IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 13th DAY OF SEPTEMBER 2017

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION Nos.42013-42023/2017 (T-RES)

BETWEEN:

1. M/S. M.J.S. ENTERPRISES
REPRESENTED BY ITS PARTNER
SRI. SHUAIB AHAMED
AGED ABOUT 30 YEARS
KONAKUNTE CROSS, UTTARAHALLI
BENGLAURU 560062.

2. M/S H.B. ENTERPRISES
REPRESENTED BY ITS PROPRIETOR
SRI. SYED HIDDAYATULLA
AGED ABOUT 41 YEARS
H. SIDDAIAH ROAD
BENGALURU 560027.

3. M/S ROYAL AUTOMOBILES
REPRESENTED BY ITS PROPRIETOR
SRI. SYED BARKATULLA
AGED ABOUT 37 YEARS
H. SIDDAIAH ROAD
BENGALURU 560027.

4. M/S M.G. AUTOMOBILES
REPRESENTED BY ITS PROPRIETOR
SRI. ZHUAIB AHAMED
AGED ABOUT 27 YEARS
H. SIDDAIAH ROAD
BENGALURU 560027.

5. M/S S.A. AUTOMOBILES
REPRESENTED BY ITS PROPRIETOR

SRI. JAVEED AHAMED
AGED ABOUT 61 YEARS
H. SIDDAIAH ROAD
BENGALURU 560027.

6. M/S T.S. ENTERPRISES
REPRESENTED BY ITS PROPRIETOR
SRI. AKRAMULLA KHAN
AGED ABOUT 43 YEARS
H. SIDDAIAH ROAD
BENGALURU 560027.

7. M/S INDUS STEEL TRADERS
REPRESENTED BY ITS PROPRIETOR
SRI. ARIF PASHA
AGED ABOUT 55 YEARS
H. SIDDAIAH ROAD
BENGALURU 560027.

8. M/S M.M. ENTERPRISES
REPRESENTED BY ITS PROPRIETOR
SRI. MOHAMED FAROOQ ROOMAN
AGED ABOUT 32 YEARS
J.P. NAGAR, 5TH PHASE
BENGALURU 560078.

9. M/S A.M.K. ENTERPRISES
REPRESENTED BY ITS PROPRIETOR
SRI. SYED KHYOOM
AGED ABOUT 51 YEARS
134, LALBAGH ROAD, BADAMAKAN
H. SIDDAIAH ROAD
BENGALURU 560027.

10. M/S A.J. ENTERPRISES
REPRESENTED BY ITS PROPRIETOR
SRI. SYED ANEEF
AGED ABOUT 25 YEARS
14/1, G-2, NATIONAL COMPLEX
2ND CROSS, H. SIDDAIAH ROAD
BENGALURU 560027.

11. M/S FARHAN STEEL
REPRESENTED BY ITS PROPRIETOR

SRI FEROZ KHAN
AGED ABOUT 45 YEARS
INDUSTRIAL AREA
HASSAN 573201.

... PETITIONERS

(BY SRI. SHANKARE GOWDA M.N. ADV.,)

AND:

1. THE CONTROLLER OF STORES & PURCHASE
KARNATAKA STATE ROAD TRANSPORT CORPORATION
NO.40, KENGAL HANUMANTHAIH ROAD
BENGALURU 560027.

2. THE MANAGING DIRECTOR
KARNATAKA STATE ROAD TRANSPORT CORPORATION
NO.40, KENGAL HANUMANTHIAH ROAD
BENGALURU 560027.

3. THE STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF SECRETARY
VIDHANA SOUDHA, BENGALURU 560027.

4. THE COMMISSIONER OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, BENGALURU 560009.

... RESPONDENTS

(BY SRI. T.K. VEDAMURTHY, AGA)

THESE W.Ps. ARE FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE E-AUCTION NOTIFICATION NOS.17-18/9012, 9013, 9014, 9015, 9016, 17-18/9212 AND 17-18/9819 ISSUED BY R-1 AT ANNEX-A TO G & ETC.,

THESE W.Ps. COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Mr. Shankare Gowda M.N. Adv. for Petitioners
Mr. T.K. Vedamurthy, AGA for Respondents

1. The petitioners, who are the auction purchasers of the scrap or intending Bidders have approached this Court by way of present petitions with the following prayers:-

> *"(i) The Petitioners most respectfully prays that this Hon'ble High Court may be pleased to issue a Writ of Certiorari or a direction in the nature of a Writ of Certiorari* ***quashing the E-auction Notification*** *Nos.17-18/9012, 9013, 9014, 9015, 9016, 17-18/9212 and 17-18/9819 issued by the 1st Respondent (Annexure – "A to G").*
>
> *(ii) The Petitioner most respectfully prays that this Hon'ble High Court may be pleased to* ***declare that the rate of tax applicable on the sale of scrap buses is 18%*** *falling under either heading 7204 of 3rd schedule or Entry No.453 of 3rd schedule of the KGST Act.*
>
> *(iii) This Hon'ble High Court may be pleased to issue such other writ or writs or directions in the nature of a writ as this Hon'ble*

High Court may deem it fit to grant in the facts and circumstances of the petitioners case".

2. The learned counsel for the petitioners Mr.M.N.Shankare Gowda submitted before the Court that in order to auction the old and scrap buses of the 2nd Respondent-KSRTC, the 1st Respondent-The Controller of Stores & Purchase, KSRTC. has issued the Tender Notice for E-auction of old and junk buses of the KSRTC vide **Annexure-A** for E-auction commencing from **11.09.2017**.

3. The grievance of the petitioners is that in the said notice inviting tenders (NIT) from the intending purchasers of these scarp buses, the rates of GST (Goods and Services Tax) as recently introduced in India **w.e.f. 01.07.2017** applicable in the said notice is given in Col.No.4 of **Annexure-A** Notice as **"As applicable /28.0".**

4. The learned counsel for the petitioners submits that the rate of GST Tax applicable on the scrap buses which cannot be plied on road as normal buses and they can be put to auction only after being certified by the concerned RTO Authorities as the scrap, not fit to be plied on road, cannot attract 28% rate of GST under the new GST regime enacted in the Central GST Act, 2017 and Karnataka Goods and Services Tax Act, 2017 and therefore, this Court by interfering in the present petitions may direct the Respondents-KSRTC to collect the GST Tax only at the rate of 18% under Schedule-III Heading **No.7204** ***"Ferrous waste and scrap; remelting scrap ingots of iron or steel"*** or under Residuary Entry **No.453** of the same Schedule-III, in which, ***"Goods which are not specified in Schedule I, II, IV, V or VI"*** of the KGST Act, so that the petitioners may have a competitive edge to give their bids at the correct rate of GST Tax applicable as per the said

Schedule and the Respondent-KSRTC has wrongly notified the rate of GST Tax as 28%.

The learned counsel for the petitioners further submitted that the Authority for Advance Ruling for resolving such disputes about the rate of Tax under the said new enactments has not so far been constituted as per Section 96 of the GST of both the Central and State GST Acts, 2017. He therefore submitted that vide **Annexure-J** E-Tender Notices issued by other States like Gujarat etc., such E-Tender Notices have been issued only at the GST rate of 18% applicable to scrap buses.

5. The learned AGA for the Respondents Mr.T.K.Vedamurthy has submitted before the Court that the rate of GST quoted in the said E-Tender Notice **Annexure-A** issued by the Respondent-KSRTC is mentioned as “As applicable/28.0” and its not fixed at 28% only. He submitted that if the petitioners have any

confusion with regard to the correct rate of GST, they are at liberty to either approach the Respondent-KSRTC itself for clarification or the competent authority, namely, Authority for Advance Ruling under the provisions of Section 96 of the CGST/KGST Act, 2017. Therefore, there is no justification for this Court to interfere at this stage.

6. Having heard the learned counsels for the parties, this Court is satisfied that at such initial tender process initiated by the Respondents-KSRTC, the present petitions filed by the petitioners are premature and misconceived and do not require any interference by this Court at this stage. First of all, the GST rates as indicated in the said E-Tender Notice Annexure-A does not give the fixed rate of GST at 28% as submitted by the petitioners. It only stipulates the rate of GST "As applicable /28.0".

7. Whether the correct rate is 18% GST as claimed by the petitioners under the aforesaid entries of Schedule-III or 28% or not can be clarified either by the Respondents-KSRTC or the Respondent-Commercial Tax Department. It is for the petitioners to participate in the said Tender process as per the terms indicated therein or not to so participate. The E-Tender Notice cannot be quashed by this Court, as this Court does not find illegality in the same.

8. It would be premature for this Court to decide such academic questions at this stage, when the very foundation of such a dispute itself is not even available for this Court to decide. It is for the petitioners to compete in the bid process at the given rates of GST Tax applicable as notified by the Respondents-KSRTC and it does not furnish cause of action to the petitioners to invoke the extraordinary jurisdiction of this Court at this stage to either modify the rates of Tax in the E-

Tender Notice issued by the Respondents-KSRTC or to decide the academic question about the correct rate of GST Tax applicable on such scrap buses, which are being put to auction by the Respondents-KSRTC and the provisions for advance ruling in this regard have been enacted in the said enactments as indicated above. The petitioners can either approach such authorities for advance ruling about the rate of GST Tax in the matter. Otherwise, the determination of rate of tax or correct tax liability is done at the time of regular assessment proceedings. If the said Authority is presently not manned and constituted and as submitted by the learned counsel for the petitioners, again it does not render it a fit case to invoke writ jurisdiction at this stage. It is for the petitioners to approach and represent the concerned Government for the constitution and manning of these Advance Ruling Authorities, as prescribed under Section 96 of the GST Act.

9. This Court does not have any definite information on the record of this Court about the actual constitution and manning of the said Advance Ruling Authority by the Respondent-State, but that is not a ground at all to invoke the writ jurisdiction prematurely and academically to decide the question of rate of Tax at the instance of the petitioners, particularly as the questions are raised in the context of the contractual process undertaken by the Respondents-KSRTC, in which also, the rate of GST applicable has been shown as "As Applicable/28.0". Therefore, the correct rate of GST as applicable on the goods in question only is intended to be levied. The bar/stroke between "As applicable & 28.0" makes them mutually exclusive parts of the said clause.

10. Therefore, it is not certain even with the Respondents-KSRTC, as to what rate of GST, they are going to charge when such auctions are finalized upon

the bidding process undertaken in pursuance of the E-Tender Notice issued vide **Annexure-A.** Therefore leaving it free for the parties to get such questions decided either at the hands of the Respondents-KSRTC or the concerned authorities of the Commercial Tax Department, the present petitions are dismissed as premature. No costs.

Sd/-
JUDGE

Srl.