

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 21<sup>ST</sup> DAY OF OCTOBER 2020**

**BEFORE**

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

**WRIT PETITION No. 10539/2020 (T/RES)**

**BETWEEN :**

SANCHAR TELESYSTEMS LIMITED  
HAVING ITS REGISTERED ADDRESS AT  
GROUND FLOOR, A-78,  
OKHLA INDUSTRIAL AREA  
REPRESENTED BY ITS  
AUTHORIZED SIGNATORY.

... PETITIONER

(BY SRI. GOVINDRAYA KAMATH.K., ADVOCATE)

**AND :**

1. COMMERCIAL TAX OFFICER VIGILANCE-4  
VTK-2, KORAMANGAL VIVEKNAGAR  
BENGLAURU - 560 047.
2. JOINT COMMISSIONER OF  
GOODS AND SERVICES TAX (APPEALS-5)  
BMTc COMPLEX, SHANTINAGAR  
BENGALURU - 560 027.

... RESPONDENTS

(BY SRI. HEMA KUMAR., AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDERS DATED 21.12.2019, PASSED BY THE R-2, UNDER SECTION 107(11) OF THE KGST ACT AS PER ANNEXURE-A AND A1 RESPECTIVELY AND CONSEQUENTIALLY IMPUGNED ORDERS DATED 20.02.2019 PASSED BY THE R-1 UNDER SECTION 129(3) OF KGST/CGST ACT AS PER ANNEXURE-A2 AND A3 RESPECTIVELY.

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

**ORDER**

The petitioner is registered as a dealer under the Delhi Service Tax Act, and is engaged in, amongst others, trading and importing of hand held walkie-talkie sets. The petitioner has filed this petition impugning

- *the orders dated 20.02.2019 under the provisions of Section 129(3) of the Karnataka Goods and Service Tax Act, 2017 (for short, 'the KGST Act') in JCCT (VIG)/CTO(VIG)-40/SRS/INS-15/2018-19 (Annexure - A2) and JCCT(VIG)/CTO(VIG)-40/SRS/INS-16/2018-19 (Annexure A3), and*

- *the subsequent orders dated 21.12.2090 in the corresponding appeal proceedings under Section 107(11) of the KGST Act in GST.AP.17/18-19 (Annexure-A1) and GST.AP.18/18-19 (Annexure-A) by the second respondent.*

2. The petitioner asserts that it imports walkie-talkie sets only for supply to the Police and the other Government Security Departments across India. A consignment of these walkie-talkies is imported from M/s JVC Kenwood Corporation, Japan and dispatched to Bangalore Airports Custom Authority from Singapore Airport. The petitioner has obtained clearance from the Customs Authority after paying applicable IGST and basic customs duty as provided in the Bills of Entry. However, the present dispute is because the CTO has commenced proceedings under section 129 of the KGST Act culminating with the impugned orders after the Commercial Tax Officer (Vigilance-40), Bengaluru (*for short, 'the CTO'*) detained one of the vehicles viz., the vehicle bearing

bearing Registration No KA-04-AB-9470 (for short, '*the vehicle*') hired by the petitioner for transportation of these walkie-talkie sets (for easy reference, '*the consignment*').

3. According to the CTO, the driver on interception of the Vehicle could produce only two Commercial Invoice copies and two Delivery Challan copies but could not furnish the prescribed e-way bills. The consignment could not have been moved without generating e-way Bills in view of the provisions of Rule 138 of the Karnataka Goods and Services Tax Rules, 2017 (for short, '*the KGST Rules*') and the subsequent Notification No. FD 47 CSL 2017 Bengaluru dated 06.09.2017. Therefore, the consequences under Section 129 of the KGST Act would have to follow. As such, the CTO on physical verification and issuance of Form GST MOV-02 as well as recording Form GST MOV-04 has detained the Vehicle issuing order of detention in Form GST MOV-06 which is served on the person-in-charge of the Goods on 09.02.2019. Subsequently, the CTO has served notice in Form GST MOV-

07 by affixture on the vehicle after drawing mahazar because the driver, the person-in-charge, refused to accept such notice.

4. The proceedings in JCCT(VIG)/CTO(VIG)-40/SRS/INS-16/2018-19 is with regard to the transportation of the consignment without e-way bills in the vehicle, and the other proceedings in JCCT (VIG)/CTO(VIG)-40/SRS/INS-15/2018-19 relates to the vehicle bearing registration No. KA 02 AG 9261, and there is no dispute that notice in Form GST MOV-07 is issued by the CTO even in respect of this other vehicle bearing registration No. KA 02 AG 9261 after issuance of the required endorsements in the prescribed Forms.

5. The petitioner has filed its response dated 08.02.2019 with the Joint Commissioner of Commercial Taxes (Vigilance), Bengaluru placing on record *inter alia* that the CTO intercepted the vehicle within 3-4 km of Bangalore

Airport Customs Office. The driver of the vehicle, because he got the clearance early and everything was found correct, left the premises before the e-way bills were generated. However, the e-way bills were generated before interception. The error is *bona fide* and unintentional and there was no intention to evade tax. The petitioner's authorised persons and advocates have also subsequently filed a detailed response stating that e-way bills for the consignment were generated between 3:06 p.m., and 3:12 p.m., and before these e-way bills could be transferred to the driver, the CTO intercepted the vehicle. The Endorsements are served on the driver of the vehicle at about 4:15 p.m. and there is a possibility that the time of interception is wrongly mentioned as 2:15 p.m. The petitioner's authorised persons and advocates have also filed further reply to the notice in Form GST MOV-07 enclosing an affidavit of the person in charge of the consignment which is an elaboration of the earlier response.

6. The CTO has not accepted the petitioner's response being of the opinion that the vehicle was intercepted at 2:45 p.m., and e-way bills were not generated before the commencement of the movement of the vehicle. The CTO has concluded that the driver's statement that he left the Bangalore International Airport at around 3:15 p.m. due to VIP movement and that the Endorsements were served at the premises of CTO Enforcement Office, Devanahalli at 4:15 p.m. cannot be believed because the "Good's delivery place" and the "Passengers boarding/de-boarding places" at the Airport are different. The details maintained by M/s Menzies Aviation Security show that the vehicle entered airport for loading at 2:12 p.m. and exited at 2.33 p.m and therefore the driver's (Person-in-charge) statement that he left the Airport premises at 3:15 p.m., cannot be accepted. The CTO has consequentially issued the impugned Orders under Section 129(3) of the KGST Act demanding tax and penalty as contemplated under Section 129(1)(a) of the CST Act.

7. In the appeal under Section 107 of the CGST Act, the second respondent has confirmed the CTO's orders. The second respondent has concluded that violation of the provisions of Rule 138 of the KGST Rules and the notification issued as regards generation of e-way bills is indisputable in view of the admitted fact that the driver of the vehicle could not produce the e-way bills when the vehicle was intercepted. The second respondent has confirmed the CTO's conclusion based on the correspondence with M/s Menzies Aviation Security, a security agency at the Bangalore International Airport Authority, as regards the vehicle's entry and exit from the Airport. The relevant part of the second respondent's impugned orders read as follows:

*"..... it is very clear that, the appellant has failed to abide the conditions of the Notification (4-D/2017), No. FD 47 CSL 2017, Bengaluru, 30.08.2017 and has not produced the e-way bills at the time of interception. So failure to comply to the conditions of the Notification, the respondent*

*is right in levying the penalty under section 129(3) of the CGST and SGST Act, 2017. Therefore, the order passed by the respondent is upheld to meet the ends of justice.*

*Further, the appellant contends that as per the Google Map Track record, the vehicle was within the premises of Menzies Aviation until 3p.m.. But the respondent has proved that the statement is not correct since the said goods vehicle KA 02 AG 9261 entered airport for loading at 2:12 .p.m. and exited at 2:33 p.m. as per Menzies Aviation Security records. In this regard the respondent corresponds with the Menzies Aviation Security vide letter dated 18-02-2019 and Menzies Aviation Security in turn responded by providing entry and exit information of the said vehicles on 18-02-2019<sup>1</sup>.*

8. The second respondent has also concluded that the petitioner's contention that the Endorsements in the

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<sup>1</sup> This reasoning is common to both the impugned orders dated 21.12.2019

prescribed form are issued at 4:15 p.m. at the CTO Enforcement Office and the prescribed e-way bills were generated earlier cannot be accepted because the petitioner relies upon online tools and data which are not prescribed either under the provisions of the KGST Act or the KGST Rules. The data on the GSTIN have legal sanctity and this data establishes that the necessary e-way Bills were not generated when the consignment was moved from the Bangalore International Airport.

9. The learned counsel for the petitioner asserts that the petitioner's specific case is that:

- (a) The loading of the consignment was completed around 2:50 p.m.,
- (b) The e-way bills were generated between 3:06 p.m. and 3:12 p.m., and because the goods were being transported for shipment purposes to the

Transporter's Godown located within the prescribed distance, the e-way bills were not uploaded,

(c) When the CTO intercepted the vehicles, the driver of the vehicle showed e-way bills on his mobile but Form -Part B was not mentioned.

(d) The CTO directed the driver to take the vehicles to the CTO Enforcement office, and the vehicles reached this office at around 4:15 p.m. when the endorsement was issued.

10. The learned counsel emphasises that if these circumstances are established there cannot be any allegation of infraction of Rule 138 of the KGST Rules or the notification issued thereunder, and the conclusion that the petitioner would be liable for consequences envisaged under the provisions of section 129(3) of the KGST Act cannot be sustained. Both the CTO and the appellate authority (the second respondent) have relied upon correspondence with

M/s Menzies Aviation Security, a security agency at the Bangalore International Airport, to conclude that the vehicles entered the airport premises on 06.02.2019 at 2:12 p.m. and exited at 2:33 p.m., but the e-way bills were generated later between 3:06 p.m. and 3:12 p.m. However, the petitioner is not given any opportunity to test the veracity of either the correspondence with the aforesaid security agency or the details as mentioned by this agency in its correspondence. This is in fundamental violation of the principles of fair play encompassed within the *opportunity of being heard* contemplated under section 129 (4) of the KGST Act.

11. The learned counsel for the petitioner also emphasizes that lack of *bona fides* in the adjudication against the petitioner is manifest in the respondents encashing the Bank Guarantee furnished by the petitioner for securing the release of the goods as contemplated under section 107 of the KGST Act. The respondents, during the pendency of the

appeal proceedings, could not have encashed the Bank Guarantee.

12. The learned Additional Government Advocate *per contra*, contends that the second respondent has relied upon the irrefutable data available on GSTIN in arriving at the conclusion that the consignment was moved from the airport premises even before the generation of the e-way bills. The data available on GSTIN cannot be controverted, as attempted by the petitioner, relying upon Internet tools such as Google Map to establish vehicle's location at the relevant time. Once it is established that the consignment is moved without generating e-way bills, the violation of the provisions of Rule 138 of the KGST Rules is established leading to the consequences under section 129(3) of the KGST Act. As such, the petitioner has not made out any grounds for interference under Article 226 of the Constitution of India.

13. As it appears from the rival submissions and the petition averments, the dispute lies within a narrow compass: *was the consignment moved without generating the prescribed e-way bills?* It is observed that there is no serious dispute about the petitioner's assertion that consignment was being transported to the transporter's godown situate within the prescribed distance from the airport premises, and the e-way bills are generated between 3:06 p.m. and 3:12 p.m. The petitioner asserts that the CTO intercepted the vehicle and directed the driver of the vehicle to the CTO Enforcement Office, Devanahalli because Form-Part B of the e-way bills were not populated, and the endorsements in the prescribed form were served at 4:15 p.m. when the vehicles reached the CTO Enforcement Office premises.

14. The petitioner to substantiate its aforesaid case proposes to rely upon the data available on Internet while the CTO relies upon correspondence with M/s Menzies Aviation

Security. The documents relied upon by the petitioner are not accepted, and the reason assigned by the respondents for non-accepting the petitioner's case and the documents, in this Court's considered opinion, is rooted inseparably in the reliance upon the data furnished by M/s Menzies Aviation Security in response to the communication by the CTO.

15. The provisions of section 129(4) of the KGST Act mandates that no tax, interest or penalty shall be determined under sub-section (3) *without giving the person concerned an opportunity of being heard*. This stipulation that no tax or interest or penalty shall be determined unless the person concerned is given an opportunity of being heard incorporates the seminal principle of fair play which is inherent in the established principle that no person is to be condemned unheard. If the CTO intended to rely upon data maintained by a third party and shared by such third party pursuant to the communication made by him, the fair play makes it

incumbent on the CTO to provide an opportunity to the petitioner to meet the data lest the petitioner is fastened with the liability to pay either the tax or interest or penalty on the basis of the data that, allegedly – and as is now alleged by the petitioner, is obtained behind its back to its detriment. The impugned orders when thus tested cannot be sustained and will have to be quashed with the proceedings in *JCCT (VIG)/CTO(VIG)-40/SRS/INS-15/2018-19* and *JCCT (VIG)/CTO (VIG)-40/SRS/INS-16/2018-19* restored to the CTO for fresh consideration with the necessary opportunity to the petitioner to meet all materials that could be relied against it. Therefore, the following:

**ORDER**

[A] The petition is allowed-in-part, and the impugned orders *viz., orders dated 20.02.2019 in JCCT (VIG)/CTO(VIG)-40/SRS/INS-15/2018-19(Annexure –A2) and JCCT(VIG)/CTO(VIG)-40/SRS/INS-16/2018-19 (Annexure A3), and orders dated 21.12.2019 in the appeals in GST.AP.17/18-19*

*(Annexure-A) and GST.AP.18/18-19 (Annexure-A1)*  
are quashed;

[B] The proceedings in *JCCT(VIG)/CTO(VIG)-40/SRS/INS-15/2018-19* and *JCCT(VIG)/CTO(VIG)-40/SRS/INS-16/2018-19* are remitted to the Commercial Tax Officer (Vigilance-4), Bengaluru (the first respondent) for fresh consideration with the necessary opportunity to the petitioner to meet all materials that could be relied against it; and

[C] the petitioner shall appear before the Commercial Tax Officer (Vigilance-4), Bengaluru (the first respondent) without further notice on 11.11.2020.

**SD/-  
JUDGE**

SA\*