



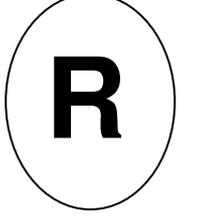
**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 17<sup>TH</sup> DAY OF OCTOBER, 2025**

**BEFORE**

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

**WRIT PETITION NO. 3208 OF 2024 (T-RES)**



**BETWEEN:**

M/S METAL N STRIPS,  
HAVING ITS OFFICE AT NO 13/3,  
KUMBHARA SANGHA BUILDING,  
1<sup>ST</sup> FLOOR, KALASIPALYAM NEW EXTENSION,  
BENGALURU – 560 002  
REPRESENTED BY ITS PROPRIETOR,  
MR SANJAY BHANDARI.

...PETITIONER

(BY SRI. BHARATH KUMAR V, ADVOCATE)

**AND:**

1. JOINT COMMISSIONER OF COMMERCIAL TAX (APPEALS - 3)  
HAVING OFFICE AT BMTC BUS STAND,  
SHANTHINAGAR, 2<sup>ND</sup> FLOOR, K.H. ROAD,  
BENGALURU 560 027.
2. ASSISTANT COMMISSIONER OF COMMERCIAL TAX (AUDIT) - 3.1,  
DGSTO 3, HAVING OFFICE AT BMTC BUS STAND,  
SHANTHINAGAR, 2<sup>ND</sup> FLOOR, K.H. ROAD,  
BENGALURU - 560 027.

...RESPONDENTS

(BY SMT. JYOTI. M. MARADI, HCGP)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 30.06.2023 BEARING REFERENCE NO.ZD2906230295852 PASSED BY THE R2 U/S 74 OF THE KARNATAKA GOODS AND SERVICES TAX 2017 R/W SECTION 122(1)(vii) OF THE KARNATAKA GOODS AND SERVICES TAX/CENTRAL GOODS AND SERVICES TAX ACT 2017 ACT ANNEXURE-A.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:





CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

**ORAL ORDER**

In this petition, petitioner seeks for the following reliefs:-

*“ a) Issue a writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction quashing the order dated: 30.06.2023 bearing Reference No. ZD2906230295852 passed by the Respondent No.2 under Section 74 of the Karnataka Goods and Serviced Tax 2017 R/w Section 122 (1) (vii) of the Karnataka Goods and Serviced Tax/Central Goods and Services Tax Act 2017 Act (Annexure-A).*

*b) Issue a writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction quashing the order dated: 07.10.2023 passed by the Respondent No.1 in matter bearing GST.AP 97/2023-24; wherein, the Respondent No.1 acting under Section 107(11) of the KGST/CGST Act 2017 was pleased to dismiss the appeal matte bearing GST.AP.97/2023-24 and consequently pleased to affirm the order dated: 30.06.2023 passed by the Respondent No.2 (Annexure-B).*

*c) Grant such other relief that this Hon'ble Court may deem fit in the facts and circumstances of the present matter.”*

2. Heard learned counsel for the petitioner and learned HCGP for the respondents – revenue and perused the material on record.



3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner invited my attention to the show cause notice dated 27.03.2023 issued by the 2<sup>nd</sup> respondent to the petitioner in order to contend that the petitioner having issued a reply to the said show cause notice, the 2<sup>nd</sup> respondent proceeded to pass the impugned order dated 30.06.2023 reducing the tax and interest payable by the petitioner, but demanding penalty in a sum of Rs.6,05,17,933/- which is illegal and arbitrary and contrary to the provisions contained in Sections 74 and 75 of the KGST Act, 2017, in particular sub-sections (1) and (9) of Section 74 and sub-sections (7) and (13) of Section 75 of the KGST Act. It is submitted that while the petitioner did not have any grievance over the tax of Rs.55,350/- or the interest of Rs.52,834/- demanded from him and was ready to deposit the same with the 2<sup>nd</sup> respondent, the petitioner was aggrieved by the imposition and demand of the aforesaid penalty of Rs.6,05,17,933/- and accordingly, filed an appeal before the 1<sup>st</sup> respondent – first appellate authority, who also erroneously dismissed the appeal vide impugned order dated



07.10.2023. Aggrieved by the impugned orders at Annexures- A and B, petitioner is before this Court by way of the present petition.

4. Per contra, learned HCGP for the respondents – revenue would reiterate the contentions urged in the statement of objections and submits that there is no merit in the petition and that the same is liable to be dismissed.

5. Before advertng to the rival submissions, it would be necessary to refer to the demand for tax, interest and penalty made by the 2<sup>nd</sup> respondent as per the show cause notice, the summary of which is extracted as hereunder:-

<b>Abstract of tax, interest and Penalty payable as per show cause notice</b>					
<b>Particulars</b>	<b>SGST</b>	<b>CGST</b>	<b>IGST</b>	<b>CESS</b>	<b>TOTAL</b>
<b>Tax</b>	15110029	15110029	0	0	30220058
<b>Interest</b>	13717231	13717231	1267	0	27435729
<b>Penalty</b>	15110029	15110029	0	0	30220058
<b>Fee</b>	0	0	0	0	0
<b>Total</b>	<b>43937289</b>	<b>43937289</b>	<b>1267</b>	<b>0</b>	<b>87875845</b>

6. As stated *supra*, the petitioner having submitted a reply and contested the proceedings, the tax and interest demanded from the petitioner as per the show cause notice *supra*, was reduced from Rs.3,02,20,058/- and Rs.2,74,35,729/- to Rs.55,350/-



and Rs.52,834/- respectively; however, the penalty of Rs.3,02,20,058/- as demanded in the show cause notice was increased to Rs.6,05,17,933/- as can be seen from the abstract of the impugned order, which is as under:-

<b>Abstract of tax, interest and Penalty payable as per show cause notice</b>					
<b>Particulars</b>	<b>SGST</b>	<b>CGST</b>	<b>IGST</b>	<b>CESS</b>	<b>TOTAL</b>
<b>Tax</b>	27675	27675	0	0	55350
<b>Interest</b>	26417	26417	0	0	52837
<b>Penalty</b>	22308629	22308629	15900675	0	60517933
<b>Fee</b>	0	0	0	0	0
<b>Total</b>	22362721	22362721	15900675	0	60626117

7. As can be seen from the aforesaid order and the show cause notice, while the tax and interest as demanded in the show cause notice has been reduced in the impugned order, the penalty as demanded in the show cause notice has been increased in the impugned order. As stated supra, it is the specific contention of the petitioner that he is ready to pay the tax and interest as demanded in the impugned order and filed an appeal only to the extent of penalty demanded from him and the 1<sup>st</sup> respondent – first appellate authority has dismissed the appeal also vide impugned order dated



07.10.2023 and the present petition is restricted only to the quantum of penalty demanded by the respondents.

8. A perusal of the impugned orders passed by the respondents will indicate that the following provisions have not been considered or appreciated while passing the impugned orders which are clearly illegal, arbitrary and contrary to the provisions contained in Sections 74 and 75 of the KGST Act and are without jurisdiction or authority of law and the same deserve to be set aside, insofar as they relate to imposing and confirming a penalty of Rs.6,05,17,933/- and the matter remitted back to the 2<sup>nd</sup> respondent for reconsideration afresh in accordance with law to the limited / restricted extent of aforesaid penalty payable by the petitioner. In this context, it is necessary to refer to the relevant statutory provisions in this regard as hereunder:-

***“Section 74. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-***

*(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or*



*suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.”*

9. Section 74(1) of the KGST Act clearly contemplates that there cannot be a demand for penalty more than the tax demanded from the petitioner and the penalty has to be a maximum equivalent to the tax specified in the notice.

10. Section 74(9) of the KGST Act, reads as under:-

*(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.*

11. Section 74(9) provides for consideration of the representation made by the petitioner and determination of tax and penalty due from him and to issue an order.

12. Section 75(7) of the KGST Act, reads as under:-

*(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified*



*in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.*

13. This provision creates an embargo which specifically prohibits the respondents from demanding any penalty from the petitioner in excess of the amount specified in the notice (SCN under Section 74(1)) and no demand (made in the SCN) shall be confirmed on grounds other than grounds specified in the notice (SCN).

14. Section 75(13) of the KGST Act, reads as under:-

*(13) Where any penalty is imposed under section 73 or section 74 [or section 74A], no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.*

15. Section 75(13) also operates as a bar for the respondents to impose penalty for the same act or omission on the same person under any other provision of the KGST Act where penalty is imposed under Sections 73 or 74 of the Act.

16. A conjoint and harmonious construction / interpretation of the aforesaid provisions will give rise to the following principles:-

- (i) In the show cause notice issued under Section 74(1), the respondents – revenue cannot demand any



amount towards penalty in excess of the tax demand and the penalty can be demanded to a maximum amount that would be equivalent to the tax amount.

- (ii) The amount of penalty demanded in the adjudication order under Section 74(9) cannot exceed the penalty demanded in the show cause notice issued under Section 74(1) of the KGST Act.
- (iii) The amount of penalty demanded in the show cause notice cannot be confirmed in the adjudication order other than on grounds specified in the show cause notice.
- (iv) Whenever penalty is imposed by the adjudication order in accordance with Section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act; it follows therefrom that if a penalty is imposed for certain act or omission, while passing an adjudication order under Section 79, the respondents would not be entitled to impose penalty again under Sections 122 to 128 of the KGST Act.



17. A perusal of the impugned orders will indicate that the aforesaid statutory provisions and underlying principles have not been considered or appreciated by the respondents, who have illegally and arbitrarily not only demanded higher penalty from the petitioner in excess of what was demanded in the show cause notice but also demanded penalty in excess of the tax which was confirmed by the respondents themselves in the impugned orders and the invocation of Section 122 of the KGST / CGST Act in the impugned orders also being illegal and arbitrary and contrary to the aforesaid provisions warranting interference by this Court in the present petition.

18. Under these circumstances, I am of the considered opinion that the impugned orders passed by the respondents at Annexures - A and B deserve to be set aside and the matter be remitted back to the 2<sup>nd</sup> respondent for reconsideration afresh in accordance with law, bearing in mind the aforesaid statutory provisions and observations made above.

19. As stated supra, the submission made on behalf of the petitioner that they are ready to deposit to pay the tax amount of Rs.55,350/- and interest of Rs.52,834/- is placed on record and the



impugned orders only insofar as they relate to imposing penalty of Rs.6,05,17,933/- deserve to be set aside and necessary directions are to be issued to the petitioner to pay the aforesaid tax and interest to the 2<sup>nd</sup> respondent who is to be directed to accept the same and proceed further to reconsider only the penalty payable by the petitioner and in accordance with law.

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

**ORDER**

(i) Petition is hereby partly allowed.

(ii) The impugned order at Annexure-A dated 30.06.2023 passed by the 2<sup>nd</sup> respondent and the impugned order at Annexure-B dated 07.10.2023 passed by the 1<sup>st</sup> respondent insofar as they relate to demand and confirmation of payment of tax of Rs.55,350 and interest of rs.52,834/- from the petitioner are hereby confirmed.

(iii) The impugned orders passed by the respondents only insofar as they relate to imposition of penalty in a sum Rs.6,05,17,933/- upon the petitioner are hereby set aside.

(iv) The matter is remitted back to the 2<sup>nd</sup> respondent for reconsideration afresh only to the limited / restricted extent of the



penalty payable by the petitioner in accordance with law, bearing in mind the aforesaid statutory provisions as well as the observations made in the body of this order and by providing sufficient and reasonable opportunity to the petitioner and hearing him in accordance with law.

(v) Liberty is reserved in favour of the petitioner to file pleadings, documents, judgments, etc., before the 2<sup>nd</sup> respondent, who shall consider the same and proceed further in accordance with law.

(vi) The petitioner is directed to pay / deposit a sum of Rs.55,350/- towards tax and Rs.52,834/- towards interest to the 2<sup>nd</sup> respondent who is hereby directed to receive / accept the same and proceed further only as regards penalty payable by the petitioner.

(vii) The petitioner undertakes to appear before the 2<sup>nd</sup> respondent on **05.12.2025** without awaiting further notice.

**Sd/-  
(S.R.KRISHNA KUMAR)  
JUDGE**

BMC/SRL