



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 22ND DAY OF APRIL, 2024

BEFORE

THE HON'BLE MRS. JUSTICE M.G.UMA

WRIT PETITION NO.100347/2022(T-RES)

BETWEEN:

M/S. KOLVEKAR LOGISTICS,
PROPRIETORSHIP FIRM,
SHOP NO.12, GROUND FLOOR,
ROYAL EMBASSY COMPLEX,
KAJUBAG, KARWAR, TALUKA KARWAR,
DISTRICT: UTTARA KANNADA,
KARWAR – 581 301.

REP. BY ITS PROPRIETOR SRI SADASHIV
S/O. PRABHAKAR KOLVEKAR,
AGE: 34 YEARS, OCC: BUSINESS,
RESIDENT OF KARWAR.

...PETITIONER

(BY SRI NARAYAN G. RASALKAR, ADVOCATE)

AND:

1. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS), DHARWAD DIVISION, NAVANAGAR, HUBBALLI, TALUKA: HUBBALLI, DIST: DHARWAD, HUBBALLI – 580 021.
2. THE COMMERCIAL TAX OFFICER (ENFORCEENT 2) TUMKURU, TUMKUR DISTRICT AND TALUKA, TUMKUR – 572 101.





3. THE REGISTRAR, KARNATAKA
APPELLATE TRIBUNAL, M. S. BUILDING,
DR. B. R. AMBEDKAR ROAD,
BENGALURU – 560 001.

...RESPONDENTS

(BY SMT. KIRTI LATA R. PATIL, HCGP FOR R1 AND R2;
NOTICE TO R3 IS DISPENSED WITH)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE WRIT OF CERTIORARI OR DIRECTIONS IN THE NATURE OF WRIT OF CERTIORARI QUASHING THE IMPUGNED APPEAL ORDER NO.APL.GST.30 2021.22 DATED 30.11.2021 PASSED UNDER SECTION 107(11) OF THE KARNATAKA GST ACT, 2017 PASSED BY THE RESPONDENT NO.1 THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS), HUBBALLI – 5802, VIDE ANNEXURE-G, AND ALSO THE IMPUGNED PENALTY ORDER DATED 01.10.2021 IN FORM GST MOV.09 PASSED BY THE RESPONDENT NO.2, CTO ENFORCEMENT 2, TUMKURU, UNDER SECTION 129(3) OF THE KGST ACT 2017 AS PER ANNEXURE-D ARE ILLEGAL IMPROPER AND IRREGULAR AND ISSUE WRIT OF MANDAMUS OR DIRECTIONS IN THE NATURE OF DIRECTIONS TO THE RESPONDENTS TO REFUND THE ENTIRE AMOUNT OF TAXES AND PENALTY PAID ALONG WITH THE INTEREST AT 18% ALONG WITH COSTS AND ETC.,

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



ORDER

The petitioner is seeking to issue the writ in the nature of certiorari to quash Annexure-D dated 01.10.2021 and Annexure-G dated 30.11.2021 passed by respondent Nos.1 and 2.

2. Heard learned counsel Sri. Narayan G. Rasalkar, for petitioner and Smt.Kirtilata R. Patil, learned High Court Government Pleader for respondents.

3. Learned counsel for the petitioner contended that the petitioner is the partnership firm carrying on its business and registered under Goods and Services Tax Law, petitioner was transporting bitumen for subsequent sale. It was shipped in a heat insulated containers in liquid state, ensuring conditioning of the temperature. When the container was transporting the consignment, the respondent-Enforcement-2 of Officer of the Commercial Tax intercepted and inspected the vehicle. It is stated that the Original Tax Invoice was not carried in the vehicle



and therefore, the petitioner is liable for penalty. Accordingly, the Enforcement passed the dated 01.10.2021 determining the tax and penalty.

4. Learned counsel submitted that tax demanded by respondents was paid while preferring the appeal before the first appellate authority i.e. Assistant Commissioner of Commercial Tax. But the first appellate authority has passed the impugned order as per Annexure-D under Section 129(3) of the Central Goods and Services Act, 2017 (for short, 'the CGST Act') only on the ground that the original outward supply tax invoice as specified under Section 68 of the CGST is not tendered by the driver but only Xerox copy of the invoice is produced.

5. Learned counsel submitted that none of the provisions under State Goods and Services Tax Act, 2017 (for short, 'the SGST Act') and the CGST Act prescribe carrying of Original Tax Invoice with the transporter. Annexure-D refers to Rule 138-A of SGST, so also Section 68 of the CGST, but nowhere in these



provisions, there is reference to Original Tax Invoice to be carried by the transporter.

6. Learned counsel submitted that every supplier is required to upload the Invoices in the official portal and officials attached to the respondents could have downloaded the said Invoice. As per Rule 48 of the CGST, the Invoice is required to be prepared in triplicate in case of supply of goods and copy marked as Original is meant for recipient or purchaser of the consignment and therefore, same will be directly sent to the purchaser. The duplicate copy is meant to be carried by the transporter and the third copy marked as triplicate is meant for supplier to be retained with him. This Rule makes it clear that it is only the duplicate copy which is to be carried by the transporter during transit. The only objection raised by the respondents is that the transporter was not carrying the Original Tax Invoice, which is not the requirement of law.

7. Learned counsel placed reliance on the



decision of this Court in ***M/S Divya Jyothi Petrochemicals Co. Vs. The Joint Commissioner of Commercial Taxes***¹ and in view of the above, he prays for allowing the writ petition.

8. *Per contra*, learned High Court Government Pleader opposing the petition submitted that since the petitioner was not carrying the original tax invoice, tax and penalty was imposed and the same was confirmed by respondents by passing the order. There is no illegality in the said order and therefore, he prays for dismissal of the petition.

9. The only contention raised by respondents is that the transporter was not carrying the Original Tax Invoice while transporting the goods. Even though Rule 138-A of the SGST and Section 68 of the CGST, are referred to while passing Annexure-G, none of these provisions refer to carrying of the Original Tax Invoice by the transporter.

10. Learned counsel for the petitioner placed

¹ W.P.No.100378/2022 D.D.28.02.2024



reliance on the decision of this Court in ***M/S Divya Jyothi Petrochemicals Co.*** (supra). In support of his contention that the petition is liable to be allowed. In ***M/S Divya Jyothi Petrochemicals Co.*** (supra), a similar contention was raised by the petitioner therein. The same was considered in the light of the Rule 138-A of the SGST and Section 68 of the CGST and Rule 48 of the CGST and an opinion was formed that as per Rule 48(1)(b) of the CGST, it is only the duplicate copy which is meant for transporter and the triplicate copy is meant for supplier as per clause (c). It is therefore, held that the transporter is not required to carry the original tax invoice, but the law mandates him to carry the duplicate copy. I do not find any reason to form a different opinion. Under such circumstances, it is the contention taken by respondents that the petitioner is liable to pay tax and penalty, as the transporter had not carried the original tax invoice cannot be accepted. It is stated that petitioner is levied with the double tax as he is already paid tax as required to be paid and once again he was



compelled to pay tax with penalty and therefore, the same is liable to be refunded. Accordingly, I proceed to pass the following:

ORDER

- a) The writ petition is ***allowed***.
- b) The order as per dated 01.10.2021 and 30.11.2021 produced as per Annexure-D dated Annexure-G are quashed.
- c) Respondents are directed to refund of the tax and the penalty, paid in excess to the petitioner, within three months from today.

SD/-
JUDGE