IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF DECEMBER, 2019

BEFORE

THE HON'BLE MRS. JUSTICE S.SUJATHA

W.P.No.52413/2019 (T-RES)

BETWEEN:

M/S. AMIABLE ELECTRONICS PVT. LTD.,
REPRESENTED BY ITS CHIEF FINANCIAL OFFICER
SHRI. RAAKESH J.JHUNJHUNWALA
NO.36/6 C/O DHL SUPPLY CHAIN PRIVATE LIMITED
SOMASANDRAPALYA, NEAR KEB POWER STATION
HSR LAYOUT, BENGALURU – 560 102.

...PETITIONER

(BY SRI RAJU H.Y., ADVOCATE)

AND:

1. THE NODAL OFFICER
JOINT COMMISSIONER OF COMMERCIAL TAXES
DIVISION – 6, KIADB BUILDING
14TH CROSS, PEENYA INDUSTRIAL AREA
PEENYA 2ND STAGE
BENGALURU – 560 072

2. THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
GSTO-35A, LIC BUILDING
2ND FLOOR, JEEVANBHIMA NAGAR
BENGALURU – 560 075

3. THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
LGSTO-16, VANIJYA THERIGE KARYALAYA
RAJENDRA NAGARA, KORAMANGALA
BENGALURU – 560 047

4. THE COMMISSIONER OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA

GANDHINAGARA
BANGALORE – 560 009

5. THE PRINCIPAL CHIEF COMMISSIONER OF CENTRAL TAX
POST BOX NO.5400, C.R.BUILDING
QUEEN'S ROAD
BENGALURU – 560 001

6. THE GOODS AND SERVICE TAX COUNCIL
5TH FLOOR, TOWER II
JEEVAN BHARTI BUILDING
JANPATH ROAD,
CONNAUGHT PLACE,
NEW DELHI – 110 001

…RESPONDENTS

(BY SRI JEEVAN J.NEERALAGI, CGC FOR R1, R5 & R6;
SRI T.K. VEDAMURTHY, AGA FOR R2, R3 & R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENTS EITHER TO OPEN THE GST COMMON PORTAL THEREBY ALLOWING THE PETITIONER TO SUBMIT FORM GST TRAN-2 OR DIRECT THE RESPONDENTS TO ACCEPT FORM GST TRAN-2 ALREADY FILED MANNUALLY VIDE LETTER 22.10.2019 IN ANNEXURE – D AND ENABLE THE PETITIONER THE BENEFIT OF TRANSIT CREDIT IN TERMS OF SECITON 140(3) OF CGST ACT, 2017 R/W IN TERMS OF RULE 117(4)(B)(III) OF CGST RULES, 2017 AND SECITON 172 OF CGST ACT, 2017 AND ETC.,

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

ORDER

The petitioner has sought for a direction to the respondents to open the GST Common Portal thereby allowing the petitioner to submit Form GST TRAN-2 or direct the respondents to accept the Form GST TRAN-2 already filed manually vide letter dated 22.10.2019 at Annexure – D and enable the petitioner to avail the benefit of transit credit in terms of Section 140(3) of the Central Goods and Services Tax Act, 2017 ('CGST Act' for short) read with Rule 117(4)(b)(iii) of the Central Goods and Services Tax Rules, 2017 and Section 172 of CGST Act, 2017.

2. The petitioner is a Private Limited Company engaged in the activity of wholesale trade of desktop computers, portable laptops, computer accessories, mobiles and gadgets etc. The petitioner was registered as a 'dealer' under the provisions of the Karnataka Value Added Tax Act, 2003 ('KVAT Act' for short). On introduction of new tax regime i.e. Goods and Services Tax with effect from 01.07.2017, the petitioner is registered under the provisions of the Goods and Services Tax Act, 2017 (KGST & CGST Act). It is

submitted that in order to avail the transit credit of duty of tax levied by the Central Government, the petitioner in terms of transit provisions, electronically submitted and filed GST TRAN-1 Form in GST Common Portal. However, the GST TRAN-2 Form was not filed within the due date for a bona-fide reason as the concerned Accountant of the petitioner's Company had left the organization during that period. After the period prescribed for filing of the GST TRAN-2 Form lapsed, the petitioner had made efforts to avail the transitional credit by submitting the application/representation but the Common Portal was not opened.

3. It is submitted that the Nodal Officer has not considered the application/representation submitted by the petitioner hence, the petitioner was constrained to file the GST TRAN-2 Form manually, but the same has not been accepted by the respondent-Authorities.

4. Having regard to the facts and circumstances of the case, it is evident that the application/representation submitted by the petitioner before the Nodal Officer/respondent No.1 has remained unconsidered. In the light of the decision of this Court in Writ Petition No.19076/2019 dated 26.04.2019, the Nodal Officer is obligated to consider the application/representation seeking permission to upload GST TRAN-2 Form electronically or manually. This Court while considering the filing/revising of GST TRAN-I Form in Writ Petition No.33290/2019 and allied matters elaborately discussed the provisions of the CGST Act as well as the rulings of the different Hon'ble Courts holding the field.

5. In the light of Section 140 read with Sections 142 and 172 of the CGST Act as well as Rule 117 (1) of the CGST rules and the Circular dated 03.04.2018, the Nodal Officer is directed to consider the

application/representation submitted by the petitioner and take a decision in an expedite manner, in any event, not later than 8 weeks from the date of receipt of certified copy of this order.

Accordingly, the writ petition stands disposed of.

Sd/-
JUDGE

KTY