

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.40904 OF 2018 (T-RES)

BETWEEN:

M/s. DPK Engineers Private Limited
Represented by its Chairman & Managing Director
Shri S. Sampath Raman,
No.109, ADA Raanga Mandira Building,
JC Road,
Bengaluru-560 002.

... Petitioner

(By Sri. Raghavendra B. Hanjer, Advocate)

AND:

1. Union of India
Represented by it Secretary,
Ministry of Finance,
Department of Revenue, North Block,
Rashtrpati Bhawan,
Defence Head Quarters,
New Delhi-110 001.
2. The Commissioner of Central Tax
Bengaluru South Commissionerate,
CR Building, PB No.5400,
Queens Road,
Bengaluru-560 001.
3. The Assistant Commissioner of Central Tax,
South Division-1,
Bengaluru South Commissionerate,
2nd Floor, BMTc Building,
Kanakapura Road,
Banashankari,
Bengaluru-560 070.

... Respondents

(By Sri. Jeevan J. Neeralgi, Advocate for Sri C. Shashikantha,
Advocate for R-1 to R-3)

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the portion of the impugned refund sanction order dated 13.06.2018 (Annexure-A) passed by the R-3 in adjusting part of the sanctioned refund amount towards disputed interest liability; and thereby direct the R-3 to release the refund amount of Rs.13,33,069/- to the petitioner.

This Writ Petition coming on for Preliminary Hearing in 'B' Group, this day, the Court made the following:

ORDER

The short grievance of the petitioner/assessee is against the unilateral appropriation of a part of refundable amount in terms of the impugned FORM-GST-RFD-06 dated 13.06.2018 a copy whereof is at Annexure-A, to the arguable dues of other Assessment Year/s.

2. Learned Asst. Solicitor General of India, Shri C Shashikantha, on request having accepted notice for the respondents resists the writ petition making submission in justification of the impugned order.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court grants limited reprieve to the petitioner because:

a) there is force in the contention of the petitioner's counsel that the appropriation of money being a mode of recovery of dues under the Central Goods & Services Act,

2017, could not have been done sans notice to the Assessee, the contra contention of the counsel for the Revenue militating against the principles of natural justice; therefore, a unilateral decision as to appropriation ought not to have been made;

b) there is also force in the contention of the counsel for the Assessee that the respondents being statutory authorities, need to practice fairness while dealing with a citizen and that, the unilateral recovery by way of appropriation falls short of fairness standards which the respondents are expected to maintain; and,

c) the contention of the learned counsel for the Revenue that the Act vests the power in the respondents to take measures for recovery of tax, interest & the penalties that have fallen due does not come to the rescue of the Revenue; existence of power is one thing and its exercise is another; the existence per se does not justify the exercise; no case is made out for excluding an opportunity of hearing to the Assessee before making the impugned order.

In the above circumstances, this writ petition succeeds in part; that part of the impugned which appropriated a portion of refundable amount having been set at naught, the

other part has been left intact; matter is remitted to the answering respondent for consideration afresh after hearing the petitioner or his agent, within a period of eight weeks.

It is open to the respondents to solicit any information or documents from the petitioner as are necessary for the fresh consideration of the matter; however, in the guise of such solicitation delay shall not be brooked.

It hardly needs to be stated that the answering respondent shall inform the petitioner the result of consideration pursuant to remand, failure whereof shall be viewed seriously.

No costs, now.

**Sd/-
JUDGE**

HA/-