HC-KAR

NC: 2026:KHC:24626
WP No. 11918 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2026

BEFORE

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

WRIT PETITION NO.11918 OF 2024 (T-RES)

BETWEEN:

BIOCON LIMITED
(COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013)
20TH KM HOSUR ROAD, ELECTRONIC CITY,
BANGALORE-560100.
BY ITS AUTHROIZED SIGNATORY
YOGISH RUDRA M
S/O M V MRUTHYUNAJAYA,
AGED ABOUT 52 YEARS,
R/AT B 3065, TOWER-3 PRESTIGE
SUNRISE PARK BIRCHWOOD,
NEO TOWN ROAD, ELECTRONIC CITY
BENGALURU-560100.

...PETITIONER

(BY SRI. G. SHIVADASS, SENIOR COUNSEL APPEARING FOR
SRI. PRASHANTH SHIVADASS, SRI. RISHAB J. AND
SMT. SHARADHA R., ADVOCATES)

AND:

1. STATE OF KARNATAKA
REP. BY THE SECRETARY
FINANCE DEPARTMENT, VIDHANA SOUDHA,
BENGALURU – 560 001.

2. COMMISSIONER OF COMMERCIAL TAXES, BANGALORE
COMMERCIAL TAX BUILDING,
KALIDASA MARG.
GANDHI NAGAR, VANIJYA THERIGE KARYALAYA,
BENGALURU – 560 009.

3. DEPUTY COMMISSIONER OF COMMERICIAL TAXES
AUDIT 4,7 DGSTO-4, ROOM NO.502,
5TH FLOOR, VTK-2 BUILDING,

KORAMANGALA,
BANGALORE-560 047.

...RESPONDENTS

(BY SMT. JYOTI M. MARADI, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 22ND FEBRUARY 2024 IN FORM GST DRC 07 WITH REFERENCE NO.ZD290224053591F AND NO.DCCT (A)-4.7/DGSTO-4/BIO/2023-24 (ANNEXURE-A), PASSED BY LD. R3 IN CONFIRMATION OF SCN DATED 29TH DECEMBER 2023 ISSUED IN FORM GST DRC 01 NUMBERED AS DC (AUD)-4.7/GST/DRC-01/BIO/2023-24 ABD ZD2912230915861 (ANNEXURE-H) PASSED BY LD. R3, BEING IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE OF CONSISTENCY AND AGAINST THE PROVISIONS OF LAW AND ETC.

THIS PETITION, COMING ON FOR *FURTHER HEARING*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks the following reliefs:

"i) To issue a Writ of Certiorari or any other appropriate writ or direction to quash the impugned order dated 22 February 2024 in Form GST DRC 07 with reference no. ZD290224053591F and No. DCCT (A)-4.7/DGSTO-4/BIO/2023-24 (Annexure A), passed by Ld. Respondent No.3 in confirmation of SCN dated 29 December 2023 issued in Form GST DRC 01 numbered as DC (Aud)-4.7/GST/DRC-01/BIO/2023-24 and ZD2912230915861 (Annexure H) passed by Ld. Respondent No. 3, being in violation of principles of natural justice, of consistency and against the provisions of law.

ii) To Issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.

iii) To award cost of this petition

iv) Pass any other order or give any other direction as this Hon'ble Court deems fit and appropriate in the circumstances of the case."

2. A perusal of the material on record will indicate that in pursuance of the audit observations, audit notices, audit proceedings and correspondence between the petitioner and the respondent for the Financial Year/Tax Period 2018-19, the respondent issued pre-intimation in Form GST DRC 01A dated 06.12.2023 calling upon the petitioner to pay a sum of Rs.1,15,15,27,040/- together with applicable interest under Section 73(5) of the CGST/KGST Act, 2017. The petitioner having submitted a reply dated 14.12.2023, the respondent issued a Show Cause Notice (SCN) dated 29.12.2023 under Section 73(1) of the CGST/KGST Act calling upon the petitioner to pay a sum of Rs.90,82,01,601/- together with interest and penalty. The petitioner submitted a detailed reply dated 29.01.2024 and attended personal hearing and filed written submissions pursuant to which the

respondent proceeded to pass the impugned order dated 22.02.2024 under Section 73(9) of the CGST/KGST Act confirming the demand made in the SCN and calling upon the petitioner to pay a sum of Rs.30,37,84,642/- towards tax together with interest of Rs.29,14,02,162/- and penalty of Rs.3,03,78,464/- to the respondent. Aggrieved by the impugned order, the petitioner is before this Court by way of the present petition.

3. Heard learned Senior Counsel for the petitioner and learned HCGP for the respondents and perused the material on record.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior Counsel for the petitioner invited my attention to the impugned order in order to contend that the reasoning and findings recorded by the respondent in relation to Issue No.2 pertaining to allegations of wrong availment and utilization of excess Input Tax Credit (ITC) of Rs.20,00,82,381/- due to incorrect ITC claimed in GSTR-3B vis-à-vis as available in GSTR-2A are erroneous and contrary to the material on record and the same deserve to be quashed. It was submitted on instructions that insofar as the

remaining issues and findings recorded against the petitioner in the impugned order are concerned viz., non-payment of GST on corporate guarantee, liability to pay tax on cross-charges received towards facilities and other expenses, ITC with regard to promotion expenses held to be ineligible as per Sections 16 and 17 of the CGST/KGST Act, denial of reduced rate of tax at 0.1% for merchant exports, wrong claim of refund on export in Invoice Value instead of Shipping Bill resulting in excess refund, liability to pay under Reverse Charge Mechanism (RCM) for import of services and ITC with respect to Doctor consulting and patient counseling, which are alleged to be restricted under Section 17 of the CGST/KGST Act, the impugned order and the findings recorded by the respondent in this regard and to the said extent being erroneous and contrary to law and facts and without taking into account or consideration the relevant statutory provisions, Circulars, Notifications etc., and the judgments relied upon by the petitioner, the same deserve to be set aside and the matter remitted back to respondent No.3 – Adjudicating Authority for reconsideration afresh and in accordance with law.

5. Per contra, learned HCGP for the respondents would reiterate the various contentions urged in the statement of objections and submits that there is no merit in the petition and the same is liable to be dismissed.

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

7. A perusal of the material on record will indicate that as noticed above, the respondents have answered Issue No.2 relating to alleged wrong availment of utilization of excess ITC due to incorrect ITC claimed in GSTR – 3B vis-à-vis as available in GSTR-2A and thereby confirmed the demand of Rs.20,00,82,381/- together with interest and penalty and called upon the petitioner to pay a total sum of Rs.41,21,69,705/- in this regard by holding as under:

> ***"2. ITC VERIFICATION.***
>
> *Wrong availment and utilization of Excess Input tax credit of Rs.20,00,82,381/ due to the incorrect ITC CLAIMED In 3B VIS-A-VIS as available in GSTR-2A:*
>
> *Audit's detection: During the course of Audit on verification of the inward supply register, input tax claimed*

and availed details in GSTR-3B VIS-A-VIS GSTR-2A for the tax period April- 2018 to March-2019, some of the invoices are not reflecting in GSTR-2A, which resulted in excess availment of input tax credit This is not admissible under the provision of Section 16(2) of the Act and the details are as under:

Tax Period	***ITC claimed in GSTR-3B during the month [as per table 4A(4)+4A(5)-4B(1)-4B(2)]***			***ITC auto-drafted in GSTR-2A during the month]as per PART-A, PART-B] (Excluding RCM supplies)***			***Shortfall (-) / Excess(+) in ITC (GSTR-3B-GSTR-2A)***
Months	***IGST***	***CGST***	***SGST/UTGST***	***IGST***	***Cost***	***SGST/UTGST***	***IGST***
Apr-18	*35408645*	*10643790*	*10643790*	*28426216*	*14968359*	*14968359*	*6982429*
May-18	*56973724*	*5444625*	*14982582*	*61375845*	*16482254*	*16482254*	*-4402121*
Jun-18	*70130503*	*21070123*	*21070123*	*43150942*	*21968947*	*21969259*	*26979561*
Jul-18	*-4654410*	*0*	*0*	*32734593*	*20275691*	*20275691*	*-37389003*
Aug-18	*-119802*	*0*	*0*	*43636432*	*14636837*	*14636837*	*-43756234*
Sep-18	*127901139*	*33408879*	*33408879*	*39494459*	*29011566*	*29011567*	*88406680*
Oct-18	*152201838*	*58793927*	*58793927*	*40701118*	*14835126*	*14835127*	*111500720*
Nov-18	*50915933*	*17326223*	*17326223*	*38205960*	*20165355*	*20165355*	*12709973*
Dec-18	*91237672*	*18882421*	*18882421*	*76990737*	*19185091*	*19185091*	*14246935*
Jan-19	*38958468*	*13202543*	*13202543*	*38199473*	*14981027*	*14981027*	*758995*
Feb-19	*49476292*	*13717474*	*13714599*	*36607237*	*17764758*	*17764758*	*12869055*
Mar-19	*58183588*	*23466637*	*24211440*	*47008197*	*25113329*	*25113329*	*11175391*
Total	***726613590***	***215956642***	***226236527***	***526531209***	***229388339***	***229388654***	***200082381***

Sl.No.	***Particulars***	***IGST***	***CGST***	***SGST***
1	*Excess Claim of ITC over and above what is eligible to claim*	*200082381*	*0*	*0*
2	*Interest at 18% for 64 Months*	*192079085.4*	*0*	*0*
Total Payable		***392161466***	***0***	***0***

The RTP is advised to pay the same.

***Reply Filed**:*

- *Vide this Para, it is alleged that, Annexure 8 of the reply to DRC 01 A is not submitted to the office or uploaded in the common portal along with the reply in the Part-B DRC-01A. Accordingly, the contention of the RTP cannot be considered and the RTP is advised to pay the same. Hence, a demand*

of Rs.20,00,82,381/- is proposed along with interest of Rs.19,20,79,085/- and penalty of Rs.2,00,08,238/-

- *At the outset we would like to reiterate our submissions in the below paragraphs and also we are attaching*
  - *Details of imports, procurements made from SEZ along with copies of Bill of Entry as Annexure - 13*
  - *Copy of the notice and our reply to ASMT-10 as Annexure-14*
- *We understand that your goodself has arrived at this observation by comparing the ITC as reported in GSTR 30 under Table 4(A)(5) with ITC as appearing in GSTR 2A.*
- *The reconciliation of ITC values reported is as follows:*

S.No.	***Particulars***	***ITC(Rs.)***
A	***As per GSTR 3B – All Other ITC***	***72,66,13,590***
B	*Less:*	
i.	*Import of goods ITC disclosed in All other ITC in GSTR 3B of Jul'18*	*7,73,73,105*
ii.	*Input tax credit on procurements made from SEZ units wrongly considered under All Other ITC in GSTR 38*	*13,68,11,797*
C	***Net comparable ITC [A-[B(i)+B(ii)]]***	***51,24,28,688***
D	***ITC as per GSTR 2A***	***52,65,31,209***
E (C-D)	***Shortfall / (Excess) in GSTR 2A***	***1,41,02,522***

- *From the above table, it is evident that there is no excess ITC availed by the Noticee and the difference is merely due to wrong disclosure of ITC on import of goods and on procurements made from SEZ units in GSTR 3B.*
- *The Assessee states that the ITC related to import of goods during July 2018 (Rs.7,73,73,105/-) and on goods procured*

from SEZ units during the financial year was wrongly reported in GSTR 3B under 'All other ITC in Table 4(A)(5) instead of Table 4(A)(1). Towards this, the Noticee is enclosing the details of imports, procurements made from SEZ along with copies of Bill of Entry. Further, this error was corrected by us in the annual returns i.e., GSTR 9 filed for the relevant period by correctly reporting the input tax credit under 'Import of goods (including supplies from SEZ)' in Table 6E.

- *The Assessee submits that this issue was already picked up and verified by Assistant Commissioner of Commercial Taxes, LGSTO-25, by issuance of ASMT-10 dated 19.10.2023. We had submitted our reply vide ASMT-11 on 27.10.2023 and explained the reconciliation of the input tax credit. Basis our reply and submissions made, there were no proceedings initiated by the Ld. Officer. Copy of the notice and our reply are collectively enclosed as mentioned above for your ready reference.*
- *Accordingly, we humbly submit that the errors are only related to reporting in returns but there is no excess availment of ITC. Also, as this issue was already verified by the jurisdictional officer, we submit that the demand is wrongly proposed and needs to be dropped.*

Final Outcome:

The Noticee has claimed that they have wrongly reported in GSTR-3B of July-2018 relating to import of goods as all other ITC and this when checked with the GSTR-3B of Jul-2018, the all other ITC claimed in Jul-2018 3B is

Rs.4304997/- and not Rs.7,73,73,105/. Hence, the claim of the Noticee can not be accepted. Further, input relating to procurements from SEZ units is claimed to have been shown in all other ITC in GSTR-3B. But have not mentioned in which GSTR-3B such claims have been made.

Here it is pertinent to note that, GSTR-9 is not a return for the purpose of availing input tax credit and any missed out input tax credit, has to be claimed as per Sec 16(4) within the permitted time, that is by October-20th of 2019.

Any claim of input tax credit not put forth in the GSTR-3B return in the applicable columns cannot be claimed later in the GSTR-9 submitted on 30-12-2020.

Further, the Noticee has claimed in the specific box No.4A(1) of GSTR 3B an input tax credit relating to import of goods of Rs.66.88 Crores and now claiming the same by reporting through GSTR-9 is not as per law.

The Noticee claims that, the LGSTO has issued ASMT-10 regarding the same issue and the Noticee has replied and has ask the undersigned to drop the issue. But it can be observed that the Noticee has not submitted ASMT-12 as per Rule-99(3) of KGST rules, which is usually issued by the proper officer, if the reply submitted is acceptable. Hence, just because an ASMT-10 has been issued, the Act of belatedly claiming the input tax credit through GSTR-9 cannot be accepted. Hence based on the above discussion the Noticee is advised to pay back the wrongly claimed input tax credit along with the applicable interest and penalty. Which is computed as below:

Sl. No.	Particulars	IGST	CGST	SGST
1	Excess Claim of ITC over and above what is eligible to claim	200082381	0	0
2	Interest at 18% for 64 Months	192079085	0	0
3	Penalty @ 10%	20008238		
Total		412169705		

You are advised to pay the above liability."

8. A perusal of the aforesaid findings recorded by the respondents will clearly indicate that the same are contrary to the facts and law inasmuch as the respondents failed to consider and appreciate that GSTR-2A as it was conceived was designed to take in only details of suppliers in India and their supplies and it did not take in details relating to import of goods and services and SEZ procurements. The respondents also failed to consider and appreciate that for the period April, 2018 to March, 2019, petitioner entered the RCM payments for such procurements in GSTR-3B and during the said period, the above payments were not in GSTR-2A by design of the system itself and GSTR-3B returns were filed in September, 2018, which reflected most of the credits and credits were also mentioned in GSTR-09 in Table 6E filed before 31.10.2020; as per Central Government Advisory dated 29.08.2020 Import details and supplies from SEZ were getting reflected in GSTR-2A only from August, 2020 and as per Press Release dated

19.10.2021, the respondents clarified the position that GSTN as functionality to get details from ICE GATE and in view of introduction of Section 16(2)(aa) w.e.f., 01.01.2022, there was no requirement of matching with GSTR-2A.

9. The respondents also failed to consider and appreciate that the difference is due to wrong disclosure of ITC on import of goods and on procurement made from SEZ in GSTR-3B for the month of July (rectified as September) under “All other ITC” in Table 4(A)(5) instead of Table 4(A)(1), which is meant for import of goods and the error was rectified in GSTR-9 in Table 6E; further, as per Advisory dated 29.08.2020 and 19.10.2021 import details and supplies from SEZ are not reflected in GSTR-2A and ITC cannot be denied based on typographical error in reply to the SCN (mentioned as July instead of September); so also, as per Rule 36(1)(d) of the CGST/KGST Rules, Bill of Entry is the relevant document for availing ITC of Tax paid on import of goods and there is no requirement of matching with GSTR-2A as Section 16(2)(aa) is introduced w.e.f., 01.01.2022. Under these circumstances, I am of the considered opinion that that the reasoning and findings recorded by the respondent in relation to Issue No.2 pertaining to

allegations of wrong availment and utilization of excess Input Tax Credit (ITC) of Rs.20,00,82,381/- due to incorrect ITC claimed in GSTR-3B vis-à-vis as available in GSTR-2A are erroneous and contrary to the material on record and the same deserve to be quashed.

10. Insofar as the impugned order containing the reasoning and findings on remaining issues recorded against the petitioner are concerned viz., non-payment of GST on corporate guarantee, liability to pay tax on cross-charges received towards facilities and other expenses, ITC with regard to promotion expenses held to be ineligible as per Sections 16 and 17 of the CGST/KGST Act, denial of reduced rate of tax at 0.1% for merchant exports, wrong claim of refund on export in Invoice Value instead of Shipping Bill resulting in excess refund, liability to pay under Reverse Charge Mechanism (RCM) for import of services and ITC with respect to Doctor consulting and patient counseling, which are alleged to be restricted under Section 17 of the CGST/KGST Act, I am of the view that the impugned order and the findings recorded by the respondent in this regard and to the said extent being erroneous and contrary to law and facts and without

taking into account or consideration the relevant statutory provisions, Circulars, Notifications etc., and the judgments relied upon by the petitioner as well as its submissions/written submissions and consequently, in order to provide one more opportunity to the petitioner in this regard, the same deserve to be set aside and the matter remitted back to respondent No.3 – Adjudicating Authority for reconsideration afresh and in accordance with law.

11. In the result, I pass the following:

ORDER

i) The petition is hereby ***partly allowed***.

ii) The Impugned Order-in-Original No. 4.7/DGSTO-4/BIO/2023-24 DCCT(A) dated 22.02.2024 enclosed at Annexure-A to the Writ Petition to the extent it has confirmed the demand of excess availment of ITC to the tune of Rs.20,00,82,381/- along with penalty of Rs.20,08,238/ and the interest levied thereon, on such ITC, is hereby set aside.

iii) The Impugned Order No.DCCT(A) 4.7/DGSTO-4/BIO/2023-24 dated 22.02.2024 enclosed as Annexure-A to the Writ Petition to the extent it relates to the remaining following issues are set aside and remanded back to the Respondent No. 3, Deputy Commissioner of Commercial Taxes, Audit-4.7, Koramangala for reconsideration afresh in accordance with law as expeditiously as possible:

- Non-payment of GST on Corporate Guarantee;
- Liability to pay tax on cross charges received towards facilities and other expenses;
- ITC with regard to promotion expenses held to be ineligible as per Section 16 and 17 of the Central Goods and Services Tax Act, 2017;
- Denial of reduced rate of tax at 0.1% for merchant export;
- Wrong claim of refund on export invoice value instead of shipping bill resulting in excess refund;

- Liability to pay under RCM for import of services; and

- ITC with respect to Doctor consulting and patient counseling, which are alleged to be restricted under Section 17 of the Central Goods and Services Tax Act, 2017.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

Srl/ Mds