



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT APPEAL NO. 1195 OF 2024 (T-RES)

BETWEEN:

1. THE JOINT COMMISSIONER
OF COMMERCIAL TAXES (APPEALS-1)
2nd FLOOR, TTMC, BMTc BUILDING,
SHANTHINAGAR,
BENGALURU 560 027
2. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES,
LGSTO-20, NO.19/3, 2nd FLOOR,
CUNNINGHAM ROAD,
BENGALURU 560 052

...APPELLANTS

(BY SRI. N. DEVDAS, AAG A/W
SRI. SHIVAPRABHU S HIREMATH, AGA)

AND:

M/S NAM ESTATES PRIVATE LIMITED
(INCORPORATED UNDER THE COMPANIES ACT, 2013)
NO.150, 1ST FLOOR, EMBASSY POINT,
INFANTRY ROAD,
BENGALURU 560 001.

...RESPONDENT

(BY SRI. VIKRAM HUILGOL, SENIOR COUNSEL A/W
MS. KRISHIKA VAISHNAV, ADVOCATE AND
SRI. MAHESH CHOWDHARY, ADVOCATE)





THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 18.04.2024 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WP No-9075/2024 AND CONSEQUENTLY ALLOW THE PRESENT WRIT APPEAL.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE G BASAVARAJA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

Revenue has preferred this Intra-Court Appeal under Section 4 of the Karnataka High Court Act, 1961 for laying a challenge to the learned Single Judge's order dated 18.04.2024 whereby Respondent - Assessee's W.P.No.9075/2024 (T-RES) having been favoured the Refund Decline Orders dated 06.09.2021 & its confirmation in Appeal order 30.09.2023 have been quashed. Further, Assessee's Refund Application dated 05.07.2021 having been allowed, Petitioners are directed to refund the entire GST amount of Rs.2,53,58,268/- within eight weeks.

2. BRIEF FACT MATRIX OF THE CASE:



2.1 The Respondent herein, namely, M/S NAM ESTATES PRIVATE LIMITED, entered into a contract with M/s Mavin Switch Gears and Control Private Limited for the supply, installation, and commissioning of Gas insulated Sub-stations (GIS)/Conventional Sub-stations and extra-high voltage transmission lines.

2.2 An advance payment of Rs. 14,08,79,262/- was made by NAM ESTATES PRIVATE LIMITED against a bank guarantee provided by the supplier. Upon receipt of this payment, M/s Mavin Switch Gears and Control Private Limited issued a tax invoice on 01-08-2017, including GST of Rs. 2,53,58,268/- and declared this transaction in their GSTR-1 and GSTR-3B returns.

2.3 However, the supplier failed to deliver the goods and services, leading to the cancellation of the contract in March 2021. Consequently, the advance payment was recovered by encashing the bank guarantee. While matters stood thus, the Respondent herein, M/S NAM ESTATES PRIVATE LIMITED filed a refund application in FORM RFD-01 on 05-07-2021, seeking refund of the GST amount paid, to the tune of Rs.2,53,58,268/-

2.4 The Assistant Commissioner of Commercial Taxes, LGSTO-20, (Appellant No. 2 herein) reviewed the application and issued a notice (RFD-08) on 27.08.2021, indicating that the refund eligibility under section 54 of the CGST/SGST Act, 2017 was not established based on the taxpayer's submissions. As there was no response from the taxpayer, a refund rejection order was passed and issued on 06-09-2021.



2.5 An appeal against the refund rejection order dated 06-09-2021 was filed by the Respondent herein, before the JCCT(Appeals)-1. The Appellate authority highlighted that the supplier, who was the tax-payer, was obligated to issue credit notes for the cancelled contract and declare these in their tax return, adjusting the tax liability accordingly. It was concluded by the Appellate Authority that the taxpayer could not seek a refund of SGST & CGST as the tax paid on the advance was the supplier's responsibility.

3. Learned Addl. Advocate General appearing for the Revenue argues that factual matrix that would give raise to a claim for refund needed to be ascertained at the hands of authorities and therefore, learned Single Judge could not have undertaken that exercise; the Refund Decline Order made by the original authority having been examined is confirmed by the statutory appellate authority; even otherwise, the procedure for refund cannot be dispensed with. So arguing, he seeks invalidation of impugned order of the learned Single Judge.

4. Learned Sr. Advocate Mr. Vikram Huilgol appearing for the Assessee per contra makes submission in justification of the impugned judgement and the reasons on which it has been



constructed. He tells us that where GST is paid in contemplation of accomplishment of a contract, which later comes to be rescinded because of breach by the other party thereto, the tax amount has to be refunded; the authorities in the fact matrix demonstrable from record would not have declined refund inasmuch as, that would amount to acquisition of private property of the Assessee without authority of law. So contending he seeks dismissal of the appeal.

5. Having heard the learned counsel for the parties and having perused the Appeal papers, we decline indulgence in the matter for the following reasons:

5.1 Admittedly, the contract in question having been breached by the other party thereto, the Assessee has recovered the amount by encashing the bank guarantee. The amount remitted to the Exchequer by way of GST component in contemplation of discharge of contract by execution could not have been retained by the State when the contract failed. It is as simple as that. Levy of tax is on the transaction; if transaction fails what is paid in advance needs to be refunded. The learned Single Judge has structured the impugned judgment on this inarticulate premise, which cannot be faltered.



5.2 Learned Single Judge at para 7 of the impugned judgment has rightly observed as under:

"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..."

5.3 The vehement submission of learned AAG that no refund can be granted as a matter of course, unless the requirement of Sec.54 of Karnataka Goods and Service Tax Act, 2017, appears to be very attractive at the first blush. However, a deeper examination shows it otherwise. Sec. 54(1) of the Central GST Act, 2017 is in *pari material* with the said provision of the State Act. The Apex Court in OSWAL CHEMICALS AND FERTILIZERS LIMITED vs. COMMISSIONER OF CENTRAL EXCISE, BOLPUR¹ construed the term 'any person' employed in Sec.11B of the Central Excise Act, 1944 to include even the purchaser of goods and therefore purchasers too can

¹ (2015)14 SCC 431



seek refund of Central Excise Duty. The same analogy applies to the case of Respondent-Assessee.

5.4 Learned Sr. Counsel Mr.Huilgol is right in telling that the Revenue could not have declined the refund on the ground that Credit Note was not issued by the other party to the contract ie., the vendor, upon whom essentially the duty to pay tax rested inasmuch as the question of issuing such a note would not arise since goods were never delivered and that there was a gross breach of contract because of which it was rescinded and the price paid in advance was retrieved by encashing the bank guarantee. Added, the GST portal and the returns of both the Assessee herein and his vendor reflect the payment of GST amount in a sum of Rs.2,53,58,268-00. What prejudice would be caused to the State by making the refund as sought for by the Assessee, is not discernible. Caesar cannot retain monies of citizens without statutory justification. After all, the Assessee is not going to make his unjust enrichment by obtaining the refund, but will get back his own money. Article 265 of our Constitution states that tax not to be imposed save by authority of law. This broadly accords with the law declared by the Apex Court in MAFATLAL INDUSTRIES vs. UOI².

In the above circumstances, this appeal being devoid of merits is liable to be rejected and accordingly it is, costs having

² (1997)5 SCC 536



been made easy. The appellant shall refund or cause to be refunded the GST amount to the Respondent-Assessee within a period of eight weeks, failing which they run the risk of contempt proceedings and further they are liable to pay the interest at the statutory admissible rate, which may be recovered on such payment, from the erring officials.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

YN/Bsv/Snb/*
List No.: 1 Sl No.: 15