

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH 2022

BEFORE

THE HON'BLE MR. JUSTICE B. M. SHYAM PRASAD

WRIT PETITION No.5275/2022 (T-RES)

BETWEEN :

NEW MODERN INDUSTRIES
PLOT NO.223 AND 224,
4TH PHASE, BOMMASANDRA
JIGANI LINK ROAD,
INDUSTRIAL AREA,
BANGALORE – 560 099
REPRESENTED BY ITS PRO SOURABH
AGED ABOUT 25 YEARS.

... PETITIONER

(BY SRI. K M SHIVAYOGISWAMY, ADVOCATE)

AND :

1. THE COMMERCIAL TAX OFFICER
(ENFORCEMENT)-37,
OFFICE OF THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES,
(ENFORCEMENT) SOUTH ZONE VTK-2,
KORAMANGALA,
BENGALURU – 560 047.
2. THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES (ENFORCEMENT)
SOUTH ZONE, VTK-2,
KORAMANGALA,
BANGALORE – 560 047.

3. THE COMMISSIONER OF COMMERCIAL
TAXES IN KARNATAKA
COMMERCIAL TAXES BUILDINGS,
GANDHI NAGAR,
BANGALORE – 560 009.

... RESPONDENTS

(BY SRI.K. HEMA KUMAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER FOR PHYSICAL VERIFICATION/INSPECTION OF THE CONVEYANCE, GOODS AND DOCUMENTS, ISSUED IN FORM GST MOV-2 BY THE R1 IN RESPECT OF GOODS CONVEYANCE BEARING NO. KA 32A 2003 DATED 03.03.2022 VIDE ANNEXURE-F; DIRECT THE R1 TO RELEASE THE GOODS VEHICLE IN TRANSIT BEARING LORRY NO.KA 32 2003 AS PER THE ORDER OF PHYSICAL VERIFICATION IN FORM GST-02 DATED 03.03.2022 VIDE ANNEXURE-F.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner, who is the owner of certain goods,
has sought for the following reliefs:

'For quashing the first respondent's order dated 03.03.2022 [Annexure "F"] for physical verification/inspection of the conveyance, goods and documents issued in form GST MOV-2 for goods conveyance bearing No. KA 32A 2003; and

For directions in the nature of Mandamus directing the first respondent to release the goods vehicle in transit bearing Lorry No. KA 32A 2003 as per the order of physical verification in Form GST-02 dated 03.03.2022 vide Annexure "F".'

It is submitted by Sri. K.M. Shivayogiswamy, learned counsel for the petitioner, and Sri. K. Hemakumar, learned Additional Government Advocate, that during the pendency of the petition an order, as contemplated under section 129[3] of the Central Goods and Services Tax Act, 2017 [for short, '*the CGST Act*'], is issued on 17.03.2022 and even the subject conveyance is released as against the surety bond and the bank guarantee that is furnished by the petitioner. The petitioner has offered surety and furnished the bank guarantee for 100% of the penalty. The petitioner's remedy as against such order is under Section 107 of the CGST Act, and the petitioner can avail such remedy upon deposit of 25% of the penalty as contemplated

under the proviso to Section 107 of the CGST Act. They also submit that in the light of these subsequent events, the petition could be disposed of.

If the petitioner has obtained release of the vehicle against furnishing surety bond and bank guarantee [100% of the penalty] and there is an order as contemplated under section 129[3] of the CGST Act, the petitioner, if aggrieved, must avail permitted remedy under Section 107 of the CGST Act. If the requirement in law is that the petitioner must deposit only 25% of the penalty to avail such remedy, the petitioner cannot be fastened with the responsibility to pay 100%.

Therefore, the writ petition stands disposed of with liberty to the petitioner to avail remedy under Section 107 of the CGST Act upon deposit of 25% of the penalty. The petitioner shall be entitled for return of the surety bond and the bank guarantee furnished. If the petitioner, upon filing the appeal with the deposit as

aforesaid, files with the first respondent, the details of the appeal and the deposit made, the first respondent shall within ten [10] working days from the date of receipt of such information, return the bank guarantee/surety bond furnished. It is needless to observe that all contentions of the parties are left open.

**SD/-
JUDGE**

AN/-