IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT APPEAL NO. 275 OF 2025 (T-RES)

BETWEEN:

1. STATE OF KARNATAKA
PUBLIC WORKS DEPARTMENT
K R CIRCLE
BENGALURU - 560001
REP BY ITS PRINCIPAL SECRETARY.

2. THE CHIEF PROJECT OFFICER
PROJECT IMPLEMENTATION UNIT
STATE HIGHWAYS DEVELOPMENT PROJECT
K R CIRCLE
BENGALURU - 560001

3. STATE OF KARNATAKA
FINANCE DEPARTMENT
II FLOOR, VIDHANA SOUDHA
BENGALURU - 560001
REP BY ITS ADDITIONAL
CHIEF SECRETARY

4. COMMISSIONER OF COMMERCIAL TAXES
GOVERNMENT OF KARNATAKA
VANIJYA THERIGE KARYALAYA
1ST MAIN ROAD, GANDHINAGAR
BENGALURU - 560009

5. DEPUTY COMMISSIONER OF COMMERCIAL
TAXES (AUDIT)-5.7
DEPARTMENT OF COMMERCIAL TAXES
6TH FLOOR, B BLOCK
VIVEKNAGAR POST, KORAMANGALA
BENGALURU - 560047

…APPELLANTS

(BY SRI ADITYA VIKRAM BHAT, AGA)

AND:

1. M/S. SUDHANVA ENGINEERS AND BUILDERS
A SOLE PROPRIETORSHIP
HAVING ITS REGISTERED OFFICE AT NO. 1298
13TH MAIN, 5TH A CROSS
JUDICIAL LAYOUT, YELAHANKA
BENGALURU - 560064
REP BY PROPRIETOR
SRI SUDHANVA S.

…RESPONDENT

(BY SRI S.S NAGANAND, SENIOR ADVOCATE A/W
SRI SIDHARTH SRIKANTH, ADVOCATE FOR
SRI NAGESH MORO, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE JUDGEMENT DATED 25/04/2024 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONBLE COURT IN W.P. NO.2911/2024 (T-RES) AND ETC.

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

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellants have filed the present appeal impugning the order dated 25.04.2024 [**impugned order**] passed by the learned Single Judge of this Court in W.P.No.2911/2024 (T-RES) clubbed with W.P.No.3196/2024 (T-RES). The preset appeal arises from W.P.No.2911/2024. Respondent No.1 [**writ petitioner**] had filed the said writ petition, *inter alia*, praying as under:

> "i. Direct Respondent No.2 (appellant No.2 herein) to pay Respondent No.5 (appellant No.5 herein) a sum of RS. 93,60,678- (Rupees Ninety-three lakhs, Sixty thousand, Six hundred and seventy-eight only) along with interest at the rate of 18% per annum, and penalty at 10% per annum, towards the GST dues of the Petitioner for FY 2018-19;
>
> OR
>
> In the alternative, direct Respondent No. 2 to reimburse to the Petitioner a sum of Rs. 93,60,678/- (Rupees Ninety-three lakhs, Sixty thousand, Six hundred and seventy-eight only) along with interest at the rate of 18% per annum, and penalty at 10% per annum;
>
> ii. Restrain Respondent No.5 from proceeding against the Petitioner on the basis of the show cause

notice dated 06.11.2023bearing No. DCCT (A) -5.7/DGSTO-5/ADJU/2023-24(Annexure-H), and the Demand Order dated 21.12.2023 bearing No. DCCT (A) -5.7/DGSTO-5/ADJU/No. 74/2023-24 (Annexure-M), till the payment of the due amount by Respondent No. 2;

iii. Award costs of the proceedings;

iv. Grant any such relief as this Hon'ble Court deems fit under the facts and circumstances of this case, in the interest of justice and equity."

2. The said writ petitioner is a sole proprietorship concern, engaged in the business of construction and executing various public works in the State of Karnataka. The writ petitioner was duly registered as a dealer under Section 22 of the Karnataka Value Added Tax Act, 2003, with effect from 24.05.2012. After the roll out of the Goods and Services Tax [**GST**] regime with effect from 01.07.2017, the writ petitioner obtained a registration certificate dated 15.09.2020 with the GST authorities.

3. The writ petitioner and appellant No.2 entered into an agreement dated 17.10.2016 [**the Agreement**] for executing the following works:

"(i) improvement to Sureban-Chittaragi-Koodalasangam SH-133 from KM 27.50 to KM 42.00 (is selected reaches) in Badami Taluk, Bagalakot District;

> (ii) improvement to Sureban-Chittaragi-Koodalasangam SH-133 from KM 102 to KM 106 in Hunagund Taluk, Bagalakot District."

4. Appellant No.2 issued a notice to proceed with the Work dated 17.10.2016 at a contract price of ₹23,52,84,303/-. The writ petitioner claimed that it commenced the project work and regularly raised RA bills and invoices. The writ petitioner claimed that it was initially liable to pay Value Added Tax [**VAT**] at the rate of 4%, but after 01.07.2017, it became liable to pay GST at the rate of 12% for the execution of Works. The writ petitioner states that although the imposition of GST increased the tax payable, it continued to execute the works and perform its obligations under the Agreement. The writ petitioner had raised invoices indicating the additional tax burden imposed on account of GST, but appellant no.2 failed to reimburse the same. The works were duly completed, and appellant no.2 issued a Work Completion Certificate dated 11.09.2019.

5. The writ petitioner also claimed that it was unable to pay the GST to appellant No.5 due to non-reimbursement of the amount by appellant No.2.

6. The writ petitioner states that appellant no.5 issued an observation dated 30.06.2023 alleging that the writ petitioner had defaulted in payment of GST. According to appellant no.5, the writ petitioner was liable to pay GST at the rate of 18% on its taxable turnover (9% towards CGST and 9% towards SGST).

7. The writ petitioner furnished its reply to appellant no.5, *inter alia*, stating that the applicable rate of GST was 12% and not 18% since the Agreement was for the execution of Governmental Project Works. It also claimed that it was unable to pay the GST as appellant no.2 had not reimbursed the said amount.

8. Appellant mo.5 issued a show cause notice dated 06.11.2023 under Section 73(1) of the Karnataka Goods and Service Taxes Act, 2017 [**KGST Act**] for the Financial Year 2018-2019.

9. The writ petitioner claimed that in view of the proceedings instituted by appellant no.5, it once again requested appellant no.2 to release the reimbursement of GST, as due. The writ petitioner made a representation dated 09.11.2023 requesting appellant no.2

to release an amount of ₹93,60,678/- along with interest, towards the reimbursement of GST.

10. The writ petitioner also responded to the show cause notice dated 06.11.2023 issued by appellant no.5. The said proceedings culminated by passing a demand order under Section 73(9) of the KGST Act raising a demand of ₹2,42,68,900/- (Rupees Two Crores Forty Two Lakhs Sixty Eight Thousand and Nine Hundred only) along with interest at the rate of 18% per annum and penalty at the rate of 10% of the principal liability. Cumulatively, the said demand amounted to ₹4,84,76,038/- (Rupees Four Crores Eighty Four Lakhs Seventy Six Thousand and Thirty Eight only).

11. In the aforesaid backdrop, the writ petitioner filed a Writ Petition in W.P. No.2911/2024.

12. The writ petitioner claimed that the prices it quoted for the works included only VAT, computed at 4% of the taxable turnover. However, a portion of the project work was executed prior to 01.07.2017, and the remaining portion was executed after the GST regime came into force. The writ petitioner claimed that appellant

no.2 was liable to pay the tax component of the project works executed by it.

13. The said writ petition was allowed by the impugned order. The operative part of the impugned order reads as under:

> "(i) Petitions are hereby allowed and disposed of in terms of the order passed in **Sri Chandrashekaraiah and others Vs. The State of Karnataka and others – WP No.9721/2019 and connected matters dated 11.04.2023.**
>
> (ii) Respondent Nos.1 and 2 are hereby directed to pay the GST dues of the petitioner, including interest at the rate of 18% and penalty at the rate of 10%, levied as per the demand order dated 21.12.2023 for the FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21 as and where applicable to respondent Nos.3 to 5 – State after due verification and in accordance with law.
>
> (iii) Liberty is reserved in favour of the petitioner to submit fresh / new representation along with calculation to the respondents, who shall consider the same and proceed further in terms of the directions issued in this order."

14. As is apparent from the above, the writ petition was allowed following the earlier decision in the case of **Sri. Chandrashekaraiah and others V. The State of Karnataka[1].** It is thus relevant to refer to the operative part of the decision in **Sri. Chandrashekaraiah** (*supra*). The same is set out below:

[1]NC: 2023:KHC:15431

"20. In the result, I pass the following:-

ORDER

(i) Petitions are hereby disposed of.

(ii) The Respondents-State and other Govt agencies / Respondents who have entered into works contract with the Petitioners are issued the following directions / guidelines:-

(a) Calculate the works executed pre-GST (prior to 01.07.2017) under KVAT regime and payments received by the Petitioners.

(b) The payments received by the Petitioners pre-GST for such of the works executed before 01.07.2017 are to be assessed under KVAT tax regime – either under COT or VAT scheme as applicable.

(c) Calculate the balance works to be completed or completed after 01.07.2017, in the original contract.

(d) Derive the rate of materials, KVAT items required or used to complete the balance works.

(e) Deduct the "KVAT" amount from those materials and the service tax, if applicable.

(f) Add the applicable "GST" on those items.

(g) Input Credit on the materials is to be arrived at and be set off as against the output GST, for those assessed under regular VAT.

(h) Further, the “tax difference” should be calculated on such balance works executed or to be executed after 01.07.2017 separately.

(i) Based on the result obtained on calculation of the tax difference on the contract value, concerned department/authority has to decide whether agreement needs to be changed or not.

(j) A supplementary agreement may be signed with the Petitioners for the revised GST-inclusive work value for the Balance Work completed or to be completed as determined above and in case the revised GST-inclusive work value for the Balance Work, completed or to be completed after 01.07.2017, is more than the original agreement work value, the Petitioners are to be paid /reimbursed, as the case may be, the differential tax amount by the concerned employer; so also, in case payments for works completed pre-GST are made postGST, the concerned employer has to pay or reimburse, as the case may be, the differential tax amount, to the Petitioners.

(iii) Petitioners are directed to submit comprehensive representations to the respective employers/Respondents within a period of 4 weeks from the date of receipt of a copy of this order, irrespective of whether they have completed the works pre-GST or post-GST or payments were received or yet to be received post-GST.

(iv) If such representations are submitted, the respective employers/Respondents are directed to consider and dispose of the same in the light of the aforesaid directions / guidelines as expeditiously as possible and at any rate within a period of 8 weeks from the date of submission of the representations.

(v) In view of the interim orders passed by this Court in the present petitions, such of the petitioners who had not filed their GST returns during the period after 01.07.2017 are permitted to file their returns / amended returns, pursuant to the calculation of the differential tax as per procedure above under GST regime, without insisting on interest or penalty or limitation.

(vi) The GST authorities are also directed not to take precipitative action against the Petitioners for a period of 6 months from the date of receipt of a copy of this order.

(vii) Liberty is reserved in favour of the petitioners to challenge any order / decision passed / taken by the respondents or the authorities, subsequent to this order and also take recourse to such remedies as available in law."

15. The learned counsel appearing for the appellants has confined the challenge to the impugned order on two fronts. First, it is submitted that the operative part of the order seeks to incorporate the directions issued in the case of **Sri.Chandrashekaraiah** (*supra*), which also includes a direction enabling the writ petitioners to file GST returns/ amended returns for the period after 01.07.2017 by calculating the differential tax in a manner as set out in the said order. Further, the interest and penalty have been waived, and the limitation period has been relaxed. Second, it is submitted that the appellants are not liable to reimburse any amount to the writ petitioner, and the direction to the concerned respondents to do so must be read as confined to the concerned Employer (appellant No.2).

16. The dispute as to whether the writ petitioner is entitled to reimbursement of incremental tax paid or payable by them on account of the levy of GST is strictly a matter between the writ petitioner and the concerned Employer with whom it had entered into a contract. The Agreement between the writ petitioner and the

Employer would not alter the statutory scheme for the levy of GST. Thus, the liability of the writ petitioner to pay Goods and Services Tax under the (Central Goods and Services Tax Act, 2017, State Goods and Services Tax Act, 2017 or the Integrated Goods and Services Tax Act, 2017) is required to be determined strictly in accordance with the provisions of the relevant statute. The question of the levy of GST, assessment, recovery, and enforcement is a matter of statutory prescription and cannot be altered by the terms of any contract.

17. In view of the above, no directions could be issued permitting the filing of any revised returns contrary to the provisions of the statute. The plenary directions to waive the penalty, interest under the GST Acts or relax the limitation for filing returns/revised returns, are also unsustainable. No such directions can be issued contrary to the statute.

18. In the aforesaid view, the direction issued to the respondents to reimburse the tax is required to be construed as a direction only to the concerned Employer and not to the tax authorities.

19. The impugned order, to the extent of the directions issued to the tax authorities/State, is set aside. The appeal is disposed of in the aforesaid terms.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KPS
List No.: 2 Sl No.: 0