IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

SALES TAX REVISION PETITION NO. 29 OF 2023

BETWEEN:

M/S INDIA HERITAGE FOUNDATION
GOKULAM COMPLEX
8TH MILE, DODDKALLASANDRA POST
KANAKAPURA ROAD
BANGALORE-560 062
REPRESENTED BY ITS TRUSTEE,
SRI MADHU PANDIT DASA
S/O LATE SRI RAMAN NAIR
AGED ABOUT 66 YEARS

...PETITIONER

(BY SMT. VANI H, ADVOCATE)

AND:

THE STATE OF KARNATAKA
DEPARTMENT OF FINANCE,
BY ITS SECRETARY,
VIDHANA SOUDHA
AMBEDKAR VEEDHI
BANGALORE-560 001

...RESPONDENT

(BY SRI. ADITYA VIKRAM BHAT, AGA)

STRP FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE JUDGMENT DATED 4.01.2023 PASSED IN STA NO.222 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BANGALORE, PARTLY ALLOWING THE APPEAL FILED AGAINST THE ORDER DATED

30.04.2019 PASSED IN VAT.AP.70/2018-19(A.Y.2005-06) ON THE FILE OF ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-3), BENGALURU PARTLY ALLOWING THE APPEAL AND SETTING ASIDE THE ORDER DATED 16.03.2009 PASSED UNDER SEC. 39(1) OF THE KVAT ACT, 2003 BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT - 31), BENGALURU, FOR THE TAX PERIOD OF 2005-06.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS ON 18.06.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, ***RAJESH RAI K, J.,*** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE RAJESH RAI K

CAV ORDER

(PER: HON'BLE MR. JUSTICE RAJESH RAI K)

This Sales Tax Revision Petition No.29/2023 is preferred by the petitioner-assessee aggrieved by the order dated 04.01.2023 passed by the Karnataka Appellate Tribunal (hereinafter referred to as, 'the Tribunal'), wherein the Tribunal rejected the request of the assessee to reduce the VAT on iron and steel incorporated in the works contract from 12.5% to 4%.

2. The brief facts for the disposal of the revision petition are, the petitioner is a registered dealer under the provisions of the Karnataka Value Added Tax Act, 2005 (for short ‘KVAT Act’) that undertakes construction of residential

flats. The petitioner filed the return of income for the tax periods of the year 2005-06, declaring VAT at 12.5% to the tune of Rs.21,91,12,429/- on the value of iron and steel incorporated in the works contract. The return filed by the petitioner was assessed under Section 38 of the KVAT Act.

3. Subsequently, the case of the petitioner was selected for reassessment under Section 39(1) of the Act proposing certain disallowances. The petitioner, during the reassessment proceedings requested the prescribed Authority to levy VAT at 4% on the value of iron and steel incorporated in the works contract. However, vide reassessment order dated 16.03.2009, *inter alia*, the request of the petitioner was rejected and the reassessment was concluded by levying VAT at 12.5% on iron and steel, among other additions and disallowances made.

4. Challenging the reassessment order dated 16.03.2009, the petitioner filed an appeal before the Joint Commissioner of Commercial Taxes (Appeals)-3 Bangalore (for short 1st Appellate Authority), in KVAT Appeal No. 70/2018-19. The 1st Appellate Authority allowed the appeal in part vide order dated 30.04.2019, however, the specific contention of the

assessee regarding reduction of VAT on iron and steel to 4% from 12.5% was not allowed.

5. Being aggrieved by the order of the 1st Appellate Authority, the petitioner filed an appeal before the Tribunal in STA No. 222/2019. The Tribunal vide impugned order dated 04.01.2023 has partly allowed the appeal filed by the petitioner, however, VAT on iron and steel incorporated in works contract was not reduced to 4% from 12.5% for the year 2005-06. Aggrieved by the order of the Tribunal, the assessee has filed the present STRP.

6. Heard learned Additional Government Advocate Sri. Aditya Vikram Bhat for the revision petitioner and Learned Counsel Sri. Sandeep Huilgol for respondent.

7. Apart from urging several contentions learned counsel for the revision petitioner submitted that 'iron and steel' is considered as a 'declared good' under Section 14 of the Central Sales Tax Act, 1956 (for short 'CST Act') and hence, as per Section 14 and 15 of the CST Act read with Article 286 of the Constitution, the prescribed authority ought to have reduced the VAT on iron and steel incorporated in the works

contract from 12.5% to 4%. He further submitted that as per Section 15 of the CST Act, every sales tax law of the State shall not levy tax of more than 4% on the sale or purchase of declared goods.

8. Learned Counsel further contended that as per Article 265 of the Constitution of India, tax could only be levied or collected except by authority of law and hence, levy of tax at 12.5% rather than 4% in accordance with Section 14 and 15 of the CST Act read with Article 286 of the Constitution would be violative of Article 265.

9. She further contended that the Hon'ble Apex Court in ***Gannon and Dunkerley and Co. and Ors. V. State of Rajasthan and Ors,*** as well as in ***Builders Association of India vs Union of India*** has held that the provisions of Section 15 of the CST Act providing the State to levy tax on declared good would also apply to transfer of property in goods under works contracts. Thus, it is submitted that in terms of the judgment of the Hon'ble Apex Court, the levy of VAT at 12.5% is unconstitutional.

10. *Per contra*, learned AGA contended that the petitioner themselves declared VAT at 12.5% for iron and steel involved in works contract and the petitioner did not file any such revised return rectifying the same. It was only when the petitioner's case was selected for reassessment that the petitioner made a request to reduce the VAT from 12.5% to 4%. In such circumstances, the request of the petitioner cannot be granted.

11. He further contended that Section 4 of KVAT Act was amended from 01.04.2006 enabling levy of VAT on transfer of property in goods involved in execution of works contract subject to Sections 14 and 15 of the CST Act, i.e. at 4%. Thus, it is submitted that for 2005-06, the VAT applicable would be the residuary rate at 12.5%, since the same would be covered under 'other goods'.

12. He also contended by placing reliance on the decision of the Hon'ble Apex Court in ***MAFATLAL INDUSTRIES AND ORS. VS UNION OF INDIA AND ORS***. reported in **1997 (5) SCC 536**, that even if the contentions of the petitioner are assumed to be correct, it is not known, as to whether the petitioner has passed on the burden to pay duty to

other parties during the relevant year and as such unjust enrichment cannot be allowed. For all these reasons it is prayed that the revision petition filed by the petitioner be dismissed.

13. The STRP was admitted on 29.08.2023 to examine the following substantial questions of law:

1. *Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in affirming the levy of VAT at 12.5% on the value of iron and steel, used in the incorporation of the works contract during the year 2005-06, contrary to the provisions of section 15 of the Central Sales Tax Act, 1956?*

2. *Whether on the facts and circumstances of the case the Appellate Tribunal was right in affirming the levy of VAT at 12.5% merely because petitioner has declared a particular rate of VAT which is higher than what is prescribed in law and thus the order is violative of Articles 265 and 286(3) of the Constitution?*

3. *Whether on the facts and circumstances of the case the findings of the Appellate Tribunal in relation to the appropriation of amounts received initially towards land cost at paragraph 22 of the impugned order were perverse and thus liable to be set aside?*

14. We have given our anxious consideration to the submissions made by learned counsel for both the parties. Perused the material on record.

15. As could be gathered from records, the assessee had filed the return declaring iron and steel at 12.5% VAT. However, it is not in dispute that no revised return as contemplated under Section 35(4) of the Act was filed. It was only during the course of the reassessment proceedings, nearly three years after the filing of the return, that the assessee sought before the reassessing authority a reduction of VAT on iron and steel incorporated in the works contract from 12.5% to 4%.

16. In the similar circumstance a coordinate bench of this Court in ***NANDI CONSTRUCTIONS V. STATE OF KARNATAKA*** (STRP No. 216/2015 and Connected matters) has held that no benefit other than the benefit claimed in revised return or original return can be allowed by the re-assessment Authorities or the 1st Appellate Authority. Thus, the fact scenario is squarely covered as per the decision of the Coordinate bench in ***NANDI CONSTRUCTIONS*** (supra). The relevant extract is produced hereunder:

"6. *The main issue to be decided by this court is as to whether the petitioner can be granted benefit over and above that what has been claimed in the returns filed by the assessee for the relevant tax periods. Admittedly, the claim of the petitioner, in its returns filed for the relevant tax periods, was at 45 per cent. towards land cost. Though the assessing officer allowed only 40 per cent., the first appellate authority granted the benefit of 45 per cent. towards land cost. The question now to be decided is whether unless a claim is made by the assessee in its return (and without the same being revised or modified by filing a revised return), any benefit beyond the benefit claimed in the return can be considered and allowed by the authorities.*

7. *In our view the answer would be a clear no. The Division Bench of this court in the case of Infinite Builders and Developers, Bangalore [2014] 68 VST 24 (Karn) ; (2013) 76 Kar. L.J 390 was considering a case where the first appellate authority had granted a benefit more than what was claimed by the assessee. The same was denied by this court, with the following observations (para 44, pages 38 and 39 in 68 VST) :*

> *"43. The assessee never filed any revised return in respect of the period from April 2005 to March 2006 nor claimed any input-credit return, but, on the other hand only filed nil tax liability return. The assessee persisted and did not file any revised return or anything at all even after inspection, notice, etc. In this view of the matter, there was nothing at all before the assessing authority to provide any input-tax deduction in favour of the assessee for the entire period from April 2005 to March 2006. So it is urged by the appellant/assessee that even long after the expiry of the period in*

> *which the revised return could have been filed, the fact remains that there is no response by filing any revised returns. In such a position, we are of the view that the first appellate authority did go out of its duties and responsibilities and acted out of its jurisdiction to entertain a claim for deduction of input-tax rebate in favour of the assessee by accepting some material, purporting it to be based on the books of accounts and the purchase invoices, etc., and in granting reliefs to the assessee. We find, it is a case of the first appellate authority acting more loyal than the king, even though a claim had not been put forth by the assessee through the returns, the first appellate authority has ventured to allow the appeals and grant relief to the assessee, contrary to statutory provisions!"*

9. *We have no reason to differ with the opinion of the two Division Benches. Learned counsel for the petitioner has submitted that the question in the aforesaid cases was regarding grant of input-tax rebate as a deduction, whereas in the present case, according to the petitioner, the claim is exclusion of land cost and as once the authority has accepted it to be higher than 50 per cent., no tax could be levied on such amount which was beyond 50 per cent. of the sale consideration. We are unable to accept such submission made by the learned counsel for the petitioner as nothing more than what is claimed by the assessee in its return can be given by the authorities, and if it is permitted, then the assessing authority or the appellate authorities would be given unfettered powers to grant any such relief which may not even have been claimed by the assessee in its returns. The Act provides for filing a revised return under section 35(4) of the Karnataka Value Added tax*

> *Act, 2003. If the assessee fails to avail of the benefit of filing revised return, then it is only the return which is filed, which has to be considered by the assessing officer or other authorities and nothing more than what is claimed in the return that can be granted by the authorities in favour of the assessee."*

17. The Tribunal remanded the matter to the First Appellate Authority with a direction to secure the relevant records and undertake the necessary verification in the light of the observations made in paragraphs 24 and 25 of its order, particularly with regard to a detailed examination of the books of accounts and other records. Upon consideration, we find no infirmity or illegality in the said direction issued by the Tribunal warranting interference.

18. Accordingly, keeping open the question of law Nos.1 and 3, and answering the question of law No.2 in favour of the State, the STRP stands ***dismissed***.

SD/-
(S.G.PANDIT)
JUDGE

SD/-
(RAJESH RAI K)
JUDGE

PKS