HC-KAR

NC: 2026:KHC:23833
WP No. 16424 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

BEFORE

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

WRIT PETITION NO. 16424 OF 2022 (T-RES)

BETWEEN:

M/S. L M WIND POWER BLADES INDIA
PRIVATE LIMITED
REGISTERED UNDER COMPANIES ACT, 1956,
PLOT NO. 85, KIADB INDUSTRIAL AREA,
PHASE-II, THIMMANAYAKANA HALLI,
DABASPET, NELAMANGALA TALUK,
BANGALORE - 562 111.
REPRESENTED BY ITS
AUTHORIZED SIGNATORY
MR. SHOVIT GUPTA
TAX MANAGER,
NO. 69, 13TH B MAIN,
DOOPANAHALLI, HAL 2ND STAGE,
BANGALORE - 560 008.

...PETITIONER

(BY SRI. G.SHIVADASS, SENIOR COUNSEL APPEARING FOR
SRI PRASHANTH,AND SRI.S. SHIVADASS,
SRI. RISHAB.J.AND
MISS. DHANYATHA.R, ADVOCATES)

AND:

1. THE JOINT COMMISSIONER
CENTRAL TAX GST APPEALS-II
TRAFFIC TRANSIT MANAGEMENT CENTRE,
BMTC BUILDING, 4TH FLOOR
DOMLUR, OLD AIRPORT ROAD,
BANGALORE-560 071.

2. THE ASSISTANT COMMISSIONER
CENTRAL TAX NW-3 DIVISION,

NORTH-WEST COMMISSIONER,
NORTH WING, 2ND FLOOR,
BMTC COMPLEX,
SHIVAJINAGAR BUS STAND,
BANGALORE - 560 051.

…RESPONDENTS

(BY SRI. AKASH.B.SHETTY, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDERS PASSED BY R1 DTD 06.07.2021 FOR THE MONTH OF APRIL 2019 ORDER DTD 22.04.2022 FOR THE MONTH OF AUGUST 2019 TO NOVEMBER 2019 AND JANUARY 2020 AND ORDER DTD 01.07.2022 FOR THE MONTH OF FEBRUARY 2020 TO APRIL 2020 ANNEXED AT ANNEXURE-A, B AND C TO THE EXTENT THEY REJECT REFUND ON ACCOUNT OF ITC ACCUMULATED ON EXPORT OF GOODS OR SERVICE, RESPECTIVELY AS BEING WITHOUT ANY LEGAL BASIS AND ISSUE WRIT HOLDING THAT THE PETITIONER IS ELIGIBLE TO CLAIM REFUND OF ACCUMULATED INPUT TAX CREDIT IN TERMS OF SECTION 16 OF THE IGST ACT R/W SECTION 54OF THE CGST ACT AND ETC.

THIS PETITION, COMING ON FOR DICTATING ORDERS, 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:

" a). To issue a Writ of Certiorari or any other Writ, order(s), directions, quashing the impugned orders passed by Respondent No. 1 dated 06.07.2021 for the month of April-2019, Order dated 22.04.2022 for the month of August 2019 to November 2019 and January 2020 and Order dated 01.07.2022 for the month of February 2020 to April 2020 annexed at Annexure-A, Annexure-B and Annexure-C, to the extent they reject refund on account of

ITC accumulated on export of goods or service, respectively as being without any legal basis;

b). To issue a Writ of Mandamus holding that the Petitioner is eligible to claim refund of Accumulated Input tax credit in terms of Section 16 of the IGST Act read with Section 54 of the CGST Act;

c). To issue a Writ of Mandamus holding that the services provided by the Petitioner are in the nature of export of services;

d) To issue a Writ of Mandamus directing the Respondent No. 1 to calculate Adjusted total turnover as per Rule 89 of the CGST Rules after giving due consideration to the credit notes issued;. CGST Rules after giving due consideration to the credit notes issued;

e) To issue a Writ of Mandamus holding that various inputs and input services availed by the Petitioner is in the course or furtherance of business of the Petitioner and the Petitioner is eligible to avail ITC on the same as it is not restricted as per Section 17 of the CGST Act:

f.) To issue a Writ of Mandamus holding that the Petitioner is eligible for ITC on provisioning of group charges;

g) To issue a Writ of Mandamus holding that the Petitioner has availed duty drawback only with respect to the basic customs duty and not GST and is hence eligible for refund of IGST paid on export.

h) Alternatively, to issue a Writ of Mandamus to direct the Respondent Authorities to reconsider the applications by appreciating the correct factual and legal position.

i) To issues Order(s), Directions, Writ(s) or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstance of the case in the interest of justice."

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

3. In addition to reiterating the various contentions urged in the petition and rejoinder as well as referring to the material on record, learned Senior Counsel for the petitioner submitted that the services provided by the petitioner are in the nature of export of services and the findings recorded by the respondents in this regard are erroneous and contrary to facts and law and the same deserves to be quashed. It was submitted that the petitioner and LM Group Holdings A/S with whom the petitioner entered into Master Service Agreement are not merely establishments of distinct persons and as such, the respondents committed an error in coming to the conclusion that the services provided by the

petitioner are not export of service. It is submitted that apart from the fact that the respondents committed an error in holding that the petitioner was not entitled to refund of Input Tax Credit (ITC) on Royalty expenses, the respondents also erred in rejecting the refund claim of the petitioner on the ground of ineligible ITC and the impugned orders deserve to be quashed. It was further submitted that insofar as the impugned orders pertaining to refund rejection on account of claim of Duty Drawback, issue of invoices and credit notes reported in October, 2019, issue of computation of adjusted total turnover and other issues are concerned, the impugned orders deserve to be set aside and the matter be remitted back to respondent No.1-Appellate Authority for reconsideration afresh and in accordance with law. In support of his submissions, he places reliance upon the following judgments:

(i) M/s Wipro GE Health Care Pvt. Ltd. v. Assistant Commissioner– WP 7317/2023 and connected matters, dated 27.03.2025.

(ii) Linde Engineering India v. Union of India – TIOL-1285-HC-AHM-ST

(iii) Commissioner of Income Tax v. Lakshmi Machine Works – (2007) 290 ITD 667 (SC)

(iv) BT (India) Pvt. Ltd., Vs. Union of India – (2023) CENTAX 89 (DEL),

(v) M Trade Links v. Union of India – (2024) 19 CENTAX 131 (Ker)

4. Per contra, learned counsel for the respondents-Revenue 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.

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

6. The Petitioner is registered under Central Goods and Services Tax Act and is primarily engaged in the business of manufacturing and supply of wind turbine blades. The Petitioner entered into a Master Service Agreement with LM Group Holdings A/S, a company duly incorporated under the laws of Denmark (Contractor) and its Group subsidiaries. As per the said agreement, the Petitioner has to provide various services such as finite element analysis, core engineering, stress engineering, product equipment design, manufacturing technologies engineering, product development, quality testing services and research and

development related activities and others as specified and detailed in Annexure-B to the said agreement. During the impugned periods, the petitioner provided amongst others Repair services, research and development services, Engineering services, Wind blade balancing, transport cradle rental, and other services under the agreement. The petitioner has provided the research and development services by aiding in the process of customizing/modifying the designs as per the needs of the customers to the parent entity as well as Wind blade repair and related services to its customers located outside India at their location and specifically, the repair services were undertaken at the foreign location of the recipient of such service.

7. The petitioner has also provided cradle rental services while exporting the wind blades by charging fee on per day basis which are imported back to India for re-use. These cradles are used as carriers in the transportation of the wind blades due to its heavy weight. The petitioner during the impugned periods also availed several inputs and input services such as manpower supply, production related expenses, material handling charges, uniforms, housekeeping expenses, repair and maintenance, disposal of

hazardous waste, etc., in the course or furtherance of business and availed ITC on the said inputs and input services. The petitioner also availed ITC on the royalty paid for buying the right to manufacture and sell the rotor blades, licence of patented technology and trademark rights in pursuance of the agreement for transfer of know-how with LM Wind Power A/S, Denmark.

8. The petitioner has also imported management consultancy services under cross charge from LM Wind Power A/S GRF, Denmark and discharged IGST under Reverse Charge Mechanism (RCM). Further, the petitioner had imported certain goods used for undertaking manufacture of goods which were subsequently exported and in respect of these goods, the petitioner has claimed duty drawback only to the extent of Basic Customs Duty (BCD) paid on such imports.

9. The petitioner further contended that for the period July 2018, petitioner inadvertently reported the export supplies as with payment of IGST and paid the applicable IGST though the goods were intended to be exported without payment of tax and indicated the supplies as without payment of tax in shipping bills. The said error was recognised by the petitioner in the month of October 2019

and issued a credit note to reverse the transaction and also sought for eligible refund under the head 'export without payment of tax'. Subsequently, the petitioner filed an application of refund of accumulated ITC for the impugned periods as per the provisions of the IGST Act read CGST Act and rules made thereunder before the Respondent No.2. The refund applications were rejected with the following major contentions:

(i) Supplies made outside India does not qualify as export of services

(ii) Incorrect computation of adjusted total turnover

(iii) ITC disallowed on royalty expenses paid

(iv) Non-submission of relevant documents

(v) ITC ineligible on several supplies

(vi) Reduction of refund amount on account of availment of benefit of duty drawback.

10. It is contended that the petitioner to substantiate various claims filed a reply with elaborate submissions for each of such contentions before the Respondent No. 2 along with required documents. However, the Order-in-Original partly allowed the

refund claims for few periods and the details of the same is as described in the following table:

Period	Order-in-Original Date	Refund Claimed	Refund sanctioned	Refund rejected
Apr-19	13.02.2020	7,04,39,930	6,90,54,947	13,84,983
Aug-19	22.10.2020	30,52,80,291	26,94,01,339	3,58,78,952
Nov-19	27.10.2020	3,62,36,126	2,64,66,294	97,69,832
Sep-19	29.10.2020	12,52,81,844	11,38,19,003	1,14,62,841
Oct-19	29.10.2020	6,82,07,579	73,07,366	6,09,00,213
Jan-20	13.11.2020	18,79,06,233	16,03,27,823	2,75,78,410
Mar-20	04.01.2021	7,60,82,394	5,95,93,768	1,64,88,626
Feb-20	01.01.2021	11,41,18,540	6,15,35,245	5,25,83,295
Apr-20	04.01.2021	5,85,95,797	2,01,07,118	3,84,88,679

11. Subsequently, the petitioner submitted all the required documents for examination by way of annexures to the Respondent No.1 in an appeal for the impugned periods. Additionally, it was also submitted that the petitioner has incurred royalty expenses for buying the right to manufacture and sell rotor blades, license of patented technology and trademark rights without which the petitioner will not be able to produce and sell its products and is hence an inevitable expense. However, the respondent No.1 once again rejected the refund claims by passing the impugned orders,

aggrieved by which, petitioner is before this Court by way of present petition.

12. A perusal of impugned orders will indicate that the respondent No.1 has come to the conclusion that the supply of services by the petitioner does not qualify as export of services as the place of supply for the services is within India under Section 13(3)(a) of the IGST Act on the ground that the petitioner is charging consideration for the services carried out in respect of goods made available by the recipient using the labour, plant and office space, equipment and materials; the said finding is erroneous and contrary to the material on record in as much as the services provided by the petitioner are not in respect of the goods made available by recipient and even in cases where the goods are to be made available for services such repair and maintenance, the same is undertaken at the Recipients foreign location and hence in both cases, the place of supply will be outside India and the transaction will be deemed to be an 'export of service'; further, the manpower and handling charges incurred by the petitioner being incidental to the supply of services to its customers located outside India, has to be included in the value of taxable value of the exports as per

Section 15 of the CGST Act. Insofar as cradle rental services are concerned, the said service is an independent service provided by the petitioner and is covered under paragraph 5 (f) of Schedule II of the CGST Act which treats transfer of right to use goods as deemed supply of service and the transaction in the present case qualifies to be export of services as per Section 2(6) of the IGST Act.

13. It is also relevant to state that the petitioner and LM Group Holding A/S are not merely establishments of distinct persons; as per the Master Service Agreement, the Contractor and the petitioner are independent parties, and the petitioner acts as Independent Contractor in providing the services under the said agreement and the petitioner and Contractor are different legal entities one situated in India and other situated outside India. In ***Linde Engineering's*** case *supra*, it was held that a subsidiary company in India providing services to its parent entity outside India would not be treated as establishments of a 'distinct person' and benefit of export of service cannot be denied to them. Further, with respect to incorrect calculation of the adjusted total turnover, the Adjusted total turnover must be calculated as provided under Sub-

rule (4) of Rule 89 of the CGST Rules and in case any value is reduced from the numerator by the Respondent, then the corresponding value must also be deducted from the denominator to avoid skewed computation of refund value. In ***Lakshmi Machine Works*** case supra***,*** the Hon'ble Apex Court held that non-consideration of a factor in the denominator but consideration of the same in the numerator would lead to an anomaly and hence, if credit notes were not to be considered for the purpose of computing the adjusted total turnover, then the same shall not be considered for computing the export turnover.

14. It is also pertinent to note that the petitioner is eligible for ITC availed during the impugned periods on various supplies such as manpower supply, production related expenses, material handling charges, uniforms, housekeeping expenses, repair and maintenance, etc., as they are used in the course or furtherance of business of the petitioner; further, as per Section 16(1) of the CGST Act, the petitioner had used the said input and input services in the course or furtherance of business and has satisfied all the conditions specified under Section 16(2) of the CGST Act to avail ITC and the said inputs and input services are not covered under

the exceptions specified under Section 17(5) of the CGST Act and the petitioner had reasonably established the existence of nexus, which was sufficient to hold that there is nexus between input services and output services.

15. It is also relevant to state that that the denial of ITC on the royalty expenses incurred by the petitioner on the ground that petitioner and the Contractor being related entities and rejecting valuation under Section 15 of the CGST Act is without any basis since the scrutiny of value of supply is an independent proceeding and the same cannot be questioned in refund proceedings.

16. As stated supra, the material on record clearly establishes that the petitioner operates as an entirely independent legal contractor from its overseas parent/affiliates under a definitive commercial agreement. Services are fully rendered to foreign entities, billed in freely convertible foreign exchange (USD), and do not constitute a mere internal transaction between establishments of the same distinct person; for the R&D and core engineering services, the ultimate deliverable is specialized research reports sent electronically outside India for furtherance of the client's offshore business; the place of supply must be governed by the

default rule under Section 13(2) of the IGST Act (Location of the Recipient), which is outside India.

17. The material on record also establishes that specialized repairs (such as wind blade access rope repair) and blade balancing services are entirely executed at the offshore locations of the clients in foreign countries (e.g., Spain, USA) and because the physical goods are not required to be made structurally available to the petitioner within India, the place of supply is outside India; so also, expenses incurred on vital business items such as manpower supply, material handling, production overheads, housekeeping, and standard uniform outlays are fundamentally utilized "in the course or furtherance of business" under Section 16(1) of the CGST Act and denying these inputs is legally unsustainable. The technology transfer agreement provides the operational right to manufacture patented rotor blades. Because the petitioner pays the required GST on these inward royalty fees under the Reverse Charge Mechanism (RCM), it maintains an absolute statutory right to claim a full refund of this accumulated credit upon exporting the final products.

18. A perusal of the material on record will indicate that the petitioner uses its own machinery and persons to provide service and both the installation and repair services are undertaken at the location of the foreign customer due to the sheer size of wind turbine blades and on application of Section 13(3)(a) of the IGST Act, the location of the customer where the services are rendered would be the place of supply; even assuming that the goods are temporarily imported into India for repair, then the second proviso to Section 13(3)(a) would be specifically applicable and hence, the place of supply would be outside India.

19. It is also relevant to state that the entire gamut of services rendered by the petitioner is to be looked into in this regard; in the case of composite supply of services, principle supply is research and development which does not require the goods to be made available by the recipient as held by this Court in the case of ***M/s. Wipro GE's*** *supra****;*** the petitioner and LM Group holdings A/S with whom petitioner entered into Master Service Agreement, are not mere establishment of the distinct person in the light of the judgment of the Hon'ble Gujarat High Court in the case of ***Linde Engineering's*** *supra*. Under these circumstances, I am of the

considered opinion that the impugned orders insofar as they relate to rejecting the refund claim of the petitioner on account of export of services involving a sum of Rs.9,08,33,460/- deserve to be quashed.

20. A perusal of the material on record including the impugned orders will indicate that the respondents have denied refund of ITC in favour of the petitioner on a royalty expenses without appreciating that royalty is paid to the parent entity for licensing the right to manufacture and sell rotor blades, license of patented technology and trade mark rights, all of which are in furtherance of business; in any event, the transaction value for the same and the eligibility of credit in this regard cannot be questioned in revenue proceedings and consequently, the impugned orders passed by the respondents refusing to refund ITC on royalty expenses in a sum of Rs.3,65,39,905/- also deserve to be quashed.

21. A perusal of the material on record including the impugned orders will also indicate that the refund claim of the petitioner in a sum of Rs.3,21,87,780/- has been rejected on the ground that the petitioner had availed ineligible ITC which is also contrary to law and facts inasmuch as the petitioner had used the

said inputs and input services in the course/furtherance of business and had complied with all the conditions prescribed under Section 16(1) & (2) of CGST Act, particularly, when the said inputs and input services were not specifically blocked under Section 17(5) of the CGST Act; at any rate, eligibility of the petitioner to claim ITC cannot be determined in a refund proceedings as held by the Hon'ble Delhi High Court in the case of ***BT (India)'s*** *supra,* and accordingly, the impugned orders insofar as they relate to rejecting the refund claim of the petitioners on the ground of ineligible ITC also deserve to be quashed.

22. Insofar as the impugned orders relating to refund rejection on account of claim of Duty Drawback involving an amount of Rs.46,52,207/-, issue of invoices and credit notes reported in October, 2019, involving an amount of Rs.4,47,58,830/-, issue of computation of adjusted total turnover involving an amount of Rs.4,31,37,437/- and other issues involving an amount of Rs.25,09,297/- are concerned, the said findings being contrary to facts and law as well as the material on record, I am of the view that the same deserve to be set aside and the matter be remitted

back to respondent No.1 – Appellate Authority for reconsideration afresh and in accordance with law.

23. In the result, I pass the following:

ORDER

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

ii) The impugned Orders–In-Appeal at Annexure-A dated 31.03.2021, Annexure-B dated 22.04.2022 and Annexure-C dated 01.07.2022 to the extent and insofar as they relate to the issue of refund on account of Export of Services in a sum of Rs.9,08,33,460/-, issue of eligibility of refund of ITC on Royalty expenses involving an amount of Rs.3,65,39,905/- and issue of rejection of refund of a sum of Rs.3,21,87,780/- on the ground of ineligible ITC availed are hereby quashed and the claims of the petitioner in this regard are hereby upheld.

iii) The impugned Orders–In-Appeal at Annexure-A dated 31.03.2021, Annexure-B dated 22.04.2022 and Annexure-C dated 01.07.2022 to the extent and insofar as they relate to refund rejection on account of claim of Duty

Drawback involving an amount of Rs.46,52,207/-, issue of invoices and credit notes reported in October, 2019, involving an amount of Rs.4,47,58,830/-, issue of computation of adjusted total turnover involving an amount of Rs.4,31,37,437/- and other issues involving an amount of Rs.25,09,297/- are hereby set aside and the matter is remitted back to respondent No.1- Appellate Authority for reconsideration afresh in accordance with law as expeditiously as possible.

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

SA/Mds
List No.: 2 Sl No.: 1