



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 9075 OF 2024 (T-RES)

BETWEEN:

M/S NAM ESTATES PRIVATE LIMITED
(INCORPORATED UNDER THE
COMPANIES ACT, 2013)
NO.150, 1ST FLOOR,
EMBASSY POINT
INFANTRY ROAD
BENGALURU – 560 001
REPRESENTED BY ITS DIRECTOR
P.R.RAMAKRISHNAN
AGED ABOUT 72 YEARS

...PETITIONER

(BY SMT.KRISHIKA VAISHNAV, ADVOCATE FOR
SRI. A MAHESH CHOWDHARY, ADVOCATE)

AND:

1. JOINT COMMISSIONER
OF COMMERCIAL TAXES (APPEALS-I)
2ND FLOOR, TTMC
BMTc BUILDING
SHANTHI NAGAR
BENGALURU – 560 027
2. ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES,
LGSTO-20, NO.19/3, 2ND FLOOR,
CUNNINGHAM ROAD,
BANGALORE – 560 052

...RESPONDENTS

(BY SRI.HEMA KUMAR, AGA)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 30.09.2023 IN GST AP NO.70/2021-22 VIDE ANNEXURE A ISSUED BY THE RESPONDENT NO. 1 AS BEING ILLEGAL, ERRONEOUS, ARBITRARY, AND BAD IN THE EYES OF LAW & ETC.

THIS PETITION, COMING ON FOR *ORDERS*, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this petition, the petitioner seeks quashing of the impugned order dated 30.09.2023 in GST AP No.70/2021-22 vide Annexure-A, whereby the appeal filed by the petitioner challenging the order dated 06.09.2021 was rejected by respondent No.1.

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record would indicate that pursuant to the Agreement dated 29.05.2017 entered into between the petitioner and its vendor by name viz., M/s. Mavin Switchgears and Control Pvt.Ltd., the petitioner paid advance of Rs.14,08,79,262/- to the aforesaid vendor as well as GST of Rs.2,53,58,268/-. Subsequently, the aforesaid vendor did not supply goods under the contract to the petitioner and the contract



having been cancelled, the petitioner called upon the aforesaid vendor to return/refund the entire advance amount. Since, the vendor did not refund/repay the aforesaid amount of Rs.14,08,79,262/- back to the petitioner, the petitioner recovered the same by encashing the bank guarantee furnished by the aforesaid vendor.

4. As stated supra, in addition to paying the aforesaid sum of Rs.14,08,79,262/- towards the agreement, the petitioner also paid an additional amount of Rs.2,53,58,268/- towards GST, which was in turn paid by the aforesaid vendor to the respondents. In view of the non supply of goods covered under the contract and cancellation of the contract and recovery of the advance amount paid by the petitioner, the petitioner became entitled to the aforesaid GST, which was paid by the aforesaid vendor to the respondents without there being any tax liability in this regard either by the petitioner or its vendor.

5. A perusal of the material on record will also indicate that on 27.08.2021, respondent No.2 issued a show cause notice calling upon the petitioner to show cause as to why the refund application should not be rejected, pursuant to which respondent



No.2 passed an order dated 06.09.2021 rejecting the refund application, which was confirmed by respondent No.1/Appellate Authority vide impugned order dated 30.09.2023, which is assailed in the present petition.

6. A perusal of the order dated 06.09.2021 passed by respondent No.2 rejecting refund claim of the petitioner will indicate that the same is unreasoned, cryptic, non-speaking order without assigning any reasons as to why the refund application was rejected. Further the impugned order dated 30.09.2023 at Annexure-A will indicate that despite several judgments having been referred to and relied upon by the petitioner, respondent No.1/Appellate Authority confirmed the order passed by respondent No.2 on the ground that eligibility criteria under Section 54 of the Karnataka Goods and Service Tax, 2017, have not been met by the petitioner. In this context, it is relevant to note that respondent No.1 has come to the conclusion that supplier/vendor was the person ought to have issued credit note and thereafter, it was open for the petitioner to seek refund and without doing so, the petitioner is not entitled to seek refund of the GST. Respondent No.1 has also come to the conclusion that it is for the vendor to file an appropriate application before the respondents/authorities seeking



refund and only thereafter, the grievance of the petitioner can be addressed for the purpose of refund.

7. In my considered opinion, in the facts and circumstances of the instant case viz., the payment of sum of Rs.14,08,79,262/- paid by the petitioner to the vendor, payment of Rs.2,53,58,268/- towards GST by the vendor to respondents and refund of entire amount of Rs.14,08,79,262/- by encashment of the bank guarantee by the petitioner and other material on record would cumulatively indicate that there was no GST liability either by the petitioner or his vendor were concerned and by applying doctrine/principles of unjust enrichment and restitution and since the aforesaid GST amount is lying with the respondents, who are retaining the same without there being any GST liability either by the petitioner or the vendor, I deem it just and appropriate to set aside the order dated 06.09.2021 passed by respondent No.2 as well as impugned order dated 30.09.2023 passed by respondent No.1/Appellate Authority and direct the concerned respondents to refund entire GST amount of Rs.2,53,58,268/- back to the petitioner within a stipulated time frame. It is however made clear that the present order is passed in a peculiar/special facts and circumstances of the instant case and



without making it a precedent or having any precedential value for any purpose, whatsoever.

8. In the result, I pass the following:

ORDER

- (i) Petition is hereby ***allowed***;
- (ii) Order dated 06.09.2021 passed by respondent No.2 and impugned order dated 30.09.2023 passed by respondent No.1 are hereby set-aside;
- (iii) Refund application dated 05.07.2021 filed by the petitioner stands ***allowed***;
- (iv) Concerned respondent/authority is directed to refund the entire GST amount of Rs.2,53,58,268/- back to the petitioner within a period of eight weeks from the date of receipt of a copy of this order; and
- (v) It is also made clear that this order does not interpret any of the provisions of CGST Act and Rules and it is made in the peculiar/special facts and circumstances obtaining in the instant case



and this order shall not be treated as a precedent or have any precedential value for any purpose whatsoever.

**Sd/-
JUDGE**

AV
LIST NO.: 1 SL NO.: 33