IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF DECEMBER, 2019

BEFORE:

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT PETITION No.51539/2019 (T – RES)

BETWEEN:

M/s. FRESH AND HONEST CAFÉ LIMITED
MUNICIPAL No. NEW 4, OLD No 13 AND 14
GANESH MANDIR, 2ND MAIN GEDDALAHALLI
WARD No-100 SANJAY NAGAR
BANGALORE
REP. BY ITS MANAGER-TAXATION. ...PETITIONER

(BY SMT.APARNA NANDAKUMAR, ADV. FOR
SRI MANOHAR.N., ADV.)

AND:

1. THE DEPUTY COMMISSIONER [CT]
[AUDIT-5.5], DVO-5, 'B' BLOCK
V.T.K-2, KORMANGALA
BANGALORE-47.

2. THE BANK MANAGER
STATE BANK OF INDIA
MANDAPETA, MAIN ROAD
EG DISTT EAST GODAVARI
ANDHRA PRADESH-533308. ...RESPONDENTS

(BY SRI T.K.VEDAMURTHY, AGA.)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS OF THE IMPUGNED ENDORSEMENT PROCEEDINGS DATED 16.8.2019 FROM THE FILES OF THE IRST RESPONDENT HEREIN QUASH THE SAME ANNEXURE-F; AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:-

O R D E R

Learned Additional Government Advocate accepts notice for the respondent No.1.

2. The petitioner has assailed the endorsement dated 16.08.2019 and the garnishee proceedings dated 19.11.2019 both issued by the respondent No.1 *inter alia* seeking a direction to the respondent No.1 to consider the representation of the petitioner dated 14.11.2019 and to pass appropriate orders.

3. The petitioner, a private limited company is a registered dealer under the provisions of the Karnataka Value Added Tax Act, 2003 ['Act' for short]. The petitioner is engaged in the business of coffee vending machine and refreshment contracts.

4. It is the contention of the petitioner that by inadvertence, a mistake had crept in, in Form VAT 240 – audited statements of accounts certificate issued by its Chartered Accountant wherein, the ineligible income

tax deduction under Section 11 was shown as Rs.6,25,463/- which indeed pertains to the TDS of the petitioner deducted by the respective contractors under Section 18 of the Act. The claim made by the petitioner towards the input tax credit on this deducted tax amount of Rs.6,25,436/- has been denied by the Assessing Authority mainly relying on VAT Form 240. The rectification application filed under Section 69[1] of the Act has been rejected.

5. Learned counsel Smt.Aparna Nandakumar representing the learned counsel appearing for the petitioner would submit that the prescribed authority – respondent No.1 has failed to appreciate the mistake that was apparent from the record in filing the VAT Form 240 and the same ought to have been rectified considering the rectification application submitted by the Chartered Accountant. Learned counsel would further submit that the Department has proceeded with the

recovery proceedings by issuing garnishee notice, despite the petitioner has the remedy of an appeal against the endorsement impugned, issued by the respondent No.1 rejecting the rectification application. The respondents are acting hastily to recover the tax amount determined without awaiting for the appeal period provided under the Act for the petitioner to exercise.

6. Learned Additional Government Advocate justifying the orders impugned would submit that the disputed facts cannot be adjudicated under the writ jurisdiction. The petitioner without exhausting the alternative statutory remedy, has approached this Court and hence the writ petition deserves to be dismissed at the threshold relegating the petitioner to avail the alternative and efficacious remedy of appeal available under the Act.

7. Having heard the learned counsel for the parties and perusing the material on record, this Court

is of the view that there is considerable force in the submissions made by the learned counsel for the Revenue.

8. The issue involved herein is more related to the factual aspects which necessarily requires to be adjudicated by the Appellate Authority. Moreover, the petitioner has not challenged the assessment order in the present proceedings. The endorsement issued by the respondent No.1 rejecting the rectification application filed under Section 69[1] of the Act is under challenge.

9. It is well settled law that the scope of rectification is very limited. If the authority is satisfied that there is any mistake apparent from the record, the provisions of Section 69 can be invoked to rectify such mistake. Any mistake said to have been committed by the learned Chartered Accountant in filing VAT Form 240 would not be construed as the mistake apparent from the record to attract Section 69[1] of the Act.

10. Since the factual aspects involved in the case are analyzed and the certificate is issued by the learned Chartered Accountant, such mistakes, if any in the VAT Form 240 ought to have been brought to the notice of the prescribed authority at the time of the assessment proceedings. Indisputably, no such attempts have been made by the petitioner to seek rectification of the VAT Form 240 before the conclusion of the assessments by the prescribed authority. Section 69[1] of the Act would attract when there is any mistake from the record while concluding assessment proceedings by the Prescribed Authority, the Appellate Authority or Revising Authority.

11. Hence, the petitioner is permitted to file the statutory appeal before the Appellate Authority. If such an appeal is preferred within a period of two weeks from the date of receipt of certified copy of the order, the same shall be considered by the Appellate Authority on merits without objecting to the period of limitation.

12. In view of the Garnishee notice being issued by the respondent, this Court deems it appropriate to stay the Garnishee notice until the Appellate Authority decides the application to be filed by the petitioner seeking stay of the demand pursuant to the assessment orders impugned herein, subject to compliance of Section 63[4] of the Act.

With the aforesaid observations and directions, writ petition stands disposed of.

Registry shall return the original impugned orders/Annexures to the petitioner, keeping the photocopies of the same for the record purposes.

Sd/-
JUDGE

NC.