IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF AUGUST, 2019

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMAD NAWAZ

WRIT APPEAL NOS.2939-2940 OF 2019 (T-RES)

BETWEEN:

M/S. RAJ ENTERPRISES
S/O MINI, AGED ABOUT 27 YEARS
HAVING ITS REGISTERED ADDRESS AT
IP 9/268 B, EDAYOOR
MALAPPURAM DISTRICT
KERALA - 676 552
REPRESENTED BY ITS
PROPRIETOR
MR.RANJITH KUNNATH

... APPELLANT

(BY SHRI K. ARAVIND KAMATH, SENIOR COUNSEL FOR
SHRI K.J. KAMATH, ADVOCATE)

AND:

ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
(ENFORCEMENT), CHALLAKERE.

... RESPONDENT

(BY SRI VIKRAM HUILGOL, HCGP)

THESE WRIT APPEALS ARE FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET-ASIDE THE ORDER DATED 30/07/2019 IN W.P. NOS.31111-31112/2019 [T-RES] AND CONSEQUENTLY ALLOW THE W.P. NOS.31111-31112/2019 [T-RES] AND ETC.

THESE APPEALS COMING ON FOR PRELIMINARY HEARING THIS DAY, ***CHIEF JUSTICE*** DELIVERED THE FOLLOWING:

JUDGMENT

Heard the learned counsel appearing for the appellant.

2. By filing the writ petitions under Article 226 of the Constitution of India, the appellant challenged an order of detention under sub-section (1) of Section 129 of the Central Goods and Services Tax Act, 2017 (for short 'the said Act of 2017') as well as the notice issued under sub-section (3) of Section 129 of the said Act of 2017.

3. The learned counsel appearing for the appellant pointed out that by issuing the impugned notice, clause (b) of sub-section (1) of Section 129 of the said Act of 2017 has been invoked which proceeds on the footing that the appellant is the owner of the goods. He invited our attention to the circular issued on 31st December 2018 by the Central Board of Indirect Taxes and Customs, GST Policy Wing of the Government of India and in particular clause (6) thereof which lays down that for the purposes of sub-section (1) of Section 129 of the said Act of 2017, if the invoice or any other specified document is accompanying the consignment of goods, either the consignor or the consignee should be deemed to be the owner. He

submitted that in the present case, the invoice and other documents were accompanying the goods which are detained and therefore, in any event, clause (a) of sub-section (1) of Section 129 will be attracted and therefore, even if penalty is to be paid by the appellant, it will have to be paid in terms of clause (a) and not clause (b) of sub-section (1) of Section 129 of the said Act of 2017.

4. The learned counsel appearing for the appellant also submitted that even clause (c) of sub-section (1) of Section 129 of the said Act of 2017 is an option available to the appellant to get the detained goods released.

5. The learned High Court Government Pleader pointed that there is a serious dispute about the documents produced by the appellant and therefore, it will have to be decided whether the appellant is either a consignee or a consignor and whether the invoice and other documents are genuine documents.

6. By the impugned order, the learned Single Judge permitted the appellant to file additional documents and

directed the concerned authorities to pass a speaking order. Time of four weeks was granted to the respondent to do so.

7. The appellant has also filed response to the detention order but there is no reply filed to the notice under sub-section (3) of Section 129 of the said Act of 2017 and therefore, the learned Single Judge has permitted the appellant to file additional explanation.

8. The appellant can always contend before the concerned authority that in view of the circular dated 31st December 2018, in particular clause (6) thereof, the appellant will have to be treated as the owner of the detained goods and therefore, the penalty payable will be as per clause (a) of sub-section (1) of Section 129 of the said Act of 2017. Though the notice proceeds on the footing that clause (b) of sub-section (1) of Section 129 is applicable, the concerned authority will have to consider the applicability of sub-section (1) of Section 129 and if prayed to that effect, whether the appellant is entitled to the benefit of clause (c) of sub-section (1) of Section 129 of the said Act of 2017.

9. We accordingly direct that while passing a speaking order in terms of the order of the learned Single Judge, the aforesaid aspects shall also be taken into consideration by the concerned authority.

10. It may not be appropriate to record the factual finding in this appeal that the appellant will have to be treated as the owner under the circular dated 31st December 2018 and therefore, clause (a) of sub-section (1) of Section 129 of the said Act of 2017 is applicable. This exercise will have to be left to the authority which passes the order in terms of the order of the learned Single Judge.

11. Accordingly, we dispose of the appeals by passing the following order:

(i) While passing an order in terms of clause (4) of the impugned judgment and order, the concerned authority shall consider whether the appellant can be treated as the owner in the light of the circular dated 31st December 2018 and whether release of the detained goods can be permitted upon the appellant furnishing security as provided in clause

(c) of sub-section (1) of Section 129 of the said Act of 2017.

(ii) Time to file the additional explanation to the notice along with the documents is extended by a period of one week from today.

The pending interlocutory applications do not survive for consideration and are disposed of.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

AHB