

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2022

BEFORE

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

WRIT PETITION No.15547 OF 2022 (T-RES)

BETWEEN:

M/S. SHRI MAHILA GRIHA UDYOG LIJJAT PAPAD,
NO.8, WEST OF CHORD ROAD,
3RD STAGE, 4TH BLOCK,
BASAVESHWARANAGAR,
BENGALURU-560 079.
GSTIN-29AABTS5090H1Z6

...PETITIONER

(BY SMT. VEENA J. KAMATH, ADVOCATE FOR
SRI. KAMATH & KAMATH)

AND:

1. THE JOINT COMMISSIONER OF COMMERCIAL TAXES
(APPEALS)-2, DGSTO-2, TTMC, BLOCK-B,
BMTc BUILDING, SHANTINAGAR,
BENGALURU-560 027.

2. THE COMMERCIAL TAX OFFICER,
AUDIT-2.1, DGSTO-2,
1ST FLOOR, KENCHNAHALLI,
MAIN ROAD, NEAR GOPALAN ARCADE,
RAJARAJESHWARINAGAR,
BENGALURU-560 098.

...RESPONDENTS

(BY SRI HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH/SET ASIDE
THE IMPUGNED ENDORSEMENT DTD.20.7.2022 ISSUED BY THE
R-1 BEARING NO.J.C.C.T(A)-2(T)2022-23 AS PER ANNEXURE-A
BY ISSUING A WRIT OF CETIORARI OR ANY OTHER ORDER OR
WRIT IN THE NATURE OF A WRIT OF CERTIORARI AND ETC.

THIS W.P. COMING ON FOR ORDERS, THIS DAY, THE
COURT MADE THE FOLLOWING:-

ORDER

In this petition, the petitioner has sought for the following reliefs:

*I. To quash/set aside the impugned endorsement dated 20.07.2022 issued by the Respondent No.1 bearing No.J.C.C.T(A)-2/T/ /2022-23 as per **Annexure-A** by issuing a Writ of Certiorari or any other order or writ in the nature of a Writ of Certiorari.*

II. To direct the Respondent No.1 to provide a fair and sufficient opportunity of hearing to the Petitioner in respect of the Petitioner's Appeal to the Appellate Authority filed vide FORM GST APL-01 dated 11.07.2022 as per Annexure-D and thereafter adjudicate the matter in accordance with law and not to pursue coercive steps until the said order is passed by issuing a Writ of Mandamus or any other or writ in the nature Writ of Mandamus and/or

III. To grant any other relief that this Hon'ble Court may deem fit in favour of the Petitioner in the interest of equity and justice."

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

3. In addition to reiterating the various contentions urged in the Memorandum of Petition and

referring to the documents produced by the petitioner, learned counsel for the petitioner invites my attention to the impugned endorsement at Annexure-A dated 20.07.2022 in order to point out that the said endorsement is an unreasoned, non-speaking, arbitrary, cryptic and laconic endorsement without application of mind, in as much as except for stating that no appeal would lie against the audit observation/report dated 11.04.2022, no other reasons have been assigned by respondent No.1 to dismiss the appeal filed by the petitioner. In this context, my attention is invited to Section 107 of the Central Goods and Services Tax Act, 2017 (for short "the said Act of 2017") in order to contend that while Section 107 enables a person to prefer an appeal against any decision or order which are actually exclusive and independent of each other, a perusal of Section 121 of the said Act of 2017 will clearly indicate that except for the non-appealable decision and orders which are expressly described and enumerated in Section 121 of said Act of 2017, all other orders and/or decisions passed by the authorities would be appealable under Section 107 of the said Act of 2017 and respondent No.1 having failed

to consider this aspect of the matter, the impugned order deserves to be quashed. It is also submitted that no opportunity was granted in favour of the petitioner to urge all contentions including the contentions with regard to maintainability of the appeal *qua* Sections 107 and 121 of the said Act of 2017 and on this ground also, the impugned order at Annexure-A deserves to be quashed.

4. Per contra, learned AGA for the respondents submits that there is no merit in the petition and the same is liable to be dismissed.

5. Though several contentions have been urged by both sides in support of their respective claims, a perusal of the impugned endorsement will indicate that respondent No.1 has not considered or appreciated the scope and ambit of Section 107 R/w. Section 121 of the said Act of 2017 and consequently, the impugned endorsement being unreasoned, non-speaking, arbitrary, cryptic and laconic, the same deserves to be quashed. So also, in view of the specific assertion on the part of the petitioner that no opportunity was granted to the petitioner

to urge all their contentions before respondent No.1, by adopting a justice oriented approach and in order to provide one more opportunity to the petitioner to put forth all contentions in support of its claim, I deem it just and appropriate to set aside the impugned endorsement and remit the matter back to respondent No.1, the appellate authority for reconsideration afresh in accordance with law.

6. in the result, I pass the following:

ORDER

- (i) The petition is hereby **allowed**.
- (ii) The impugned endorsement dated 20.07.2022 issued by respondent No.1 is hereby quashed.
- (iii) The matter is remitted back to respondent No.1-Appellate Authority for reconsideration afresh in accordance with law bearing in mind the observations made in this order, as expeditiously as possible.

- (iv) All rival contentions between the parties are kept open and no opinion is expressed on the same.

**Sd/-
JUDGE**

Bmc