**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**(ORIGINAL JURISDICTION)**

**WRIT PETITION No. 2345 /2022 (T-Res)**

|  |  |
| --- | --- |
| **BETWEEN**  M/s Emmar Project Contractors India(P)Limited  Annapoorna, Dno. 3,Kulki  Mangalore -57501  Rep by its Managing Director M.R.Prakash  GSTTIN: 29AACC4658IZQ | **PETITIONER** |
| **AND:**   1. The Asst. CommissionerOf Commercial Taxes,   LGSTO-260 Ground Floor,  Vanijya Therige Bhavan  Maiden Road, Mangalore   1. The Manager,   State Bank of India,  P.B.No.104  Holy Angels Shopping Centre Blds,  KALAMASSERY P.O. -6833104  KERALA STATE | **RESPONDENTS** |

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA**

The petitioner above named submits before this Hon’ble Court as follows:

1. The Petitioner is a registered dealer under the Karnataka Goods and Services Tax Act 2017 (hereinafter referred to as KGST Act for short) and regularly filing returns after obtaining registration under the KGST Act. Reg.No. GSTN NO29ACC46581ZQ
2. The Petitioner is a civil contractor was having his office at Mangalore and the same has been closed as the petitioner was not having any business in Karnataka since 2020 now carrying on his business only in Kerala.
3. The Petitioner further submits the petitioner was involved in construction of bridge during the Asst. Years 2018-19 and 2019-20 near Sulia in Coorg. He was regularly filling returns till February 2019 he could not file the return for March 2019, within the time allowed under the Act and the portal also been closed in July 2019 and the portal was opened only in the month of February i.e., on 20/02/2020 the petitioner filed the return and paid the Taxes. The petitioner further submit due to heavy rains during August 2018, the petitioner could not carry on any construction work which caused the petitioner heavy loss of materials and financial crises. The petitioner on the basis of the returns filed for Asst. Year 2018-19 sought for the input tax credit as provided under the GST Act. The petitioner was entitle to take the benefit before September 2019 but the portal was blocked by the Department in July 2019 itself. Accordingly the input tax benefit of Rs. 3,53,900/- was denied by the 1st Respondent for the for March 2019. A Copy of the FORM GST DRC- O1A Dated 04.01.2022 was received by the petitioner only on 08/02/2022 the same has been produced and now marked as **Annexure-A.** Further the FORM GST ASMT-10 dated 04/01/2022 was received by the petitioner only on 08/02/2022 to furnish the reply by 02/02/2022. A Copy of the same has been produced and marked as **Annexure- B**
4. During the Asst. Years 2019- 2020 also the petitioner was continuing the bridge construction work, over Payasvini river near Sulia, Madikere in Coorg District. Due to heavy floods starting from August 2018 the construction of the Bridge was badly effected and has come to a standstill; though the petitioner was under great financial difficulty he wanted to discharge his liability of paying the GST dues up to March 2020 and claim the benefit of input tax credit to the extent of Rs. 4,01,953/- but before making arrangement to pay the tax and file return the portal was blocked and the portal was opened only in March 2021 and the Petitioner duly uploaded the details and paid the taxes and claimed benefit of Rs. 4,01,953/- on 08/03/2021. The portal was opened to file the returns to pay the taxes for claiming the benefit of input tax credit of Rs. 4,01,953/-. The petitioner submit he was unable to file the returns due to unavoidable situations like flood and thereafter lock down for Govid-19 and the portal was closed for filing the returns as per the provisions of the Act. A copy of the intimation FORM GSTDRC-O1A dated 29/12/2021 served on the petitioner on 08/02/2022 now produced and marked as **Annexure-C** and the copy of the notice in FORM GST ASMT -10 dated 29/12/2022 for the petitioner to reply by 28/01/2022 was received by the petitioner only on 22/01/2022. A Copy of the notice and the cover now produced and marked as **Annexure- D.** The petitioner filed a replay praying for 15 days time to file the replay dated 28/01/2022 The same is marked as **Annexure-E**
5. It is further submitted that due to closure of the portal by the Department and unavoidable circumstances like flood and lockdown the petitioner could not file GSTR-3B but still he is entitled to claim the credit in electronic ledger for discharge of any liability under Section 19 or for claim of any refund of any unutilised amount. The Petitioner submit the delay in filing the return to pay the taxes, are due to the circumstances the petitioner was placed i.e. act of nature or act of GOD and not within the hands of the petitioner.
6. The Petitioner submits he is entitled for input tax benefit in respect of the invoices produced/submitted by him along with the returns as per Section 39 of the GST Act. The said input tax details have been shown in the Form GSTR-3B and the same were accepted by the 1st petitioner in her letters/ notices calling for explanations and though there is no dispute in the input tax benefit available to the Petitioner, in view of the delay in filing the return, the 1st Respondent blocked the ITC by invoking the provision of Section 16 (4) of the KGST Act, 2017 the same has caused irrevocable damage and mental agony during the time of floods from August 2018 and thereafter lockdown due to Covid -19 from 2020 to 2021.
7. The petitioner submits that the input tax credit claimed by the petitioner for the March 19 and 2019-20 by filing the prescribed returns beyond the time of 6 months he has become disentitled to claim the benefit as per the letters/notices of 1st Respondent. Hence blocking of Input Tax Credit Benefit under Section 16 (4) of the KGST Act on account delayed submission of the returns are illegal and unsustainable in law and the letters/ notices issued under Form GST ASMT-10 dated 29/12/2021 and 04/01/2022 by the assessing authority is liable to be set aside as the Asst. years 2018-19 and 2019-20 were badly affected by the flood and the pandemic periods.
8. The petitioner received another copy of the notice on the same day i.e 22/01/2022 issued to the Petitioner Bank to withhold the sum of Rs 7,55,853 of the petitioner account dated 19/01/2022 in spite of the fact the petitioner has been given time to explain the reasons /discrepancies by 28/01/2022 for the Asst. Year as for as the Asst.year 2018-19 is concern no other notices were served on the petitioner till 08/02/2022 sec 73 notice has been issued on the ground there is a possibility the tax payer would be assessed to a demand of Rs. 7,55,853/- under section 73 of the GST Act A Copy of the same now produced and marked as **Annexure-F**
9. At this juncture it is pertain to mention the ‘’Mis. application 665 /2021 in SMWW(C )No.3/2020 Cognizance for extension of limitation’’ has considered the difficulty faced by the litigant public has passed an order with regard to filing cases, appeals etc. extended the period of limitation for judicial and quasi-judicial Proceedings from 15/03/2020 up to 02/10/2021 and has also stated how the limitation has to be calculated A Copy of the Apex court order is enclosed as **ANNEXURE- G**. the Hon’ble Supreme Court has clearly held

‘ *in respect of all judicial or quasi –judicial proceedings whether condonable or not shall stand extended till further orders’*’

Therefore the petitioner submits that the 1st respondent though deemed to have issued notices but has not served the notices thereby without giving reasonable time/opportunity to reply by the petitioner. The petitioner submit moreover the 1st Respondent without considering the difficulties the petitioner has under gone during floods in Coorg and the Covid – 19 time when whole of India was undergoing lock down has not only closed the portal as per law now denying the petitioner the input tax credit he is entitle for under the scheme of GST and issued notice under sec 73 of the act to the petitioner Bank i.e., the 2nd respondent to withhold the sum of Rs. 7, 55, 853/- on the ground there may be a demand against the petitioner company. Therefore it is respectfully submitted that the issue of letter / or order passed by the passed by the 1st is pervasive, In appropriate under the circumstances and against the rules of natural justice.

1. It is further submitted the Karnataka High court in a similar situation under the income-tax by referring to Supreme court decision has held in the case of 438 ITR(Karn) pg 643 Shree Raghavendra Enterprises and Others Vs Deputy Commissioner of Income-Tax & Others

8.“*As held by the apex court in the aforesaid decision, mere apprehension on the part of the respondents that huge tax demand are likely to be raised on completion of assessment is not sufficient for the purpose of passing a provisional order of attachment*

*………*

*On the it is not possible in the facts of the given case to protect the Revenue and that the provisional attachment*

*order is completely warranted for the purpose of protecting the Govt. revenue.”*

9 Applying the principals laid own in Radhakrisha’s case……………………., that the provisional orders are cryptic, unreasoned non-speaking and laconic, the same deserve to be quashed

A copy of the judgement is enclosed as **Annexure-H**

1. Section 73 of the GST Act speaks about the

*73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts*

The petitioner submits that the present situation of his will not fall in any of the categories stated above thereby the action taken by the 1st respondent is without jurisdiction on this basis the petitioner submits the action of the 1st Respondent in holding that the petitioner is not entitle for the benefit of input credit and further issue of notice to withheld the sum of RS. 7,55, 853/-/ to the 2nd respondent bank is also is against the principal natural Justice. In the circumstances it is stated even assuming for argument case the action of the 1st respondent is accordance with law the provisions of GST law is applicable to the petitioner, the delay in filing the return can be condoned in the unforeseen circumstances thereby the 1st respondent was not right in dis allowing the input credit

1. The Petitioner submits that being aggrieved by the said letters/ notices of the in disallowing the input tax credit benefit on account of delay in filing the GSTR 3B returns by the Petitioner, and the attachment notice issued to the bank under section 73 of the act petitioner **without having any other alternative or efficacious remedy is approaching this Hon’ble High Court** byinvoking writ jurisdiction for the following and among other grounds.
2. The Petitioner submits that **he has not filed any other writ petition or appeal or suit** before this Hon’ble High Court or any other Court and nor any appeal is pending with regard to the above said notices. The petitioner urges the following among other grounds.

**GROUNDS**

1. The Petitioner respectfully submits that on the facts and circumstances of the case the petitioner would like to submit before this Hon’ble Court that the petitioner has filed returns as per the turnover/ transactions of the Petitioner in accordance with the provisions of the Act. The Petitioner could not file the returns for March 2019 on account of the closure of portal by the Department in July 2019 though the time was available for the petitioner to take input credit till September 2019 and due to heavy flood in the workplace and thereafter lock down due to COVID- 19 the situation were beyond the control the petitioner , therefore the assessing authority –1st Respondent ought not to have disallowed the benefit of input tax credit. Under the circumstances the 1st Respondent can never deny the input tax credit benefit to the Petitioner as there is no delay of in filing the returns the notices /letters issued by the1st respondent is not maintainable in law , and liable to be set aside.
2. On the facts and circumstances of the case, the petitioner respectfully submits that the input tax benefit is a right/a privilege granted under GST was introduced on the ideology of ‘ one Nation ‘ One Tax of’ one tax ‘ and thus the petitioner is entitled to claim the same as provided under the GST Act . Due to unavoidable circumstances, the petitioner could not file the returns in time. The petitioner though filed the returns belatedly benefit of input tax is an right to claim an allowable benefit of input tax credit of the petitioner subsist and the Department cannot deny the same to the petitioner-. Therefore, disallowing the benefit of the input tax credit is not maintainable in law ..
3. The 1st Respondent has not appreciated that the delay in filing the return is genuine and should have extended the benefit of input tax credit to the petitioner allowable under GST Act and therefore, the 1st respondent could not deny the legitimate right to claim input tax benefit of the petitioner as the same is a curable defect i.e. delay in filing the returns has been during Covvid-19 time has been considered and allowed by the Supreme court . Therefore, the orders if any passed before or after issue of attachment notice to the Bank of the petitioner are liable to be set aside.
4. On the facts and circumstances of the case, the petitioner respectfully submits before this Hon’ble Court that the conditions of the input tax benefit was satisfied by the petitioner, due to closure of the portal, the petitioner could not file the returns GSTR 3B within time allowed under the ACT therefore, the petitioner should have been given the benefit of input tax credit by the 1st Respondent. Therefore, the any notice/order passed by the 1st Respondent are not sustainable in law and liable to be set aside.
5. On the facts and circumstances of the case, due to period of limitation fixed under the Act for submission of the GSTR 3B under Section 16 (4) of the Act, the extra ordinary circumstances like closure of portal, flood and Covid-19 are being genuine and bonafide reasons, the 1st Respondent should have permitted the petitioner to avail the benefit of the input tax credit. Therefore, the notices or order passed by the 1st Respondent are not sustainable in law and liable to be set aside.
6. On the facts and circumstances of the case, the restriction of time limit of 6 months fixed in the provision of the GST Act under section 16 (4) of the GST Act for claiming of the input tax credit benefit is nothing but taking away the fundamental right as provided under the Articles 14, 19 and 21 of the Constitution of India. Therefore, the restriction of time limit fixed for claiming the input tax credit benefit is in violation of the fundamental rights and not maintainable which is being challenged by this Petitioner and the petitioner prays for quashing of the said Section 16 (4) of the GST Act as the same is not justifiable under the present circumstances.
7. The petitioner respectfully submits that the amount of input tax benefit which is provided under the Act comes with a stigma attached that if the return is filed beyond 6 months, the claimant is not entitled to get the benefit is opposed to law and there is no provision in the law under Section 16 (4) of the GST Act to consider the genuine problems faced by the users/goods and service providers when the system is having software problems/ login problems/ bug in the system/ and technical problems not supporting for submission of the returns as prescribed under the Act and also considering extra ordinary circumstances like flood and Covid-19 as happened in the case of the present petitioner, there should be a provision for the assessing authority to consider the such genuine requirements/ hurdles/ problems and extend the input tax credit benefit to the petitioner/eligible registered dealers under the GST Act.
8. On the facts and in the circumstances of the case, It is respectfully submitted that, since the petitioner had purchased the goods from registered dealers thus, the petitioner has right for claim of input tax benefits cannot be denied the input tax benefits was granted under the Act .Further the petitioner submit due to the fact we could not file the return in time and the Department is not allowing us the input credit the party/ buyer also denied of the GST against the amount paid by the petitioner; this means the GST is collected twice on the same materials.
9. On the facts and in the circumstances of the case, It is brought to the kind notice of this Hon'ble Court that, the provision for input was granted but time limited, the petitioner was unable to the claim and same has been rejected by the1st Respondent which is against law and the Apex court judgement extending the time limit.

‘ *in respect of all judicial or quasi –judicial proceedings whether condonable or not shall stand extended till further orders’*’

hence the rejection for input tax credit is against the principles of natural justice and hence the rejection orders are liable to be set aside, in the interest of justice.

1. The Petitioner respectfully submits that viewed from any angle, the disallowing of the input tax credit benefit to the Petitioner claiming that there is no provision under Section 16 (4) of the Act to condone the delay in submission of GSTR 3B return is opposed to law and liable to be quashed.

The Petitioner respectfully submit the issue of notice dated 19.01.2022 to the petitioner’s BANK to withhold the sum of Rs 7,55,853/- before 28/01/2022 the date on which the petitioner was directed to explain the reason for delay in filing the returns beyond September 2019 is against the rules of natural justice thereby liable to be quashed

**GROUNDS FOR INTERIM PRAYER**

1. The Petitioner further submits that in view of the stand taken by Respondent cannot condone the delay in filing the GSTR 3B by the petitioner under Section 16 (4) of the GST Act and not allowing the benefit of input tax credit to the petitioner has caused serious prejudice to the Petitioner. The entitlement of input tax benefit of Rs 3,53,900/- and Rs.401953/-- is in jeopardy and the respondent not considered the genuine problems expressed by the Petitioner in the submission of the returns faced/ encountered by the Petitioner and he has just gone by the Rule Book and has disallowed a sum of Rs.3,53,900/-,and Rs. 4,01,953/- and further issue of notices to the petitioner’s BANK to withhold a sum of Rs. 7,55,853/- without any material on record and without hearing which is seriously affecting the liquidity and financial position of the Petitioner. Therefore, there is imminent and urgent need for passing of interim order as prayed for to provide the petitioner access to claim the input tax credit benefit through the system and unblocking the ITC benefit of the petitioner.

**PRAYER FOR MAIN RELIEF**

WHEREFORE, the Petitioner prays that this Hon’ble Court be pleased to

1. Issue a Writ of Certiorari or any other appropriate writ or order quashing Section 16 (4) of the Karnataka Goods and Services Act 2017 fixing the time limit for submission of the GSTR 3B return within 6 months and not allowing the input tax credit benefit even if there is genuine/minor delay in submission of the GSTR 3B as unconstitutional and ultravires,
2. Issue a Writ of Certiorari or any other appropriate writ or order quashing the notice of the 1st Respondent in FORM No.10 bearing No. ACCT/LGSTO-260/ASMT-10(202-21)3/21-22-dated 29.12.202 rejecting the input credit and calling for reply vide **Annexure “B”**;
3. Issue a Writ of Certiorari or any other appropriate writ or order quashing the notice passed by the 1st Respondent in FORM GST.ASM10.No.ACCT/LGSTO/-260/ASMT-10(2021-2)/71/20-21dated 04.01.2022 rejecting the input credit benefits and calling for reply **Annexure “D”**;
4. Issue a writ of mandamus or any other appropriate writ or order directing the 2nd Respondent not withhold the sum of Rs 7,55,853/- in the account of the petitioner **Annexure’‘F’’**
5. Issue a writ of mandamus or any other appropriate writ or order directing the 1st Respondent to allow the Petitioner to claim the input tax credit benefit of Rs. 3,35,900/-and Rs 4,01,953./-- for the March 19 and 2019-20 for which he is entitled to as per the return filed by him GSTR-3B o 20/02/2020 and 08/03/2021
6. Grant such other orders of directions deemed fit in the circumstances of the case and in the interests of justice.

**PRAYER FOR INTERIM RELIEF**

Wherefore, the petitioner further prays that this Hon’ble Court be pleased to

1. Direct the 1st Respondents to provide access to the petitioner in the Department website to claim input tax credit benefit available to the petitioner amounting to Rs.3,53,900/- pertaining to the March 19 and Rs 4,0,1953/- pertaining to Asst.year 2019-20 pending disposal of this writ petition in the interests of justice and equity.

B) Direct the 2nd Respondent not to take any action with regard to order/ letter issued by the 1st respondent dated 19/01/2022 **Annexure-F**

1. Grant such other reliefs as this Hon’ble Court deems fit to grant in the circumstances of the case and in the interests of justice and equity.

Bangalore

Date: Advocate for Petitioner.

**ADDRESS FOR SERVICE:**

**M.R. Vanaja**

Advocate

104, 4th Cross, MLA Layout

Bhoopasadra

Bengaluru – 560 004

Mobile No.: 94492 707 68