



HC-KAR

**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**  
**DATED THIS THE 17<sup>TH</sup> DAY OF APRIL, 2026**  
**BEFORE**  
**THE HON'BLE MS. JUSTICE JYOTI M**  
**WRIT PETITION NO. 102773 OF 2026 (T-RES)**

**BETWEEN:**

M/S. SRI LAXMI BOREWELL AGENCIES,  
A SOLE PROPRIETORSHIP,  
HAVING ITS OFFICE AT: NO.9/6327,  
VISHNUTHIRTHA NAGAR, KUSTAGI,  
KOPPAL-584 121,  
REPRESENTED BY ITS SOLE PROPRIETOR:  
SRI. SHRI DEVENDRAGOUDA SHEKHARAGOUDA PATIL  
SON OF SHEKHARAGOUDA PATIL,  
AGED ABOUT 42 YEARS, HAVING OFFICE  
AT: NO.9/6327, VISHNUTHIRTHA NAGAR,  
KUSTAGI, KOPPAL-584 121.

... PETITIONER

(BY SRI. SHASHANK HEDGE AND  
SRI. JOSHEPH VARGEES, ADVOCATE)

**AND:**

1. ASSISTANT COMMISSIONER OF CENTRAL TAX,  
OFFICE OF THE ASSISTANT COMMISSIONER  
OF CENTRAL TAX, HOSAPETE DIVISION, 2<sup>ND</sup> FLOOR,  
AXIS CITY CENTRE, ABOVE MAX SHOWROOM,  
COLLEGE ROAD, HOSAPETE-583 201.
2. ASSISTANT COMMISSIONER OF CENTRAL TAX,  
HUBBALLI AUDIT CIRCLE, OFFICE OF THE  
COMMISSIONER OF CENTRAL TAX (AUDIT)  
HUBBALLI AUDIT CIRCLE, VISHWA HEIGHTS,  
1<sup>ST</sup> AND 2<sup>ND</sup> FLOOR, P.B. ROAD,  
BAIRIDEVARKOPPA, HUBBALLI-580 025.

... RESPONDENTS

(BY SRI. SOURABHA A. MIRJE, ADVOCATE FOR  
SRI. SHIVARAJ S. BALLOLI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227  
OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS.





THIS WRIT PETITION IS LISTED FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, AN ORDER IS MADE AS UNDER:

**ORAL ORDER**

Sri.Shashank Hegde, counsel for the petitioner and Sri.Sourabha A.Mirje, counsel on behalf of Sri.Shivaraj.S.Balloli, for the respondents, have appeared in person.

Sri.Josheph Vargees, counsel for the petitioner, has appeared through video conferencing.

2. The petition is filed seeking the following reliefs:

*"i) Issue of writ of Certiorari quashing the FORM GST SPL-07 dated 03.11.2025 bearing Reference No: ZD291125014552N and referred to as **Annexure-A1**;*

*ii) Issue a writ of Mandamus directing the Respondent No.1 to accept the application filed by the petitioner in FORM GST SPL-02 filed on 18.07.2025 and referred as **Annexure-F**, and further issue FORM GST SLP-05 in favour of the Petitioner;*

*iii) Consequently, issue a writ of Certiorari quashing the Show Cause Notice No.09/2023-24/HBL (GST Audit) bearing DIN No:20230957TG0000000BBA dated 27.09.2023 issued by the Respondent No.2 and referred to as **Annexure-A2**;*



*iv) Consequently, issue a writ of Certiorari quashing the Summary of show cause notice in Form DRC-01 dated 30.09.2023 vide Reference No: DRC01\_201860 dated 30.09.2023 issued by the Respondent No.2 and referred to as **Annexure-A3**;*

*v) Consequently, issue a writ of Certiorari quashing the Order-in-Original No.BEL / GST / 000 / DIVH / ASC /KST/24/2023-24 bearing DIN No: 20231257TC05002202A0 passed under section 73 of KGST/CGST Act 2017 dated 28.12.2023 passed by Respondent No.1 and referred to as **Annexure-A4**.*

*vi) Pass such other orders as this Hon'ble Court deems fit and proper in the interest of justice and equity."*

3. The short facts are as follows:

The petitioner is engaged in the business of work contract service for the drilling of bore wells. The petitioner is registered with the GST department with GSTIN No.29BSQPP1182B2ZI. The departmental Audit Officers of Hubli Audit Circle, Hubli, conducted an audit on the records of the petitioner for the period from July 2017 to 2020. During the course of the audit, it was observed that the petitioner is engaged in drilling bore wells. It was also observed that the petitioner is making taxable supplies



as well as exempted supplies. The aforesaid input/ input services are common and have been used in making taxable supplies as well as exempted supplies. Section 17(2) of the Act restricts Input Tax Credit in cases where a common input tax credit is used for effecting taxable as well as exempted supplies. The revenue arrived at the common Input Tax Credit, liable to be reserved a sum of Rs.62,46,056/-. The petitioner agreed with the audit observations and paid the Input Tax Credit a sum of Rs.62,46,056/- vide DRC-03 DC2909230193707, DC2909230195661, and DC2909230194832 dated 20.09.2023. However, the interest arising therefrom was not paid. The second respondent subsequently issued a show cause notice on 27.09.2023. The petitioner, in response to the show cause notice, filed a response on 07.06.2023 vide e-mail, and another reply vide letter in Form DRC-06 dated 20.10.2023.

As the matter stood thus, on 28.12.2023, the first respondent proceeded to pass an Order in Original under Section 73 of the Act. The Order in Original confirmed the demand of interest under Section 50 (1) of the Act and a sum of Rs.48,25,066/-. It is stated that the Order in Original was not



received by the petitioner, nor was the same uploaded on the GST portal. In the meanwhile, the GST Council vide its 53<sup>rd</sup> meeting recommended the insertion of Section 128A with effect from 01.11.2024 to provide for waiver of interest or penalty or both, relating to demands under Section 73 of the CGST Act pertaining to financial year 2017-18, 2018-19 and 2019-20. Subsequently, based on the recommendations, Rule 164 was inserted in the CGST Rules 2017 with effect from 01.11.2024, vide Notification No.20/2024-Central Tax, dated 08.10.2024, providing for procedure and conditions for closure of proceedings under Section 128A of the CGST Act.

Further, vide Notification No.21/2024-Central tax dated 08.10.2024, 31.03.2025 was notified under sub-section (1) of Section 128A of the CGST Act, as the date on or before which the full payment of tax demanded in the notice/ statement/ order needs to be made by the taxpayer to avail the benefit of waiver of interest or penalty or both. The petitioner was under a bona fide impression that the proceedings were dropped as the petitioner had paid the tax dues. However, an email was sent to the petitioner's email ID and intimated about the order passed



under Section 73 of the Act. The petitioner, on being aware of the existing demand, filed a waiver application in Form GST SPL-02 on 18.07.2025. In response to the waiver application, the first respondent issued Form GST SPL-03 dated 11.09.2025, asking the petitioner to produce relevant documents in Form GST SPL-04 to support the claim as to why the application filed should not be rejected.

Thereafter, the first respondent rejected the application because it was filed late. Under these circumstances, the petitioner is now before this Court on the grounds detailed in the writ petition memorandum.

4. Counsel for the respective parties urged several contentions. Heard the arguments and perused the papers with care.

5. The issue lies within a narrow compass and relates to the rejection of the waiver application. It is undisputed that vide Notification No.21/2024-Central tax dated 08.10.2024, 31.03.2025 was notified under sub-section (1) of Section 128A of the CGST Act, as the date on or before which the full payment



of tax demanded in the notice/ statement/ order needs to be made by the taxpayer to avail the benefit of waiver of interest or penalty or both. The notification clarifies that any person who wishes to file an application under sub-rule (1) or sub-rule (2) **may** do so within a period of three months from the date notified under sub-section (1) of Section 128A.

The notified date was March 31, 2025. The petitioner filed an application for a waiver on July 18, 2025. According to the first respondent, the waiver application should have been filed within three months of the notified date. Consequently, the application was rejected solely because it was belated. This rejection is untenable. The reason is apparent. The provision in question uses the word 'may,' which is enabling and directory in nature, rather than the mandatory 'shall.' Therefore, the department erred in law by interpreting this discretion as a strict time-bound obligation, rendering the rejection of the application unlawful. Therefore, the first respondent is directed to consider the waiver application filed by the petitioner.

6. For the foregoing reasons, the FORM GST SPL-07 dated 03.11.2025 vide Annexure-A1 is quashed. A Mandamus is



ordered directing the first respondent to consider the application filed by the petitioner on 18.07.2025 as referred in Annexure-F in accordance with the law. Till the consideration of the application, the show cause notice dated 27.09.2023 vide Annexure-A2, Summary of show cause notice dated 30.09.2023 vide Annexure-A3 and Order in Original dated 28.12.2023 vide Annexure-A4 are kept in abeyance.

7. With the above observations, the Writ Petition is ***disposed of.***

**Sd/-  
(JYOTI M)  
JUDGE**

MRP  
LIST NO.: 1 SL NO.: 77