



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MARCH, 2024

BEFORE

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

WRIT PETITION NO. 633 OF 2024 (T-RES)

BETWEEN:

M/S HITACHI NEST CONTROL SYSTEMS PVT LTD
UNIT NO S 704, 7TH FLOOR WORLD TRADE
CENTRE BRIGADE GATEWAY CAMPUS,
NO 26/1, DR RAJKUMAR ROAD
MALLESWARAM RAJAJINAGAR
BANGALORE - 560 055
(REPRESENTED BY SHRI HIMANSHU
S/O RAVI KUMAR SRIVASTAVA
AGED ABOUT 47 YEARS
LIQUIDATOR OF PETITIONER COMPANY
(A COMPANY PRIVATE LIMITED UNDER
REGISTERED UNDER COMPANIES ACT 1956)

...PETITIONER

(BY SRI. V. RAGHURAMAN, SENIOR COUNSEL FOR
SRI. RAGHAVENDRA C R.,ADVOCATE)

AND:

1. ADDITIONAL COMMISSIONER OF CENTRAL TAX
BENGALURU NORTH COMMISSIONERATE NO
59, GROUND FLOOR,
HMT BHAVAN BELLARY ROAD
BANGALORE – 560 032.
2. ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES,
(LGSTO-140 ADDL),
ADICHUNCHUNAGIRI MATATHA BUILDING,
4TH FLOOR, VIJAYANAGAR
BENGALURU – 560 040.
3. STATE OF KARNATAKA
REPRESENTED BY SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA,
BENGALURU - 560 001.





4. UNION OF INDIA
MINISTRY OF FINANCE
REPRESENTED BY SECRETARY
NORTH BLOCK NEW DELHI – 110 001.

...RESPONDENTS

(BY SRI. JEEVAN.J.NEERALAGI.,ADVOCATE FOR R-1 & R-2
SRI. HEMA KUMAR.K, AGA FOR R-3
SRI. AJAY PRABHU, ADVOCATE FOR R-4)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) QUASH IMPUGNED SHOW CAUSE NOTICE DATED 29/09/2023 BEARING NO. 16/2023-24 GST ADC DT 29/09/2023 (DIN NOT GENERATED DUE TO TECHNICAL ERROR) ISSUED BY R1, ENCLOSED AS ANNEXURE-A, FOR THE REASONS STATED IN THE GROUNDS AND DIRECT THE RESPONDENTS TO ALLOW CARRY FORWARD OF CENVAT CREDIT IN TERMS OF SECTION 140(1) OF CGST ACT READ WITH RULE 6(6)(vii) OF CENVAT CREDIT RULES, 2004 AND ETC.

THIS PETITION COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this petition, petitioner seeks for the following reliefs:-

“ (A) Issue a writ of certiorari or any other writ or direction or order to quash impugned show cause notice dated: 29.09.2023 bearing No.16/2023-24 GST ADC Dt: 29.09.2023 (DIN not generated due to technical error) issued by Respondent No.1, enclosed as Annexure A, for the reasons stated in the grounds and direct the respondents to allow carry forward of Cenvat credit in



terms of Section 140(1) of CGST Act read with Rule 6(6)(vii) of Cenvat Credit Rules, 2004.

(B) Issue a writ of declaration or any other writ or direction or order to declare that the provisions of Clause(iii) to Section 140(1) of the CGST Act enclosed as Annexure-B as unconstitutional for the reasons specified in the grounds.

(c) In the alternative, this Hon'ble Court may "read down" the wording contained in Clause (iii) to Section 140(1) of CGST Act so as to allow the carry forward of Cenvat Credit as declared in Tran-1 considering the express provisions of Rule 6(6) (vii) of Cenvat Credit Rules, 2004.

(D) Issue a writ of Certiorari or any other writ or direction or order to declare Notification No.13/2022-CT dated: 05.07.2022, issued by Respondent No.4, enclosed as Annexure-C, as ultra-vires Section 168A of CGST Act, 2017 for the reasons stated in the grounds.

(E) Issue a writ of certiorari or any other writ or direction or order to declare Notification No. 08/2022 dated: 12.07.2022, issued by Respondent No.3, enclosed as Annexure-C1, as ultra-vires Section 168A of KGST Act, 2017 for the reasons stated in the grounds.

(F) Issue a writ of certiorari or any other writ or direction or order to declare Notification No. 9/2023-CT dated: 31 March 2023, issued by Respondent No.4, enclosed as Annexure-C2, as ultra-vires Section 168A



of CGST Act, 2017 for the reasons stated in the grounds.

(G) Issue a writ of certiorari or any other writ or direction or order to declare Notification No.06/2023 dated: 06.04.2023, issued by Respondent No.3, enclosed as Annexure-C3, as ultra-vires Section 168A of KGST Act, 2017 for the reasons stated in the grounds.

(H) Grant such other consequential reliefs, as this Honourable High Court may think fit including the cost of this writ petition.

(I) Writ or direction in the nature of a writ of certiorari or any other writ or direction to quash the order dated: 27.12.2023 enclosed as Annexure-AA6 issued by the Respondent No.1 as being violative of principles of natural justice and being violative of Article 14 of the Constitution.”

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

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner submits that though several contentions have been urged in the present petition, the impugned show cause



notice at Annexure-A dated 29.09.2023 which culminated in the adjudication order at Annexure-AA6 dated 27.12.2023 are illegal, arbitrary and without jurisdiction or authority of law, in as much as the same was issued and passed as against the dissolved company which was not in existence at the time of issuance of show cause notice and subsequently at the time of passing the adjudication order.

3.1 In this context, my attention is invited to the order dated 15.02.2023 passed by the NCLT, Bangalore, in order to point out that under Section 59(8) of the Insolvency and Bankruptcy Code, 2016 (for short 'the IBC'), the petitioner – company was dissolved by the NCLT, as a result of which, it ceased to exist for any purpose thereafter. It is also submitted that prior to dissolution itself, the GST Registration of the petitioner was cancelled by the respondents w.e.f.30.09.2020. It was also pointed out that in terms of the order of the NCLT, it would be noted that the NOC was also issued from the Income Tax Department. It is therefore submitted that since the petitioner – company was a non-existing entity / person as on the date of issuance of the show cause notice and passing of the adjudication order, the impugned show cause notice and adjudication order are void, *non-est* and nullity in the eye of law



and the same deserves to be quashed. In support of his contentions, learned Senior counsel has placed reliance upon the following decisions:-

1. ***Spice Entrainment Ltd, Vs. Commissioner of Service Tax- 2012(208)E.L.T 43 (Del.);***
2. ***Pr.Commissioner of Income Tax, New Delhi Vs.Maruti Suzuki India Ltd -2019 SCC Online SC 928;***
3. ***Saraswati Industrial Syndicate Limited Vs. Commissioner of Income Tax - 1990(9) TMI 1-SC;***
4. ***Gayathri Microns Ltd. Versus Asst Commissioner of IT - (2020) 424 ITR 288 (Guj);***
5. ***M/s. Mudhra Ltd. Vs. Asst. Commissioner of IT, Bengaluru & Others- 2020(3) TMI 689- Karnataka High Court;***
6. ***Kunvarji Fincorp Private Limited Vs. Deputy Commissioner of IT Circle 2(1) (1), Ahmedabad - (2023) 455 ITR 419 (Guj);***
7. ***C.I.T. Vs. Sony Mobile Communication Ind. Pvt Ltd - 2023 (2) TMI Delhi High Court;***
8. ***Commissioner of C.Ex., Vs. Bharat Heavy Electrical Ltd - 2015 (329) E.L.T. 893 (Tri-Del.);***
9. ***Areva T & D India Ltd., Vs. Commissioner of C. Ex., (LTU), Chennai - 2013 (296) E.L.T.106(Tri.-Chennai);***



10. *Thermo Cables Ltd. Vs Commissioner of Cus.& C. Ex., Hyderabad - 2013(292) E.L.T. 412(Tri-Bang.);*

11. *Union of India Vs. Kamalakshi Finance Corporation Limited - 1991 (55) ELT 433 (SC);*

12. *Deputy Commissioner of IT Vs. Pepsi Foods Ltd - (2021) 433 ITR 295(SC);*

13. *Eicher Motors Vs Union of India - 1999 (106) ELT 3 (SC);*

14. *Collector of C.Ex., Vs Dai Ichi Karkaria Ltd., - 1999 (112) ELT 353(SC).*

4. Per contra, learned counsel for the respondents – revenue submits that there is no merit in the petition and the same is liable to be dismissed. Alternatively, it is submitted that even assuming that the petitioner – company stood dissolved w.e.f. 15.02.2023, subsequent to which, the impugned show cause notice was issued, the respondents would be entitled to proceed against the erstwhile Directors of the petitioner-company by virtue of Section 88(3) of the CGST Act, 2017 and on this ground also, the petition purported to have been filed by the official liquidator is liable to be dismissed.

5. I have given my anxious consideration to the rival submissions and perused the material on record.



6. The legal question that arises for consideration is, whether the tax authorities can initiate tax assessment proceedings under the provisions of CGST Act against a company which is dissolved under Section 59(8) of the IBC Act.

7. It is important at this juncture to look into the Delhi High Court judgement in ***Spice Entertainment v. Commissioner of Service Tax 2012 (280) E.L.T. 43 (Del.)***, wherein the Hon'ble Delhi High Court held as under –

“ 10. Section 481 of the Companies Act provides for dissolution of the company. The Company Judge in the High Court can order dissolution of a company on the grounds stated therein. The effect of the dissolution is that the company no more survives. The dissolution puts an end to the existence of the company. It is held in M.H. Smith (Plant Hire) Ltd. Vs. D.L. Mainwaring (T/A Inshore), 1986 BCLC 342 (CA) that "once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Thus an insurance company which was subrogated to the rights of another insured company was held not to be entitled to maintain an action in the name of the company after the latter had been dissolved".

15. Likewise, in the case of Sri Nath Suresh Chand Ram Naresh Vs. CIT (2006) 280 ITR 396, the Allahabad High Court held that the issue of notice under Section 148 of the Income Tax Act is a condition precedent to the



validity of any assessment order to be passed under section 147 of the Act and when such a notice is not issued and assessment made, such a defect cannot be treated as cured under Section 292B of the Act. The Court observed that this provisions condones the invalidity which arises merely by mistake, defect or omission in a notice, if in substance and effect it is in conformity with or according to the intent and purpose of this Act. Since no valid notice was served on the assessee to reassess the income, all the consequent proceedings were null and void and it was not a case of irregularity. Therefore, Section 292B of the Act had no application.

16. When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of Section 292B of the Act are not applicable in such a case. The framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a dead person”.

8. The Hon'ble Division Bench held that initiating assessment against a 'non-existing' / 'dead person' is not merely a procedural defect which can be cured but a jurisdictional defect. In other words, the Tax authorities do not have the jurisdiction to initiate tax assessment against a 'non-existing' entity.



9 . The Apex Court in ***Pr. Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd - 2019 SCC Online SC 928***, dealt with a similar issue wherein a notice under Section 143(2), Income Tax Act was issued to a non existing company. The Hon'ble Supreme Court reiterating the legal principles laid down in ***Spice Entertainment (supra)***, held as under –

“ 39. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the fields in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment on 2 November 2017. The decision in Spice Entertainment has been followed interim order granted earlier is extended till the next date of hearing. The case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment.

40. We find no reason to take a difference view. There is a value which the court must abide by in promoting



the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decision are made interim order granted earlier is extended till the next date of hearing. Eh expectation of consistency, uniformity and certainty. To detract from those principles in neither expedient nor desirable.”

10. On perusal of the aforementioned judgements would indicate that a company would cease to exist after an amalgamation has occurred and tax assessment cannot be initiated against a non-existent company. Similarly, a company would cease to exist after the voluntary winding up proceedings have occurred and is finally dissolved under Section 59(8) of the IBC Act. Therefore, applying the broader principles laid down by the Apex Court in ***Maruti Suzuki’s case (supra)***, tax assessment under the CGST Act cannot be initiated against non-existent company which was dissolved under Section 59(8) of the IBC Act.



12. A perusal of the material on record will indicate that the GST registration of the petitioner stood cancelled w.e.f. 30.09.2020 as evident from Annexure-K dated 20.11.2020 which was issued pursuant to the application for cancellation dated 04.11.2020 submitted by the petitioner. It is also relevant to state that the documents relating to the proceedings before the NCLT, Bangalore, will indicate that the final dissolution order was passed by the NCLT on 15.02.2023 and the status of the company was shown to be dissolved by the Registrar of Companies in pursuance of the same. As stated supra, the impugned show cause notice is undisputedly issued subsequent to 15.02.2023 after the company had stood dissolved and became non-existent in the eye of law.

13. In the instant case, the order passed by the NCLT, Bangalore, dated 15.02.2023 is sufficient to come to the unmistakable conclusion that the petitioner – company had stood dissolved completely in terms of Section 59(8) of the IBC. Consequently, the petitioner – company who is presently represented by the official liquidator for the limited purpose of the present petition ceased to exist for all other purpose including imposing or fastening any liability upon the petitioner-dissolved



company. Under these circumstances, the impugned show cause notice and adjudication order are consequently without jurisdiction or authority of law and the same deserves to be quashed.

14. Insofar as the contention urged on behalf of the respondents that by virtue of Section 88 of the CGST Act, 2017, the respondents would be entitled to proceed against the Directors of the petitioner / dissolved company is concerned, it would profitable to extract Section 88(1) and (2) of the CGST Act, which reads as under:-

“ 88. Liability in case of company in liquidation.

(1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the “liquidator”), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.



15. A reading of Section 88(1) and 88(2) that when any company is being wound up whether under the orders of a Court or Tribunal or otherwise, every person appointed as receiver / liquidator of any assets of a company, shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner (as defined under the CGST Act) and that the Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company. In the instant petition, it is not the case of the respondent that the Commissioner (as defined under the CGST Act) has issued any such demand. Further, there is no pleading or material on record regarding compliance with Section 88(1) and 88(2) of the said Act. If the Commissioner under the CGST Act had notice under Section 88(1) of the said Act and if he / she has not issued any notice to the liquidator under Section 88(2), it may not be permissible for the Commissioner to seek to adjudicate the tax



liability against the directors of the Company by issuing a demand to the Company which is non-existent in the eye of law.

Section 88(3) of the CGST Act reads as under:

“88(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.”

16. A plain reading of the aforesaid provision will indicate that the same contemplates as under:-

- (a) There has to be a private company;
- (b) The company is ordered to be wound up;
- (c) There has to be determination tax, interest or penalty on the company;
- (d) The said determination should be for a period before order or in the course of or after its liquidation;



(e) After such determination of a company during the aforesaid period, the respondents should not be in a position to recover the amount, it is only after all the aforesaid conditions are satisfied, that the respondents would be entitled to proceed against the Directors of the company.

17. In the instant case, the show cause notice undisputedly issued subsequently to dissolution and there was no determination of the tax liability of the company which was never in existence at the time of issuance of the show cause notice. In other words, at the time of adjudication order, there was no company in existence for the purpose of determination of the tax, interest or penalty and consequently, the question of invoking Section 88(3) of the CGST Act as against the Directors would not arise in the facts of the instant case.

18. In this context, it is also relevant to refer to Regulation 4 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, which reads as under:-

*“ 4. **Effect of liquidation** – (1) The Corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business.*



(2) Notwithstanding the provisions of sub-section (1), the corporate person shall continue to exist until it is dissolved under Section 59(8).”

19. A plain reading of sub-rule (1) would indicate that from the date of commencement of liquidation, the corporate person shall cease to carry on its business except as far as required for the beneficial winding up of its business; sub-rule(2) contemplates that the corporate person continues to exist until it is dissolved under Section 59(8) of the IBC. As a natural corollary of the same, after dissolution under Section 59(8) of the IBC, the said corporate person would have ceased to exist and as such, the question of any adjudication after dissolution being *per se* impermissible under Section 88(3) of the CGST Act and evidently would have no application on this ground also.

20. The submission made on behalf of the petitioner except the challenge to the show cause notice dated 29.09.2023 at Annexure-A and adjudication order at Annexure-AA6 dated 27.12.2023, the remaining reliefs may not be gone into and could be kept open is placed on record.



21. In the result, I pass the following:-

ORDER

- (i) Petition is hereby allowed.
- (ii) The impugned show cause notice at Annexure-A dated 29.09.2023 and adjudication order at Annexure-AA6 dated 27.12.2023 are hereby quashed.

**Sd/-
JUDGE**

Srl.