

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 25TH DAY OF OCTOBER 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION No.20642/2018 (T-RES)

BETWEEN:

M/s. Prosper Jewel Arcade LLP

No.444, 20th Main, West of Chord Road
Rajaji Nagar, First Block
Bangalore-560010
Represented herein by its
Designated Partner
Sri. K.P. Veeran Kutty
Aged 68 years.

...Petitioner

**(By Mr. N. Venkataraman, Senior Counsel
for Mr. V. Vinay Giri, for M/s. King & Partridge)**

AND:

1. **The Deputy Commissioner
Commercial Taxes**
(Audit & Recovery)
2.8, DVO-2, 'A' Block
Near passport office
Koramangala, Bangalore-560047.
2. The Assistant Commissioner
LVO 140, DVO-2,
Near National Games Village
Koramangala, Bangalore-560047.
3. The Commissioner
State Goods and Service Tax Department

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(Commercial Taxes Department)
1st Main Road, Gandhinagar
Bangalore-560009.

4. The State of Karnataka
Represented herein by the
Principal Secretary
Finance Department
Government of Karnataka
Vidhana Soudha
Bangalore-560001.
5. Central Board of Excise & Customs
Department of Revenue
Ministry of Finance
North Block, New Delhi
Delhi-110001.

...Respondents

**(By Mr. Udaya Holla, Advocate General with
Mr. Vikram A. Huilgol, HCGP for R1 to R4)**

This Writ Petition is filed under Article 226 of the Constitution of India praying to call for records leading to passing of the Order bearing No.DCCT: (Audit) – 2.8/VAT-167046839 (2012-13)/2017-18) dated 31/03/2018 passed by the 1st Respondent (Annexure-C) under Section 39(1) of the Karnataka Value Added Tax Act, 2003 & etc.

This Writ Petition having been reserved for Orders on **22-10-2018**, coming on for pronouncement, this day, **Dr Vineet Kothari J.**, delivered the following:

J U D G M E N T

Mr. N. Venkataraman, Senior Counsel
for **Mr. V. Vinay Giri**, for
M/s. King & Partridge for petitioner
Mr. Udaya Holla, Advocate General with
Mr. Vikram A. Huilgol, HCGP for R1 to R4

1. The petitioner – **M/s. Prosper Jewel Arcade LLP**, a Dealer in Jewellery has filed this writ petition in this Court on **10/05/2018** assailing the re-assessment Order **Annexure C** dated **31/03/2018** passed by the **Deputy Commissioner of Commercial Taxes, (Audit)-2.8, DVO-02, Bangalore** under **Section 39(1) of the Karnataka Value Added Tax Act, 2003** (hereinafter referred to as the “**KVAT Act, 2003**”) read with the other relevant provisions of the said Act for the year **2012-13** raising a demand of **Rs.4,42,72,061/-** including Tax, Interest and Penalty against the petitioner Assessee.

2. The Application of the petitioner Assessee seeking rectification in the said Order also came to be

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rejected by the Assessing Authority vide endorsement

Annexure F dated **25/04/2018**.

3. Though the said re-assessment Order under **Section 39(1)** of the **KVAT Act, 2003** is clearly and indisputably appealable to the Deputy Commissioner of Appeals under **Section 62** of the said Act, without availing the said alternative remedy, the present writ petition has been filed by the petitioner seeking to quash the said re-assessment Order *inter alia* also raising the issue regarding the constitutional validity of **Section 174(1) (d) and (e)** of the **Karnataka Goods and Services Tax Act, 2017** (hereinafter referred to as the "**KGST Act, 2017**" for short), which has been enforced only later on with effect from **01/07/2017** and is not at all applicable to the assessment period **2012-13** in question.

4. The learned Senior Counsel, Mr. N. Venkataraman vehemently urged before the Court that

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when the new GST regime subsumed the various indirect tax levies like the Excise Duty, Value Added Tax (VAT), Entry Tax, etc., earlier imposed by the Union of India as well as States and has been enforced in India with effect from **01/07/2017** consequent to **101st Amendment** to the Constitution of India, there are certain lacunas in not saving **Entry 54 of List II** in its original form prior to the **101st Constitutional Amendment** which received the Assent of the President on **08/09/2016** and was notified to be effective from **16/09/2016** and therefore the impugned re-assessment Order passed by the Assessing Authority does not legally stand the test of an Order passed under due authority of law and consequently the same deserves to be quashed by this Court in the present writ petition.

5. On a pointed question from the Court as to how the Constitutional Amendment of law and the

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change of indirect taxes regime by introduction of GST regime with effect from **01/07/2017** is applicable or relevant to the tax period involved in the present case, viz. **2012-13** under the impugned Order passed under the provisions of the then existing **KVAT Act, 2003**, the learned Senior Counsel could not give a satisfactory answer to the said query of the Court.

6. What he endeavored to submit before the Court was that the imposition of tax by its levy, assessment and collection, all have to be supported by the now existing law and since the impugned Order has been passed by the Assessing Authority on **31/03/2018** after the said KGST Act, 2017 has come into existence with effect from **01/07/2017**, the questions raised about the validity of **Section 174** of the **KGST Act, 2017** are relevant and the said questions deserve to be gone into by this Court.

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7. This Court is not impressed by the said argument on behalf of the petitioner at all. The taxable event under the Value Added Tax law is individual transaction of sale or purchase by the Dealer and the law applicable on the date of taxable event is the relevant law for imposition of tax. Merely because the re-assessment Order is passed under KVAT Act, 2003 after the KGST Act, 2017 under GST regime came into effect from **01/07/2017**, it does not mean that the said Order passed on **31/03/2018 under the KVAT Act, 2003** is *non-est* or *void* in the eye of law.

8. **Section 174** of the **KGST Act, 2017** clearly saves all the rights, obligations or liabilities acquired, accrued or incurred under the repealed Acts enumerated under **Section 173** of the said Act which includes **KVAT 2003**. The ground of attack on **Section 174 of the KGST Act, 2017** does not affect the validity

of **KVAT Act, 2003** and the Orders passed under that enactment.

9. Therefore, the larger constitutional questions raised in the present writ petition and as sought to be canvassed by the learned Senior Counsel for the petitioner like the substitution of **Entry 54 in List II**, effect of **Article 246-A** inserted by the **101st Constitutional Amendment Act of 2016**, the sunset Clause as the learned Senior Counsel chose to name it, namely **Clause 19** of the said **101st Constitutional Amendment Act** etc, are all the questions which can be raised and considered only in an appropriate case to which these amended Constitutional and statutory legal provisions under the GST law regime are applicable for a tax period which falls after **01/07/2017**. The **Entry 54 of List II** and **KVAT Act, 2003** for the tax period in question, viz. **2012-13** was very much in existence for the said period and these provisions are not under

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challenge. Merely passing of the re-assessment order after **01/07/2017** does not get adversely affected on the basis of the said arguments sought to be canvassed by the learned counsel for the petitioner.

10. The learned Advocate General, Mr. Udaya Holla fairly and rightly submitted that these questions are merely academic and the amendment of law with effect from **01/07/2017** is not applicable in the present case and the question of validity of these provisions, particularly **Section 174** of the **KGST Act, 2017** has been raised merely to maintain the present writ petition directly before the High Court under **Article 226** of the Constitution of India, even though the impugned Order is appealable under **Section 62 of the KVAT Act, 2003**. Even though the demand of tax has been raised under a valid enactment of **KVAT 2003** on the ground that the Assessee wrongly claimed the Input Tax Credit on the purchases made from the Unregistered Dealers

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(URD), which in law it was not entitled to, and therefore, the tax to that extent under the **KVAT Act, 2003** and not **KGST Act, 2017** was clearly evaded by the Assessee and therefore the re-assessment order was passed.

11. The learned Advocate General urged that the present assessment period is not all governed by the **KGST 2017** under GST regime enforced by the State with effect from **01/07/2017** pursuant to **101st Constitutional Amendment**. He submitted that not only **Article 246-A** empowers the State now to make laws both for imposition of tax in respect of Goods and Services, but also **Clause 19** of the **101st Constitutional Amendment** clearly saves all the provisions under different enactments immediately before the commencement of the said **Constitutional 101st Amendment** with effect from **16/09/2016**.

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12. He also submitted that there is no repugnancy of the provisions of the **KVAT Act, 2003** with **Entry 54** and therefore, the subsequent Amendment of law does not at all affect the Re-assessment order under challenge in the present case.

13. Having considered the rival submissions, this Court is of the clear and considered opinion that all these questions sought to be raised are only academic and do not really arise in the present case and the amended law and GST regime with effect from **01/07/2017** is not at all applicable to the facts of the present case for the year **2012-13**. These questions are therefore left open to be considered in appropriate case.

14. Since the re-assessment order under challenge **Annexure C** dated **31/03/2018** for the period **2012-13** is clearly appealable before the higher Appellate Authority under **Section 62** of the **KVAT Act, 2003**, the present writ petition is dismissed with a

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liberty to the petitioner Assessee Company to avail the remedy by way of an appeal if it so chooses and if any such an appeal is filed within four weeks from today, the objection of limitation shall not come in the way of the Assessee petitioner subject to the other conditions for maintaining such appeal being fulfilled by the Assessee petitioner.

15. Accordingly, the present writ petition is dismissed with no order as to costs.

**Sd/-
JUDGE**

BMV*