

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE 2022

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT PETITION NO.7226 OF 2022 (T-RES)

BETWEEN:

M/S TRANSWAYS INDIA TRANSPORT
NO.03, 3RD CROSS, KALASIPALYAM
NEW EXTENSION, BENGALURU - 560 002
(GSTIN - 29AAOFT6469Q1ZT)
REP. BY ITS PARTNER
MR.MOHAMMED MANSOOR

... PETITIONER

(BY SRI.ARAVIND KAMATH, SR.ADV. FOR
M/S.KAMATH AND KAMATH ASSTS.)

AND:

1. JOINT COMMISSIONER
OF COMMERCIAL TAXES (APPEALS)-3
BMTC COMPLEX, 2ND FLOOR, TTMC
SHANTINAGAR, K.H.ROAD
BENGALURU - 560 027

2. COMMERCIAL TAX OFFICER
VIGILANCE - 09, VTK-2
A BLOCK, 3RD FLOOR
VIVEKNAGAR, KORAMANGALA
BENGALURU - 560 047

... RESPONDENTS

(BY SRI.K.HEMAKUMAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
& 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET
ASIDE THE ORDER OF R1 DATED 10.03.2022 PASSED IN
GST.AP.11/2021-22 IN T.NO.609/21.22 AS PER ANNEXURE-

R AND CONSEQUENTLY SET ASIDE THE ORDER OF R2 DATED 14.12.2021 IN PROCEEDINGS AS PER ANNEXURE-F.

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

ORDER

Petitioner is a transporter operating under a valid GST registration number. It was entrusted with the transportation of stainless steel coils and plates from Mumbai to Bengaluru. A lorry belonging to the petitioner was carrying four consignments out of which two consignments had to be delivered at Peenya Industrial area at Peenya, one consignment at new Kalasipalyam and another consignment at S.P.Road cross, Bengaluru. The driver of the lorry had to move towards Peenya Industrial Area from Doddaballapur. However, after reaching Hebbal, the driver of the lorry instead of taking a right turn and move towards Peenya Industrial Area, took a left turn and moved towards Bommasandra Industrial Area. The said vehicle was stopped and checked for documents at Jigani link road, Bommasandra Industrial area. The driver had necessary documents to drive the vehicle towards Peenya, S.P.Road and new kalasipalyam but not towards

Bommasandra Industrial area. For the said reason, by considering that the goods were being moved without documents, the provisions of Rule 138A of the Central Goods and Services Tax Rules, 2017 and Section 129 of the Central Goods and Services Tax Act, 2017 have been invoked and penalty has been imposed by way of impugned order. Aggrieved by the same, the instant writ petition is filed.

2. The case of the petitioner is that it had necessary permission to move towards Peenya Industrial area and the driver of the lorry on 02.12.2021, at about 11.00 p.m., by mistake took a wrong turn towards Bommasandra Industrial area instead of Peenya Industrial area and before he realized the error committed by him, the authorities checked the vehicle and seized the same. It is contended by the learned counsel for the petitioner that it was a human error and a *bona fide* mistake and there was no intention to divert the goods elsewhere. It is submitted that the driver has given an affidavit in this regard and the purchasers to whom the consignments had to be delivered also have issued communication in this regard stating that

they were to receive the consignments and under the said circumstances, the authorities ought to have accepted the explanation of the driver of the vehicle and the intended purchasers and release the vehicle and the goods being carried therein.

3. Per contra, the learned AGA appearing for the respondents submits that given the facts and circumstances of the case, it goes to establish that the diversion was deliberate and was not a human error. He submits that the driver being from Tumkur could not have committed the said mistake and the vehicle was detained at Bommasandra Industrial area and he could not driven such a long distance without it being deliberate and the affidavit of the driver and the communication of the intended purchasers is an after thought. He further submits that as the vehicle did not move from Hebbal to Peenya Industrial area instead it moved towards Bommasandra Industrial area, it has to be considered that it was moving without valid documents. For the said reason, he prays for dismissal of the writ petition.

4. Admittedly, the driver of the vehicle was carrying required E-way bills and tax invoices to deliver goods to Peenya Industrial area, Kalasipalyam and S.P.Road. The driver instead of taking a right turn at Hebbal junction and move towards Peenya Industrial area, he has taken a left turn and has moved towards Bommasandra Industrial area. The incident has happened at late night. Given the facts and circumstances of the case, there may be chances of diversion that might have taken place due to human error and it cannot be definitely concluded that diversion was deliberate more so when the driver of the vehicle has filed an affidavit explaining the reasons and the intended purchasers have also confirmed that they were supposed to receive the said goods.

5. Given the peculiar facts and circumstances of the case wherein it cannot be taken as a precedent in other matters, for the reasons mentioned above, I am of the opinion that it is a fit case to set aside the impugned order passed under Section 107(11) of the Karnataka Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Act, 2017 and consequently, the impugned order passed under

Section 129(3) of the Central Goods and Services Tax Act, 2017. Hence, the following:

ORDER

- (i) The impugned order dated 10.03.2022 passed by respondent no.1 in No.GST.AP.11/2021-22 vide Annexure-R to the writ petition is hereby set aside;
- (ii) Consequently, the impugned order dated 13.12.2021 bearing No.JCCT(Vig)/CTO(Vig)-09/GCH/CR-79/2021-22 passed by respondent no.2 vide Annexure-F to the writ petition is set aside;
- (iii) The respondents are directed to release the vehicle and the goods detained pursuant to the said orders;
- (iv) The writ petition stands disposed of accordingly. Pending I.A.No.1/2022 does not survive for consideration and it stands disposed of accordingly.

**Sd/-
JUDGE**

hkh.