

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 1ST DAY OF APRIL 2019

BEFORE

THE HON'BLE MR.JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.107016 OF 2019 (T-RES)

BETWEEN

SRS Travels/Logistics,
Represented by its Manager,
K.Ganesh Kini, S/o K.Govind Kini,
Age: 60 years, Occ: Manager,
R/o: SRS Travels/Logistics
Office Gowdown,
Opposite Maratha Mandal College,
Subhash Nagar, Belagavi.

...Petitioner

(By Sri Sangram S. Kulkarni, Advocate)

AND

1. Joint Commissioner of Commercial
Taxes (Enforcement)-NZ,
Club Road, Belagavi.

2. Commercial Tax Officer
(Enforcement) 5,
Club Road, Belagavi.

...Respondents

(By Smt. Veena Hegde, AGA)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the order vide Annexure-H dated 11.03.2019 passed by the

respondent No.2 Commercial Tax Officer (Enforcement)5 bearing No.VaTea(Ja)-5/Be/2018-19/B-2000.

This Writ Petition coming on for *Preliminary Hearing*, this day, the Court made the following:-

ORDER

The challenge is to the order dated 11.03.2019 at Annexure-H purported to have been made under Section 129 of the Karnataka Goods and Services Tax Act, 2017 which, in substance, provides for detention and seizure of the transport vehicle to coerce recovery of tax and penalty in certain circumstances.

2. Learned Additional Government Advocate, Smt. Veena Hegde and Sri. Anilkumar Biradar, Commercial Tax Officer (Enforcement) 5, Belagavi – respondent No.2 herein, who is present in the Court, submit that the text and context of this Section empowers detention and seizure of the vehicle that was used for transportation of goods in question and therefore, the order cannot be faltered.

3. Section 129 of the Karnataka Goods and Services Tax Act, 2017, reads as under:

"129. Detention, seizure and release of goods and conveyances in transit.- (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released.-

- (a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
- (b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;
- (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause

(b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further

proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer."

4. However, having argued the matter for some time resisting the writ petition, both the sides now are in broad agreement that the vehicle in question can be retained by the petitioner by furnishing a Bank Guarantee for the value of the goods in question on or before 10th April 2019, failing which the official respondents are at liberty to seize and detain the vehicle with the police force and of RTO, if so required.

Keeping the above understanding on record, this writ petition is disposed off.

**Sd/-
JUDGE**

Kms