IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 17TH DAY OF JUNE, 2019

BEFORE

THE HON'BLE MR.JUSTICE S.G. PANDIT

WRIT PETITION NO.110937/2019 (T-RES)

BETWEEN:

M/S KALEBUDDE LOGISTICS
NO.75/2B, KALEBUDDE WAREHOUSE
COMPOUND, GABBUR,
HUBBALLI, DISTRICT: DHARWAD.
BY ITS MANAGING PARTNER
SRI PRAVEZ AHEMAD KALEBUDDE,
AGE: 28 EYARS,
R/O: GABBUR, HUBBALLI.

... PETITIONER

(BY SRI. JOHN FERNANDES AND
SMT.DEEPA R.UDIYAR, ADVOCATES)

AND

1. THE COMMERCIAL TAX OFFICER
(ENFORCEMENT 14), HUBBALLI,
NAVANAGAR, HUBBALLI.

2. THE JOINT COMMISSIONER
OF COMMERCIAL TAXES (ENFORCEMENT),
DHARWAD DIVISION,
COMMERCIAL TAX BHAVAN,
NAVANAGAR HUBBALLI-580025.

3. THE PRINCIPAL SECRETARY
(KHAJANE II) FINANCE DEPARTMENT,
CTO OFFICE, GANDHINAGAR,

BENGALURU.

4. SPECIAL SECRETARY
OFFICE OF THE GST COUNCIL
SECRETARIAT,
NEW DELHI-110001.

5. THE STATE OF KARNATAKA
BY ITS SECRETARY,
DEPARTMENT OF FINANCE,
M.S.BUILDING, BENGULURU.

... RESPONDENTS

(BY SRI RAVI V.HOSAMANI, AGA FOR R1 TO 3 AND 5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI TO QUASH THE ENDORSEMENT NO.CTO/ENF-14/HBL/2019-20 DATED 08.06.2019, ISSUED BY THE FIRST RESPONDNET INSOFOR AS PETITIONER IS CONCERNED THE COPY OF WHICH HAS BEEN PRODUCED HEREWITH AT ANNEXURE-W AND ETC.

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

ORDER

The petitioner is before this Court under Article 226 of the Constitution of India praying to quash the Endorsement No.CTO/ENF-14/Hbl/ 2019-20 dated 08.06.2019 produced at

Annexure-W and for a writ of mandamus directing the respondents No.1 and 2 to release the goods covered under the Tax Invoices No.RGHUB 00074 with e-way bill No.181123091 dated 26.04.2019, and tax invoices No.RGHUB 00073 with e-way bill No.161123321680 dated 26.04.2019 respectively and also the conveyance bearing registration No.KA-27/C 1825, absolutely in favor of the petitioner firm, by considering the representations dated 07.06.2019, made by the petitioner to the respondents No.1 to 4 respectively the copies of which have been produced herewith at Annexure-A to D.

2. The learned counsel for the petitioner submits that conveyance bearing No.KA-27/C-1825 was intercepted and searched and seized the goods in the vehicle. The respondents

initiated proceedings under Section 129 of the Karnataka Goods and Services Tax Act, 2017 (for short, the 'Act'). Order dated 20.05.2019 was passed directing the petitioner to pay tax and penalty within seven days, failing which action under Section 130 of the Act shall be initiated. Thereafter, the petitioner made representation to 1st respondent requesting for release of goods and conveyance. The 1st respondent issued endorsement stating that confiscation proceedings are pending, hence rejected petitioner request.

3. Learned Additional Government Advocate points out that the petitioner has filed appeal before the Joint Commissioner of Commercial Taxes (Appeals), Navanagar, Hubballi, Dharwad Division against the order dated 20.05.2019 passed by CTO in

Endorsement No.14/HBC/2019-20 PB-172. In the appeal itself the petitioner could seek release of goods involved in the appeal. When the appeal is pending against the main order, the petitioner could not have filed writ petition for release of goods which are subject matter of appeal. Section 129 and 130 of the Act provides for release of goods on payment of fine. Accordingly, the writ petition is rejected. It is open for the petitioner to seek appropriate interim relief in the pending appeal, if law permits.

Sd/-
JUDGE

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