



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 1119 OF 2023 (T-RES)

BETWEEN:

M/S KBL SPML 25JV
C/O WORKAFELLA
150, 1 INFANTRY ROAD
OPP COMMISSIONER OFFICE
SHIVAJINAGAR
BENGALURU - 560001
EPRESENTED BY ITS
AUTHORIZED SIGNATORY SRI ATUL GODBOLE.

...PETITIONER

(BY SMT.VEENA J. KAMATH.,ADVOCATE)

AND:

THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA
KALIDASA ROAD GANDHINAGAR
BANGALORE - 560009.

...RESPONDENT

(BY SRI.K. HEMA KUMAR., AGA)





THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 29.11.2022 BEARING ADVANCE RULING NO.KAR ADRG 44/2022 PASSED BY THE RESPONDENT AS PER ANNEXURE-A; DIRECT THE RESPONDENT TO PASS APPROPRIATE ORDERS ON THE MERITS IN RESPECT OF THE APPLICATION DATED 07.09.2022 FILED BY THE PETITIONER WITH THE RESPONDENT SEEKING ADVANCE RULING FILED U/S 97 OF THE KGST/CGST ACT, R/W RULE 104 OF THE KGST/CGST RULES, AS PER ANNEXURE-B, AFTER GIVING AN OPPORTUNITY OF PERSONAL HEARING TO THE PETITIONER.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is aggrieved by the respondent's order dated 29.11.2022 [Annexure-A] under Section 98(2) of the Central Goods and Services Tax Act,2017 and Karnataka Goods and Services Tax Act, 2017 [for short, 'CGST Act/KGST Act']. The petitioner's application is rejected as



contemplated under Section 98(2) of the CGST Act/KGST Act without being admitted for detailed hearing. The petitioner's grievance with the order dated 29.11.2022, apart from the merits of the reasons assigned, is that its application is rejected without due opportunity to show cause against the reason assigned.

2. On the previous hearing date, Mr. Hema Kumar K, the learned Additional Government Advocate, had drawn the attention of this Court's order dated 16.04.2019 by a Single Judge of this Court in W.P.No.57937/2018 [**United Breweries Limited vs. State of Karnataka**] to assert that this petition may have to be placed before a Division Bench of this Court. Ms. Veena J Kamath and Mr. Hema Kumar K are heard in the light of the petitioner's grievance and the aforesaid submissions.



3. The respondent has rejected the petitioner's application as contemplated under Section 98(2) of the CGST/KGST Act recording that the petitioner, who had the benefit of contract for construction of pumping stations and reservoirs as also for Operation and Maintenance work between 01.11.2014 and 31.10.2021, has filed application for advance ruling on 07.09.2022 after the expiry of the corresponding contractual period. The respondent, interpreting the expression '*being*' as found in Section 97(2)(g) of the KGST/CGST Act, has opined that the phrase '*being undertaken*' can only refer to an ongoing and continuous supply and with the petitioner's contractual period having expired, the application cannot be admitted.

4. Ms. Veena J Kamath submits that the petitioner was extended the opportunity of personal hearing as contemplated under Section 98 of the CGST/KGST Act, but the petitioner's representative



was not put on notice that the application would be rejected on the ground as aforesaid, and in the absence thereof, the opportunity of hearing is rendered a mere formality. Mr. Hema Kumar is not able to controvert the submission that the petitioner is not informed that the application could be rejected without admission for the reason now assigned in the impugned order.

5. This Court is of the considered view that opportunity of hearing as contemplated under Section 98(2) cannot be an empty formality, and the petitioner should have been informed that the application could be rejected without admission on the ground the corresponding contractual period has expired. Therefore, this Court is persuaded to opine that the opportunity of hearing contemplated is rendered a mere formality. The petitioner must therefore have appropriate liberty to file additional plea to show cause against such reasoning and the respondent must reconsider the application.



6. A coordinate bench of this Court, while considering the orders emanating under the provisions of Section 100 of the CGST/KGST Act in W.P.No.57937/2018, has held as follows:

"The Hon'ble Apex Court in Columbia Sportswear Company, supra, has observed that a writ petition may remain pending in the High Court for years, first before a learned Single Judge and thereafter in Letters Patent Appeal before the Division Bench and as a result the object of chapter XIX-B of the Act which is to enable an applicant to get an advance ruling in respect of a transaction expeditiously would be defeated. Hence, it is held that when an advance ruling of the Authority is challenged before the High Court under Article 226 and/or 227 of the constitution, the same should be heard directly by a Division Bench of the High Court and decided as expeditiously as possible."



The question must be whether every challenge to an advance ruling either by *Advance Ruling Authority* or *Appellate Authority* should be placed before a Division Bench of this Court.

7. As against a pronouncement of advance ruling under Section 98(4) of the CGST Act/KGST Act by the Advance Ruling Authority, an appeal can be filed with the Appellate Authority under Section 100 of the CGST Act/KGST Act. The co-ordinate Bench's order in W.P.No.57937/2018 is when the Appellate Authority's order under Section 100 of the CGST Act/KGST Act is called in question under Article 226 of the Constitution of India, and in the present case, the Advance Ruling Authority's order under 98(2) of the CGST Act/KGST Act is called in question.

8. The question whether even a petition filed against the Advance Ruling Authority's order under Section 98(2) or 98(4) of the CGST Act/KGST Act could be considered in its full import in an



appropriate case, but for the present, this Court is of the considered view that as the interference is with the Advance Ruling Authority's order under Section 98(2) of the CGST Act/KGST Act on the ground of denial of opportunity of hearing as contemplated under the Statute which inheres the principles of natural justice, this petition need not be placed before a Division Bench. For the afore, the following:

ORDER

The petition is allowed in part, and the respondent's order dated 29.11.2022 [Annexure-A] rejecting the petitioner's application for advance ruling without admitting it for detailed consideration is quashed and the application is restored for reconsideration with due opportunity to the petitioner. The petitioner, who now has the advantage of knowing the reasoning assigned by the respondent, shall be at liberty to file additional plea when issued with notice of further hearing. The



petitioner to avail this opportunity shall file a certified copy of this order with the office of the respondent.

**Sd/-
JUDGE**

NV

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