

Reserved on : 12.03.2026
Pronounced on : 09.04.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF APRIL, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

SALES TAX APPEAL No. 20 OF 2025

BETWEEN:

1. M/S. EMJAY ENGINEERING COMPANY,
No.70, 1ST CROSS, 2ND A MAIN,
DOMLUR LAYOUT, BENGALURU-560 071,
(REPRESENTED BY ITS PROPRIETRIX)
SMT. MEENAKSHI JACOB,
AGED ABOUT 71 YEARS.

...APPELLANT

(BY SRI K. M. SHIVAYOGISWAMY, ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES,
(SMR)-3, V.T.K.-1, 8TH FLOOR,
GANDHI NAGAR, BENGALURU-560 009.

...RESPONDENT

(BY SRI ADITYA VIKRAM BHAT, AGA)

THIS STA IS FILED UNDER SECTION 64(1) OF KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE ORDER DATED 30.03.2025 PASSED IN CAS No.345441054 AD SMR ON THE FILE OF THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, (SMR) - 3, BENGALURU AND MODIFYING



THE ORDER PASSED BY THE FAA VIDE APPEAL No.KVAT.A.P. 81/2020-21 DATED 22.01.2021 BEING ERRONEOUS ILLEGAL AND IMPROPER INsofar AS PREJUDICIAL TO THE INTEREST OF THE GOVERNMENT REVENUE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **K.V. ARAVIND J.**, DELIVERED THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

Heard Sri K.M. Shivayogiswamy, learned counsel for the appellant-Assessee and Sri Aditya Vikaram Bhat, learned Additional Government Advocate for the respondent-Revenue.

2. This appeal is by the assessee impugning the order dated 30.03.2025 passed under Section 64(1) of the Karnataka Value Added Tax Act, 2003 [for short, 'the Act'] by the Additional Commissioner of Commercial Taxes (SMR)-3, Bengaluru [*Suo Motu* Revisional Authority (SMR)].

3. The following questions of law are raised for consideration;

"(i) WHETHER on facts and circumstances of the case the order of the Appellate Authority is erroneous and prejudicial to the interest of Government Revenue to invoke Section 64(1) of the KVAT Act?

(ii) *WHETHER on facts and circumstances of the case, the revisional authority was right in setting aside the appeal order by modifying the appeal order restricting the Input Tax Credit?"*

4. The brief facts are that the Deputy Commissioner of Commercial Taxes, Bengaluru [hereinafter referred to as the 'Assessing Authority'], concluded the reassessment proceedings by order dated 20.11.2020 under Section 39(1) of the Act for the tax periods from April 2017 to June 2017, rejecting the input tax credit (ITC) claim of Rs.3,62,723/-. The ITC was denied on the ground that the supplying dealers had either filed NIL returns, declared lesser turnover, or had not uploaded the details in e-upass, and also on the ground that the assessee had effected purchases from a composition dealer, on which input tax is not allowable.

4.1 Aggrieved by the reassessment order, the assessee preferred an appeal before the Joint Commissioner of Commercial Taxes (Appeals)-5, Bengaluru [hereinafter referred to as the 'Appellate Authority']. The Appellate Authority, by order dated 22.01.2021, allowed the appeal. Thereafter, the SMR, in exercise of *suo motu* revisional jurisdiction under Section 64(1) of the Act, revised the order of the Appellate Authority.

4.2 The SMR, noticing that the selling dealers had filed NIL returns implying that no output tax had been admitted, held that the assessee was disentitled to the ITC claimed, except insofar as the supplies were found to have been declared, in which case the ITC was extended. The SMR concluded that the order of the Appellate Authority was erroneous, illegal, improper and prejudicial to the interest of the Government revenue. Accordingly, the Assessing Authority was directed to re-compute the turnover tax liability and to issue a revised demand notice.

5. Sri K.M. Shivayogiswamy, learned counsel for the appellant-assessee, submits that the Appellate Authority, after examining the tax invoices issued by the selling dealers, the purchase ledger accounts, bank statements and proof of receipt of goods, held that the burden of proof under Section 70 of the Act had been discharged and accordingly granted relief.

5.1 It is further submitted that the Appellate Authority recorded a finding that the appellant had received the goods pursuant to the sales effected by the selling dealers. It is contended that unless the genuineness of the purchase

transactions is doubted, the order passed by the SMR is without jurisdiction and unsustainable.

5.2 It is also submitted that the SMR has not established that the order of the Appellate Authority is either erroneous or prejudicial to the interests of the revenue. Hence, the interference by the SMR with the order passed by the Appellate Authority is unwarranted.

6. Sri Aditya Vikram Bhat, learned Additional Government Advocate appearing for the State, submits that the Appellate Authority interfered with the reassessment order without any basis. It is submitted that the Assessing Authority had held that the burden under Section 70 of the Act had not been discharged by the assessee.

6.1 It is further submitted that the selling dealers were found either to have not filed returns or to have filed NIL returns, the ITC had been claimed on purchases from composition dealers, the turnovers were not uploaded, the sales were not declared, and that the output tax had not been admitted. It is contended that the reversal of such findings by the Appellate Authority is without any basis and reflects non-application of mind.

6.2 Learned Additional Government Advocate further submits that, as the order of the Appellate Authority was erroneous and prejudicial to the interests of the State, the SMR has rightly invoked the powers under Section 64(1) of the Act.

6.3 It is further submitted that subsequent to the reassessment order and the order passed by the Appellate Authority, the Hon'ble Supreme Court in ***State of Karnataka vs. Ecom Gill Coffee Trading Private Limited [2023 SCC Online SC 248]*** laid down the parameters for discharge of the burden under Section 70 of the Act. The examination undertaken by the SMR is in the light of the aforesaid judgment. Hence, it is submitted that no interference is warranted.

7. We have considered the submissions made by learned counsel for the appellant-Assessee and learned Additional Government Advocate-Revenue.

8. The controversy in the present case relates to the discharge of the burden of proof under Section 70 of the Act. The Assessing Authority, in the reassessment proceedings, denied the ITC on the ground that the selling dealers had either not filed returns or had filed NIL returns. The ITC was also

denied on the ground that the turnovers/sales were not admitted so as to entitle output tax thereon. The findings recorded by the Assessing Authority are with reference to each of the supplying dealers.

8.1 However, the Appellate Authority proceeded to hold that if the selling dealer had not collected the tax and remitted the same to the Government, the ITC cannot be denied to the appellant on that ground. The Appellate Authority further held that there was no dispute regarding the genuineness of the purchase transactions effected by the assessee. It was also held that the selling dealers had issued tax invoices and that there was proof of supply and receipt of goods.

8.2 The above findings were interfered with by the SMR, placing reliance on the aforesaid judgment of the Hon'ble Supreme Court. The Hon'ble Supreme Court has held as under:

"10. Even considering the intent of Section 70 of the Act, 2003, it can be seen that the ITC can be claimed only on the genuine transactions of the sale and purchase and even as per Section 70(2) if a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to take at a lower rate, or that a deduction of input tax is available, such a dealer is liable to pay the penalty. Therefore, as observed hereinabove, for claiming ITC,

genuineness of the transaction and actual physical movement of the goods are the sine qua non and the aforesaid can be proved only by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars, etc. The purchasing dealers have to prove the actual physical movement of the goods, alleged to have been purchased from the respective dealers. If the purchasing dealer/s fails/fail to establish and prove the said important aspect of physical movement of the goods alleged to have been purchased by it/them from the concerned dealers and on which ITC have been claimed, the assessing officer is absolutely justified in rejecting such ITC claim.

11. *In the present case, the respective purchasing dealer/s has/have produced either the invoices or payment by cheques to claim ITC. The assessing officer has doubted the genuineness of the transactions by giving cogent reasons on the basis of the evidence and material on record. In some of the cases, the registration of the selling dealers have been cancelled or even the sale by the concerned dealers has been disputed and/or denied by the concerned dealer. In none of the cases, the concerned purchasing dealers have produced any further supporting material, such as, furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars, etc. and therefore it can be said that the concerned purchasing dealers failed to discharge the burden cast upon them under Section 70 of the KVAT Act, 2003. At the cost of repetition, it is observed and held that unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act, 2003 and proves the genuineness of the transaction/purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to input tax credit.*

12. *Despite the findings of fact recorded by the assessing officer on the genuineness of the transactions, while refusing to allow the ITC, which came to be*

confirmed by the first appellate authority, the second appellate authority as well as the High Court have upset the concurrent findings given by the assessing officer as well as the first appellate authority, on irrelevant considerations that producing invoices or payments through cheques are sufficient to claim ITC which, as observed hereinabove, is erroneous. As observed hereinabove, over and above the invoices and the particulars of payment, the purchasing dealer has to produce further material like the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods including actual physical movement of the goods, alleged to have been purchased from the concerned dealers."

8.3 In the aforesaid judgment, the Hon'ble Supreme Court has explained the modes of discharging the burden under Section 70 of the Act. We find that the findings recorded by all the three authorities are not in conformity with the manner of discharge of burden under Section 70 of the Act as laid down by the Hon'ble Supreme Court.

8.4 In the circumstances, we deem it appropriate to remit the matter to the Assessing Authority for re-adjudication insofar as the input tax credit claimed in respect of the selling dealers in question is concerned.

9. Accordingly, the following order;

Order

- (i) The appeal is ***allowed in-part***.
- (ii) The reassessment order dated 20.11.2020 and the order dated 30.03.2025 passed by the *Suo Motu* Revisional Authority are set aside.
- (iii) The matter is remanded to the Assessing Authority to the extent of the issues held against the assessee by the SMR in the order dated 30.03.2025.
- (iv) Needless to observe that the appellant–assessee shall be entitled to an opportunity to prove the discharge of the burden in conformity with the judgment of the Hon'ble Supreme Court.
- (v) In light of the remand, we consider it unnecessary to adjudicate the questions of law at this stage.
- (vi) In light of the period involved, which relates to 2017, the remand proceedings shall be concluded at the earliest.
- (vii) No order as to costs.
- (viii) Pending I.As., if any, stand disposed of as not surviving for consideration.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(K. V. ARAVIND)
JUDGE**