



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 14TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT PETITION NO.103407 OF 2024 (T-RES)

BETWEEN:

M/S. RAYS POWER INFRASTRUCTURE
PRIVATE LIMITED, 1ST FLOOR BUILDING,
B.B.NAGAR, KUSTAGI, DIST: KOPPAL,
REPRESENTED BY ITS DIRECTOR,
SRI ASHISH S/O. BHAGCHAND JAIN,
AGED ABOUT 36 YEARS.
GSTIN 29AAFCR3720A1ZR

...PETITIONER

(BY SRI H. R. KAMBIYAVAR, ADVOCATE FOR
PATRI SHAHIKALA K. AND
SMT. JOSHNA P. DHANAVE, ADVOCATES)

AND:

1. THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES (LGS TO -510),
KINNAL ROAD, KOPPAL – 583 231.
2. THE UNION OF INDIA,
REPRESENTED BY ITS FINANCE SECRETARY,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
NEW DELHI – 110 001.
3. THE STATE OF KARNATAKA,
REPRESENTED BY ITS FINANCE SECRETARY,
VIDHANA SOUDHA,
BENGALURU – 560 001.
4. THE COMMISSIONER OF COMMERCIAL TAXES
IN KARNATAKA,
VANIJYA THERIGE KARYALAYA,
1ST MAIN, GANDHINAGAR,





BENGALURU – 560 009.

5. THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
CENTRAL BOARD OF EXCISE AND CUSTOMS,
GST POLICY WING,
NEW DELHI – 110 001.

...RESPONDENTS

(BY SRI SHIVAPRABHU S. HIEMATH, AGA FOR R1, R3 AND R4;
SRI VENKATESH M. KHARVI, ADVOCATE FOR R2;
SRI GIRISH HULMANI, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, DECLARE AND STRIKE DOWN SECTION 16(2)(C) OF THE CGST/SGST ACTS AS BEING UNCONSTITUTIONAL, THE SAME BEING VIOLATIVE OF ARTICLES 14 AND 19(1)(G) OF THE CONSTITUTION OF INDIA. IN THE ALTERNATIVE, THE PETITIONER MOST RESPECTFULLY PRAYS THAT THIS HON BLE HIGH COURT MAY BE PLEASED TO READ DOWN THE PHRASEOLOGY HAS BEEN ACTUALLY PAID OCCURRING IN SECTION 16(2)(C) OF THE CGST/SGST ACTS TO MEAN OUGHT TO HAVE BEEN PAID. THE PETITIONER MOST RESPECTFULLY PRAYS THAT THIS HON BLE HIGH COURT MAY BE PLEASED TO ISSUE A WRIT OF CERTIORARI OR A DIRECTION IN THE NATURE OF A WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER DATED 08.12.2023, U/S. 73 (1) OF THE KGST/CGST ACT-2017, BEARING NO. CTO/LGSTO-510/2023-24/8814, DATED 08/12/2023, F.Y. 2017-18, TO THIS WRIT PETITION AND ETC.,

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING - B GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE C.M. POONACHA



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE C.M. POONACHA)

The present writ petition is filed seeking for the following reliefs:

- i. *"To declare and strike down Section 16 (2) (c) of the CGST/SGST Acts as being unconstitutional, the same being violative of Articles 14 and 19(1)(g) of the Constitution of India.*
- ii. *In the alternative, the Petitioner most respectfully prays that this Hon'ble High Court may be pleased to read down the phraseology "has been actually paid" occurring in Section 16 (2) (c) of the CGST/SGST Acts to mean "ought to have been paid".*
- iii. *The Petitioner most respectfully prays that this Hon'ble High Court may be pleased to issue a Writ of Certiorari or a direction in the nature of a Writ of Certiorari quashing the impugned Order dated 08.12.2023, U/s. 73[1] of the KGST/CGST Act-2017, Bearing NO.CTO/LGSTO-510/2023-24/8814 vide **Annexures-"D"**, F, Y, 2017-18, to this writ petition.*
- iv. *This Hon'ble High Court may be pleased to issue such other writ or writs or directions in the nature of a writ as this Hon'ble High Court may*



deem it fit to grant in the facts and circumstances of the petitioner's case."

2. Although the reliefs as sought for has been made in the writ petition, learned counsel Sri.H.R.Kambiyavar appearing for the petitioner submits that he does not press relief Nos.(i) and (ii) made in the writ petition and he further submits that if the relief in the present writ petition can be considered to the extent of setting aside the order dated 08.12.2023 (Annexure-D) with a further direction to the 1st respondent to consider the reply of the petitioner made vide reply dated 10.11.2023 (Annexure-C to the writ petition) to be considered, the same would suffice in the facts of the present case.

3. The factual matrix leading to the present writ petition is that the petitioner is a registered dealer under the provisions of the Central Goods and Service Tax Act, 2017¹ as well as the Karnataka Goods and Service Tax

¹ Hereinafter referred to as the 'CGST'



Act, 2017² and is engaged in the supply of Electrical Transformers, Structures, other tubular steel poles for electric transmission and distribution lines and supply of services like works contract services, etc. It is the case of the petitioners that the 1st respondent issued a show cause notice dated 31.03.2023 (Annexure-D to the writ petition) under Section 73 of the KGST Act and Section 50, 73(9) of the CGST Act as also Rule 142(1a). The petitioner replied to the same vide reply dated 10.11.2023 (Annexure-C to the writ petition). The 1st respondent vide order bearing No.CTO/LGSTO-510/2023-24/8814 dated 08.12.2023 (Annexure-D) has passed the order Under Section 73(9) of the KGST Act and determined the tax, interest and penalty. Being aggrieved, the present writ petition is filed.

4. At the outset before going to the various contentions raised on behalf of the petitioners, it is relevant to note that in the first page of the order dated

² Hereinafter referred to as the 'KGST'



08.12.2023 it is forthcoming that the same is issued by the office of the 1st respondent/Assistant Commissioner, Commercial Tax. However, it is forthcoming from page No.9 i.e., the last page of the said order dated 08.12.2023 that the same is signed by the Commercial Tax Officer, Koppal.

5. It is further relevant to note that while considering the reply of the petitioner, the contents of the said reply have been scanned and re-printed in the said order dated 08.12.2023. The same is evident from the fact that even the letterhead of the petitioner has been printed in the said order dated 08.12.2023. Thereafter, after setting out the details of the input tax credit claim/availed/utilized, it has been noticed in the said order dated 08.12.2023 that *"the reply filed by the registered person is general in nature and not tenable. Hence, not considered."*

6. It is relevant to note that the various contentions raised by the petitioner in the reply notice



have not even been considered and no order has been passed by the 1st respondent with regard to the same.

7. It is further relevant to note that the petitioner, in its reply has specifically sought for a personal hearing. Further, Section 75(4) of the KGST Act specifically stipulates that an opportunity of hearing shall be granted where a request is received in writing. It is not forthcoming from the order dated 08.12.2023 that a personal hearing has been afforded as sought for by the petitioner.

8. Hence from a bare perusal of the order dated 08.12.2023 it is clear that the 1st respondent has not applied its mind and the said order has been passed in a mechanical manner.

9. In view of the aforementioned, the following:

ORDER

a) *The writ petition is **allowed in part.***



- b) Order bearing No.CTO/LGSTO-510/2023-24/8814 dated 08.12.2023 by the 1st respondent (Annexure-D) is quashed.*
- c) The petitioner shall appear before the 1st respondent on 05.12.2024 at 3.00 p.m. without the requirement of any further notice being issued in this regard.*
- d) Upon appearance of the petitioner, the 1st respondent shall conduct further proceedings in accordance with law.*
- e) A copy of this order shall be sent to the Commissioner of Commercial Taxes, Vanijya Therige Karyalaya, 1st main, Gandhinagar, Bengaluru-560009, so as to take appropriate measures in that regard so as to ensure that the concerned officials are sensitized regarding the passing of appropriate orders in accordance with law and not mechanical orders as the impugned order dated 08.12.2023.*



f) All contentions of the parties are left open.

**Sd/-
(C.M. POONACHA)
JUDGE**

PMP/CT-ASC
List No.: 1 Sl No.: 54