IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF APRIL, 2018

BEFORE:

THE HON'BLE MRS. JUSTICE S.SUJATHA

W.P.Nos.13839/2018 & 13941/2018 (T – RES)

BETWEEN:

SRI RAGHAVENDRA TRADERS
REP. BY PROPRIETRIX Mrs. S.SUDHA
AGED ABOUT 38 YEARS
VALAPPADY 633115
SALEM, TAMIL NADU. ... PETITIONER

[BY SRI A.SRIKANTH., ADV.]

AND:

1. THE GOVERNMENT OF KARNATAKA
REP. BY ITS SECRETARY
COMMERCIAL TAXES
BENGALURU 560001.

2. THE COMMERCIAL TAX OFFICER
(SOUTH ZONE) 36, KORAMANGALA
NGV HOUSING COMPLEX
RAJENDRANAGAR
BENGALURU-560047. ...RESPONDENTS

[BY SRI VIKRAM HUILGOL., HCGP)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR ENTIRE RECORDS; QUASH THE ORDER PASSED BY RESPONDENT No.2 IN ORDER DATED 22.03.2018, ORDER DATED 22.03.2018 ONE UNDER CGST AND ANOTHER UNDER KGST RESPECTIVELY VIDE ANNEXURES-F AND F1 AND ETC.

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner has challenged the order passed by second respondent at Annexures-F and F1 both dated 22.03.2018, one under the Central Goods and Services Tax Act, 2017 ('CGST Act' for short) and another under the Karnataka Goods and Services Tax Act, 2017 ('KGST Act' for short) respectively, interalia seeking for a direction to release the vehicle bearing registration No.TN-77D-8555 along with the goods which are detained by the Authorities.

2. It is the contention of the petitioner that a consignment regarding the transaction of the invoice No.481 dated 07.08.2018 issued through the vehicle bearing registration No.TN-77D-8555 on 08.03.2018 at 5.50 a.m., at Mysuru Road, Bengaluru, was intercepted by respondent No.2. At the time of interception, the invoice and other documents pertaining to the sale of the goods carried in the conveyance used as means of

transport/vehicle was not available with the driver. The second respondent seized the vehicle/conveyance along with the goods and directed the driver to furnish the documents. Subsequently, the petitioner furnished the invoice on the next day i.e., on 09.03.2018. Considering the same, the Investigation Officer verified the goods and issued a notice computing the proposed tax and penalty under Clause (b) of Sub-section (1) of Section 129 of the CGST Act as well as KGST Act. On service of notice, the petitioner submitted reply through the counsel and on consideration of the same, second respondent passed the order imposing the tax and penalty under the KGST Act as well as under CGST Act. Being aggrieved by the same, the petitioner is before this Court.

3. It is the grievance of the petitioner that despite the full tax amount pertaining to the tax invoice submitted before the second respondent has been deposited, no vehicle/conveyance and goods are

released till date. Learned counsel would fairly submit that the petitioner shall pursue the alternative and efficacious remedy available under the Act which would be time consuming, since the livelihood of the petitioner has been adversely affected owing to the seizure of the vehicle/conveyance in question, a fervent plea is made to release the vehicle/conveyance along with the goods with liberty to the petitioner to file an appeal as provided under the Act.

4. Learned High Court Government Pleader appearing for the respondents justifying the impugned order would contend that no documents were placed before the Authorities at the time of the interception of the vehicle/conveyance by the driver/person in-charge of the goods vehicle. Tax invoice produced subsequently does not disclose the correct valuation. Hence, determination of the value of the goods carried in the goods vehicle was made by the respondent No.2

considering the market value of the goods. No ownership of the goods has been established by the petitioner to determine the tax and penalty under Section 129 (1) (a) of the CGST Act. Hence, the second respondent having no other option, determined the tax and penalty under Section 129 (1) (b) of the Act. The petitioner has paid only a sum of Rs.1,22,886/- towards the tax and penalty amount against the total amount of Rs.18,47,300/- determined by the Authorities. Hence, the vehicle has not been released. Learned High Court Government Pleader would submit that the petitioner without exhausting alternative remedy, cannot approach this Court under the writ jurisdiction seeking the relief as sought for.

5. Heard the learned counsel for the parties and perused the material on record.

6. It is prima facie apparent that the main dispute is relating to the valuation of the goods carried

in the goods vehicle. It is an admitted fact that no documents were carried by the driver/person in-charge of the goods vehicle at the time of interception of the goods vehicle on 08.03.2018. The ownership of the goods as well as quantum of penalty levied are also in dispute. These are all the factual disputes to be adjudicated before the Appellate Authority. Hence, this Court deems it appropriate to relegate the petitioner to the Appellate Authority without expressing any opinion on the merits of the case. However in the circumstances, this Court finds it appropriate to direct the second respondent to release the vehicle/conveyance along with the goods forthwith subject to the petitioner furnishing the bank guarantee of Rs.9,23,650/- along with the deposit of Rs.1,08,026/- in addition to the amount already deposited.

7. The Authorities shall release the vehicle as well as the goods forthwith subject to the payment of

the amount of Rs.1,08,026/- and furnishing the bank guarantee of Rs.9,23,650/- as aforesaid. The same shall be subject to the result of the appeal to be filed by the petitioner before the appropriate Appellate Authority. All rights and contentions of the parties are left open to be adjudicated before the Appellate Authority. If such an appeal is filed within two weeks from today, Appellate Authority shall decide the matter on merits in accordance with law without objecting to the aspect of limitation.

With the aforesaid observations, writ petitions stand ***disposed of***.

Sd/-
JUDGE

NC.

W.P.Nos.13839 & 13941/2018

SSJ:
05.04.2018

ORDER ON FOR BEING SPOKEN TO

Registry shall return the original Annexures to the petitioner keeping the photocopies of the same for the record purposes.

Sd/-
JUDGE

NC.