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

DATED THIS THE 18TH DAY OF JUNE, 2020

BEFORE

**THE HON'BLE MR. JUSTICE N.K. SUDHINDRARAO**

WRIT PETITION No.7883/2020(T-RES)

**BETWEEN:**

M/s. L & T HYDROCARBON
ENGINEERING LIMITED
MODULAR FABRICATION FACILITY
(A SEZ UNIT IN L & T SHIPBUILDING LIMITED)
KATTUPALLI VILLAGE, PONNERI TALUK
TIRUVALLUR DISTRICT, TAMIL NADU – 600 120
(REPRESENTED BY SHRI GANESAN P
DGM & HEAD – FINANCE ACCOUNTS) ..PETITIONER

(BY SRI RAVI RAGHAVAN, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA
THROUGH ITS PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA
BANGALORE – 560 001.

2. COMMERCIAL TAX OFFICER
VIGILANCE -02, A BLOCK
VANIJA THERIGE KARYALAYA
KORAMANGALA
BANGALORE – 560 047. ..RESPONDENTS

(BY SRI VIKRAM HUILGOL, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 23.05.2020 PASSED BY R-2 ENCLOSED AT ANNEXURE-A AND ORDER DATED 04.06.2020 PASSED BY R-2 ENCLOSED AT ANNEXURE-A1 AND DIRECTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA TO THE R-2 TO RELEASE THE GOODS WITHOUT ANY PAYMENT OF TAX AND PENALTIES.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT THROUGH VIDEO CONFERENCE AT BENGALURU MADE THE FOLLOWING:

**ORDER**

Writ petition is filed for quashing Annexure-A which is the order dated 23.05.2020 passed by respondent No.2 and Annexure-A-1- Order dated 04.06.2020 passed by respondent No.2. Petitioner has sought the relief under Article 226 of Constitution of India.

2. The petitioner M/s.L& T Hydrocarbon Engineering Limited Modular Fabrication Facility, a SEZ Judge Unit in L & T Shipbuilding Limited. The crux of the claim is that the petitioner concern is engaged in procurement,

fabrication, construction and project management and integrated design to build solutions to Onshore and offshore Hydrocarbon Projects. The petitioner was moving 229.94 MTs of goods bearing description Structural Plate EN 10025 S235JR THK from its SEZ Unit in Kattupalli, Tamil Nadu to their bonded warehouse at Hazira, Gujarat. Further the movement of the said goods was processed by the SEZ unit of the petitioner at Kattupalli, Tamil Nadu.

3. The goods were moved and were supported by Delivery Challan and E-way bill No.511176987299 dated 23.03.2020 along with necessary documents such as Non-returnable gate pass, Tax invoice and bill of entry. The journey of all the assignment started on 23.03.2020. However due to sudden lock down announcement by Government of India and the respective State Governments with effect from

24.03.2020 movement of the goods were stopped abruptly. But movement of goods vehicles were allowed subject to relaxation of norms of lock down. One of the means of conveyance bearing HR39E 4796 was intercepted and inspected by respondent No.2 Commercial Tax Officer, Vigilance-02, A Block Vanijya Therige Karyalaya, Bengaluru -47 and on verification they detained goods and conveyance under Section 129(1) of the Central Goods and Services Tax Act, 2017 (for short `CGST Act') on the ground as per the physical verification of the vehicle the quantity was 41 Metric Tonnes and declaration was made for 31 Metric Tonnes only.

4. The petitioner addressed a letter as against detention on 22.05.2020 and explained that the discrepancy has arisen due to clerical error of interchanging the weighment and quantity of 31 MT

against the vehicle No.HR39 E4796 (instead of 41 MT) and mentioning 41 MT against the vehicle No.MH-46AF4577 instead of 31 MT).

5. The respondent No.2 issued notice on 23.05.2020 proposing to demand integrated tax of Rs.2,88,669/- and imposed penalty equal to 100% of the tax amount under Section 129(1)(a) and penalty of Rs.13,51,051/- under Section 129(1)(b) of the GST Act.

6. The petitioner further claims that in its letter dated 26.05.2020 it made the matter clear in detail and the fact of erroneous representation of 41 Metric Tonnes instead of 31 Metric Tonnes but that was not considered by the respondent No.2. Petitioner also brought to the notice of the respondent No.2 that as per the circular dated 14.09.2018 the penalty could be

upto a maximum amount of Rs.500/- under Section 125 of the CGST Act. But the respondent No.2 did not accept, however confirmed the demand as made by him.

7. Learned counsel for petitioner would submit that it is the case of merely a bond to bond movement and said transaction is considered as import by bonded warehouse. The movement of goods are not liable for GST. He submits that imposition of penalty under Section 129(1)(a) and 129(1)(b) of CGST Act is not sustainable in view of the transaction in dispute involving bond to bond movement of goods which is not liable for GST. The discrepancy arisen due to clerical and typographical error cannot be considered as violation of the norms which attracts penalty. The competent authority has not assigned valid reasons for the act as it is not appreciation of facts. It is clear

in the context and circumstances that consideration of payment as ordered by the respondent should have been rectified at the earliest possible occasion suo moto, but in this case despite being explained the authority has not acted upon.

8. Learned Additional Government Advocate Sri.Vikram Huilgol for respondent No.2 submits that the appeal under Section 107 of Central Goods and Services Tax Act, 2017 are to be filed before the appellate authority. As such the petitioner cannot be so hurry and invoke writ remedy under Article 226 of the Constitution of India.

9. Learned Additional Government Advocate would further submit that it cannot be concluded that the order is only clerical error and misreading of the quantity of the goods. He would further submit that

the petitioner claims that he has brought the fact of error to the notice of the respondent No.2 but it was not agreed upon and hence error cannot be treated as a clerical one.

10. In the over ali context and circumstances the brief point for consideration in the form of moot question would be `whether the result of imposing of tax and penalty is a mere wrong reading of the table or wrong calculation that could have been avoided by the respondent No.2'. If the error is not a clerical error that could have been done away by respondent No.2 and the matter becomes appealable.

11. In this connection learned counsel Sri Ravi Raghavan would submit that by all means it is self explanatory that in the instant case the total amount of tax and penalty is imposed because of the wrong

reading and a error not considered by respondent. Learned counsel for petitioner would further submit that respondent No.2 while adjudicating the matter after clarification observed that the imposition of tax is not erroneous considering 41 Metric Tonnes. Learned counsel would further submit that the misreading of the entries between column No.3 and 6 has resulted in the wrong. Thus whatever applicable to petitioner concern is the quantity mentioned in column No.6 and entry of the quantity mentioned in column No.3 as 41 Metric Tonnes should have been mentioned in column No.6. Learned counsel Sri Ravi Raghavan would submit that when the matter was brought to the notice of the respondent No.2 it was observed that even in column No.6 there appears to be error and it should have been 41 Metric Tonnes. Learned counsel relied upon the following decisions:

(i) 2020-VIL-174-KER – M.R.Traders Vs Assistant State Tax Officer (Int) State GST, Department, Kottakkal and others

(ii) 2018-VIL-519-KER – Sabitha Riyaz Vs Union of India and others

(iii) 2019-VIL -174-GUJ – M/s.Neuvera Wellness Ventures Pvt. Ltd., Vs State of Gujarat

(iv) 2020-VIL -82-KER – Larsen and Toubro Limited Vs The Commissioner, State Goods and Services Tax Dept., Thiruvananthapuram and anr

12. It is necessary to mention that error may contain a wrong representation of facts or statistics or statement without any intention to do so but due to honest oversight and when the error is brought to the notice of deciding authority and canvassed as it is erroneous one when it is not accepted again it cannot be stated that it was a slip or oversight. In this connection letter was written by petitioner on 26.05.2020, personal hearing was made on

03.06.2020 and impugned order is passed on 04.06.2020.

13. Thus, when the matter was raised by the petitioner as erroneous or arithmetical slip or misplacement cannot be the situation. In view of the plea of the petitioner in this connection was brought to the notice of the respondent No.2.

14. Sections 106, 107 and 108 of the Central Goods and Services Tax Act, 2017 are worth to be mentioned. They are as under:

> **106** – Procedure of Authority and Appellate Authority – The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.
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> **107** Appeals to Appellate Authority
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> **107.** (*1*) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or

the Union Territory Goods and Services Tax Act by an Adjudicating Authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(*2*) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(*3*) Where, in pursuance of an order under sub-section (*2*), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant

and the provisions of this Act relating to appeals shall apply to such application.

*4*) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(*5*) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(*6*) No appeal shall be filed under sub-section (*1*), unless the appellant has paid—

(*a*) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(*b*) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

(*7*) Where the appellant has paid the amount under sub-section (*6*), the recovery proceedings for the balance amount shall be deemed to be stayed.

(*8*) The Appellate Authority shall give an opportunity to the appellant of being heard.

(*9*) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(*10*) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(*11*) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(*12*) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(*13*) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(*14*) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(*15*) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority

designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(*16*) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

**108** Powers of Revisional Authority

**108.** (*1*) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after

giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(*2*) The Revisional Authority shall not exercise any power under sub-section (*1*), if—

(*a*) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or

(*b*) the period specified under sub-section (*2*) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

(*c*) the order has already been taken for revision under this section at an earlier stage; or

(*d*) the order has been passed in exercise of the powers under sub-section (*1*):

Provided that the Revisional Authority may pass an order under sub-section (*1*) on any point which has not been raised and decided in an appeal referred to in clause (*a*) of subsection (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of

a period of three years referred to in clause (*b*) of that sub-section, whichever is later.

(*3*) Every order passed in revision under sub-section (*1*) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.

(*4*) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (*b*) of sub-section (*2*) where proceedings for revision have been initiated by way of issue of a notice under this section.

(*5*) Where the issuance of an order under sub-section (*1*) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (*b*) of sub-section (*2*).

(*6*) For the purposes of this section, the term,––

> (*i*) "record" shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;
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> *ii*) "decision" shall include intimation given by any officer lower in rank than the Revisional Authority.

15. The appellate authority is stated to be Joint Commissioner of Commercial Taxes in the matter similar to the present one. Thus, when the appeal is provided and the authority is notified as stated above whether the Joint Commissioner or other authority the matter has to be agitated before the same and the writ remedy cannot be invoked by making High Court as middle authority or cannot be placed in between the prescribed authority (respondent No.2) and appellate authority as per Section 107 of the Central Goods and Services Tax Act.

16. In the circumstances equally efficacious remedy is prescribed by law for the petitioner. Further the matter does not stand in the footing of error or oversight or a slip. As such I find the matter ought to have been agitated before the appellate authority as per law. Hence, I find there is no necessity to examine and adjudicate entitlement of the relief in the circumstances under writ jurisdiction under Article 226 of the Constitution of India.

Writ petition is dismissed.

**Sd/-**
**JUDGE**

SBN