

Gangadhar S. Hosakur

Ch - 116817/2023

NC: 2023:KHC-D:14861-DB
WA No. 100629 of 2023 c/w
WA No. 100630 of 2023,
WA No. 100633 of 2023,
WA No. 100634 of 2023,
WA No. 100635 of 2023,
WA No. 100636 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 19TH DAY OF DECEMBER, 2023

PRESENT

THE HON'BLE MR JUSTICE S.SUNIL DUTT YADAV

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL

WRIT APPEAL NO. 100629 OF 2023 (T-RES)

C/W

WRIT APPEAL NO. 100630 OF 2023

WRIT APPEAL NO. 100633 OF 2023

WRIT APPEAL NO. 100634 OF 2023

WRIT APPEAL NO. 100635 OF 2023

WRIT APPEAL NO. 100636 OF 2023

IN WA.NO. 100629/2023

BETWEEN

M/S QUADRI AND COMPANY
A PROPRIETARY CONCERN
REPRESENTED HEREIN BY ITS PROPERIOTOR
MR. NAFIS C/O IZAZ AHMED
HAVING ADDRESS AT GUPHS
MANDAGADDE 1, 5, GAFFOR KHAN COMPLEX
SHIVAMOGGA THIRTHAHALLI, N.H. 169-A ROAD
NEAR LINGAPURA BUS STAND, LINGAPURA VILLAGE,
MANDAGADDI HOBLI, LINGAPURA,
SHIVAMOGGA 577220.

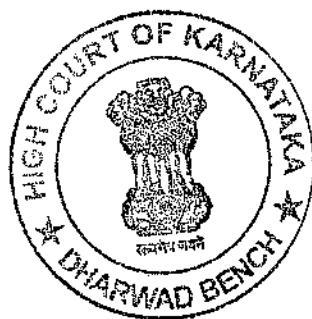
...APPELLANT

(BY SRI. BHARAT RAICHANDANI, ADVOCATE FOR
SRI. GANGADHAR S. HOSAKERI AND D.M. MALLI, ADVOCATES)

AND

1. COMMERCIAL TAX OFFICER (ENFORCEMENT-10)
HUBBALLI, NAVANAGAR HUBBALLI 580025,
TQ. HUBBALLI, DIST. DHARWAD.

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WA No. 100636 of 2023

- 2 . THE JOINT COMMISSIONER OF COMMERCIAL TAX (APPEALS)
DHARWAD DIVISION,
HUBBALLI VANIJYA THERIGE BHAVANA,
NAVANAGAR HUBBALLI 580025.
- 3 . ASSISTANT COMMISSIONER OF COMMERCIAL TAXES,
(ENFORCEMENT)-01, SOUTH ZONE
VANIJYA THERINGE KARYALAYA -2
NATIONAL GAMES VILLAGE COMPLEX
EJIPUR, BENGALURU 560047.
- 4 . COMMISSIONER OF COMMERCIAL TAXES
STATE OF KARNATAKA 1ST FLOOR,
VANIJYA THERIGE KARYALAYA KALIDASA MARG
GANDHI NAGAR, BENGALURU-560009.
- 5 . STATE OF KARNATAKA
R/BY ITS PRINCIPAL SECRETARY- FINANCE DEPARTMENT
MINISTRY OF FINANCE, GOVERNMENT OF KARNATAKA
VIDHANASOUDHA BENGALURU-560001.

...RESPONDENTS

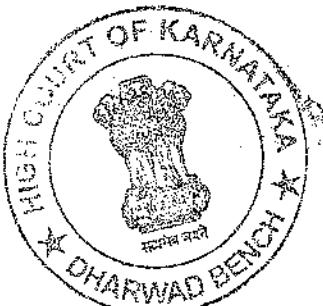
(BY SRI. GANGADHAR J.M, AAG A/W
SMT. GIRIJA HIREMATH, HCGP)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HON'BLE COURT TO SET ASIDE THE IMPUGNED INTERIM ORDER DATED 25.09.2023 PASSED BY LD. SINGLE JUDGE IN THE INTERESTS OF JUSTICE FOR RELYING UPON THE RESTATEMENT AND REAPPRAISAL OF TRANSACTION VALUE BY RESPONDENT NO.3 AND ETC.,

IN WA.NO. 100630/2023

BETWEEN

M/S QUADRI & COMPANY
A PROPRIETARY CONCERN
REPRESENTED HEREIN BY ITS PROPERIOTOR
MR. NAFIS C/O IAZZ AHMED
HAVING ADDRESS AT GUPHS
MANDAGADDE 1, 5, GAFFOR KHAN COMPLEX





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WA No. 100636 of 2023

SHIVAMOGGA THIRTHAHALLI N H 169-A ROAD
NEAR LINGAPURA BUS STAND
LINGAPURA VILLAGE MANDAGADDI HOBLI,
LINGAPURA SHIVAMOGGA 577220.

...APPELLANT

(BY SRI. BHARAT RAICHANDANI, ADVOCATE FOR
SRI. GANGADHAR S. HOSAKERI AND D.M. MALLI, ADVOCATES)

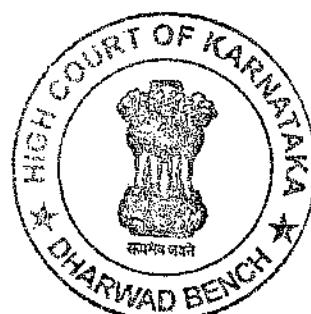
AND

1. COMMERCIAL TAX OFFICER (ENFORCEMENT-01).
ROOM NO. 119, ZILL ADALITH BHAVANA,
HUBBALLI ROAD, GADAG,
TQ GADAG, DIST GADAG.
2. THE JOINT COMMISSIONER OF COMMERCIAL TAX (APPEALS)
DHARWAD DIVISION,
HUBBALLI VANIJYA THERIGE BHAVANA,
NAVANAGAR, HUBBALLI 580025.
3. COMMISSIONER OF COMMERCIAL TAX,
STATE OF KARNATAKA 1ST FLOOR,
VANIJYA THERIGE KARYALAYA, KALIDASA MARG
GANDHI NAGAR, BENGALURU-560009.
4. STATE OF KARNATAKA
R/BY ITS PRINCIPAL SECRETARY- FINANCE DEPARTMENT
MINISTRY OF FINANCE GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA BENGALURU-560001.

...RESPONDENTS

(BY SRI. GANGADHAR J.M, AAG A/W
SMT. GIRIJA HIREMATH, HCGP)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HON'BLE COURT TO, SET ASIDE THE IMPUGNED INTERIM ORDER DATED 25.09.2023 IN WP.NO. 104992/2023 (T-RES) PASSED BY LEARNED SINGLE JUDGE IN THE INTERESTS OF JUSTICE FOR RELYING UPON THE RESTATEMENT AND REAPPRAISAL OF TRANSACTION VALUE BY RESPONDENT NO.2 AND ETC.,





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IN WA.NO. 100633/2023

BETWEEN

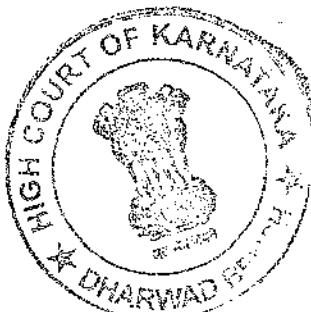
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A PROPRIETARY CONCERN
REPRESENTED HEREIN BY ITS PROPERIOTOR
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HAVING ADDRESS AT GUPHS
MANDAGADDE 1, 5, GAFFOR KHAN COMPLEX
SHIVAMOGGA THIRTHAHALLI N.H. 169-A ROAD
NEAR LINGAPURA BUS STAND,
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...APPELLANT

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SRI. GANGADHAR S. HOSAKERI AND D.M. MALLI, ADVOCATES)

AND

- 1 . COMMERCIAL TAX OFFICER (ENFORCEMENT-01)
ROOM NO. 119 ZILLA, ADALITH BHAVANA
HUBBALLI-580025
TQ. HUBBALLI DIST. DHARWAD.
- 2 . THE JOINT COMMISSIONER OF COMMERCIAL TAX (APPEALS)
DHARWAD DIVISION,
HUBBALLI VANIJYA THERIGE BHAVANA
NAVANAGAR HUBBALLI 580025.
- 3 . ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
(ENFORCEMENT-01) SOUTH ZONE,
VANIJYA THERINGE KARYALAYA -2
NATIONAL GAMES VILLAGE COMPLEX
EJIPUR BENGALURU 560074.
- 4 . COMMISSIONER OF COMMERCIAL TAXES
STATE OF KARNATAKA 1ST FLOOR,
VANIJYA THERIGE KARYALAYA KALIDASA MARG
GABDHINAGAR, BENGALURU-560009.
- 5 . STATE OF KARNATAKA
R/BY ITS PRINCIPAL SECRETARY- FINANCE DEPARTMENT,





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MINISTRY OF FINANCE GOVERNMENT OF KARNATAKA
VIDHANASOUDHA BENGALURU-560001.

...RESPONDENTS

(BY SRI. GANGADHAR J.M, AAG A/W
SMT. GIRIJA HIREMATH, HCGP)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HON'BLE COURT TO, SET ASIDE THE IMPUGNED INTERIM ORDER DATED 25.09.2023 AND 10/10/23 PASSED IN WP NO.104982/2023 (T-RES) PASSED BY LEARNED SINGLE JUDGE IN THE INTERESTS OF JUSTICE FOR RELYING UPON THE RESTATEMENT AND REAPPRAISAL OF TRANSACTION VALUE BY RESPONDENT NO.3. AND ETC.,

IN WA.NO. 100634/2023

BETWEEN

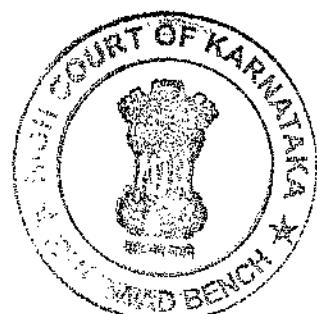
M/S QUADRI & COMPANY
A PROPRIETARY CONCERN
REPRESENTED HEREIN BY ITS PROPERIOTOR
MR. NAFIS C/O IZZAZ AHMED
HAVING ADDRESS AT GUPHS
MANDAGADDE 1, 5, GAFFOR KHAN COMPLEX
SHIVAMOGGA THIRTHAHALLI N.H: 169-A ROAD
NEAR LINGAPURA BUS STAND,
LINGAPURA VILLAGE MANDAGADDI HOBLI,
LINGAPURA SHIVAMOGGA 577220.

...APPELLANT

(BY SRI. BHARAT RAICHANDANI, ADVOCATE FOR
SRI. GANGADHAR S. HOSAKERI AND D.M. MALLI, ADVOCATES)

AND

1. ASSISTANT COMMISSIONER OF COMMERCIAL TAX
(ENFORCEMENT) NEAR GURU BHAVAN
RAJENDRANAGAR, HAVERI,
TQ. HAVERI, DIST. HAVERI-581110.
2. THE JOINT COMMISSIONER OF COMMERCIAL TAX (APPEALS)
DHARWAD DIVISION,
HUBBALLI VANIJYA THERIGE BHAVANA,
NAVANAGAR HUBBALLI 580025





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- 3 . THE JOINT COMMISSIONER OF COMMERCIAL TAX OFFICER (ENFORCEMENT), 2ND FLOOR NAVANAGAR HUBBALLI-580025.
- 4 . COMMISSIONER OF COMMERCIAL TAX STATE OF KARNATAKA 1ST FLOOR VANIJYA THERIGE KARYALAYA KALIDASA MARG, GANDHINAGAR, BENGALURU-560009.
- 5 . THE STATE OF KARNATAKA R/BY ITS PRINCIPAL SECRETARY- FINANCE DEPARTMENT MINISTRY OF FINANCE GOVERNMENT OF KARNATAKA VIDHANASOUDHA BENGALURU.

...RESPONDENTS

(BY SRI. GANGADHAR J.M, AAG A/W
SMT. GIRIJA HIREMATH, HCGP)

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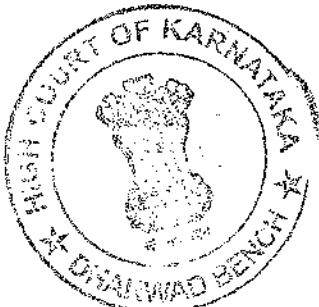
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BETWEEN

M/S QUADRI AND COMPANY
A PROPRIETARY CONCERN
REPRESENTED HEREIN BY ITS PROPERIOTOR
MR NAFIS C/O IZAZ AHMED
HAVING ADDRESS AT GUPHS
MANDAGADDE 1, 5, GAFFOR KHAN COMPLEX
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NEAR LINGAPURA BUS STAND, LINGAPURA VILLAGE
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SHIVAMOGGA 577220.

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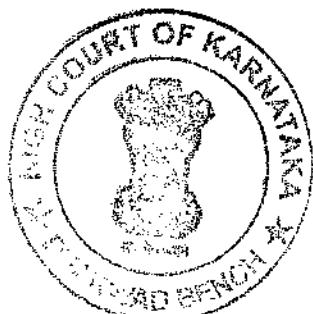
AND

- 1 . COMMERCIAL TAX OFFICER (ENFORCEMENT-10)
HUBBALLI
NAVANAGAR HUBBALLI 580025
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- 2 . THE JOINT COMMISSIONER OF COMMERCIAL TAX (APPEALS)
DHARWAD DIVISION,
HUBBALLI VANIJYA THERIGE BHAVANA,
NAVANAGAR, HUBBALLI 580025.
- 3 . ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
(ENFORCEMENT) 01 SOUTH ZONE,
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- 4 . COMMISSIONER OF COMMERCIAL TAXES
STATE OF KARNATAKA, 1ST FLOOR,
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BENGALURU-560009.
- 5 . THE STATE OF KARNATAKA
R/BY ITS PRINCIPAL SECRETARY- FINANCE DEPARTMENT
MINISTRY OF FINANCE, GOVERNMENT OF KARNATAKA
VIDHANASOUDHA, BENGALURU-560001.

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NEAR LINGAPURA BUS STAND, LINGAPURA VILLAGE
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SHIVAMOGGA 577220.

...APPELLANT

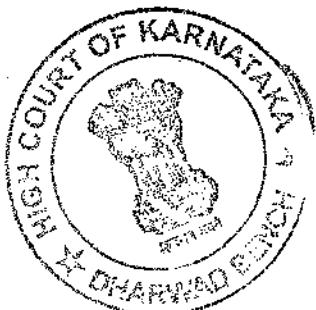
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AND

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ROOM NO 119 ZILLA ADALITH BHAVANA
HUBBALLI 5800025
TQ HUBBALLI DIST DHARWAD.
2. THE JOINT COMMISSIONER OF COMMERCIAL TAX (APPEALS)
DHARWAD DIVISION,
HUBBALLI VANIJYA THERIGE BHAVANA,
NAVANAGAR HUBBALLI 580025.
3. COMMISSIONER OF COMMERCIAL TAXES
STATE OF KARNATAKA, 1ST FLOOR,
VANIJYA THERIGE KARYALAYA KALIDASA MARG,
BENGALURU-560009.
4. THE STATE OF KARNATAKA
R/BY ITS PRINCIPAL SECRETARY FINANCE DEPARTMENT,
MINISTRY OF FINANCE, GOVERNMENT OF KARNATAKA
VIDHANASOUDHA, BENGALURU-560001.

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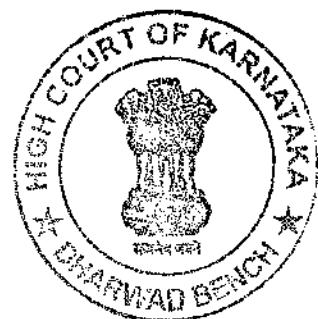
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THESE APPEALS HAVING BEEN HEARD AND RESERVED ON 18.12.2023 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY **S. SUNIL DUTT YADAV, J.**, DELIVERED THE FOLLOWING:

JUDGEMENT

With the consent of the parties all the appeals are taken up together and disposed off by a common judgment.

1. The present appeals have been filed seeking for setting aside of the interim orders dated 25.09.2023, passed in the writ petitions which order was purportedly passed relying upon re-appreciation of transaction value by the Assistant Commissioner of Taxes [Enforcement]. The appellant has also sought for a direction to commissioner of commercial taxes to pass fresh orders as to the legality and validity of restatement and reappraisal of transaction value. Appellant has also sought for the direction for the





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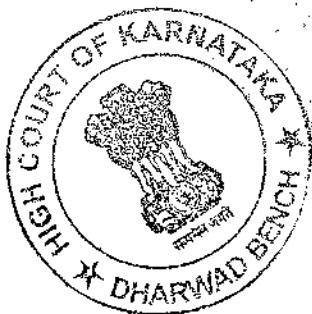
release of consignment and conveyance on payment of –

(i) 20% of deposit of penalty imposed; (ii) secure balance of consignment value as per tax invoice by a bank guarantee leaving the question of validity restatement and reappraisal of transaction value to be agitated in statutory appeal.

2. Parties are referred to as per their rank in writ petition.

3. Upon hearing counsel for the appellants Sri.Bharat Raichandani, learned Advocate for Sri.Gangadhar S. Hosakeri and Sri.D.M.Malli, Advocates for appellants, it comes out that the main grievance of the petitioner is that the condition imposed for release of goods by the learned Single Judge is onerous and ought to be modified.

4. Before advertizing to the impugned order, the brief facts that are made out are that the petitioner had raised an invoice on the consignee for supply of areca nut and





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had handed over the goods to the transporter, who had hired conveyance to transport the goods.

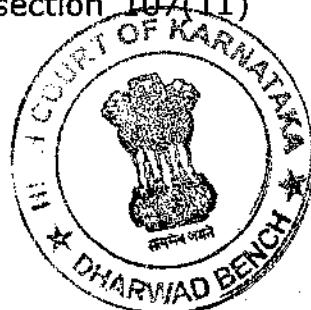
5. The said conveyance was intercepted by the Assistant Commissioner of Commercial Taxes (Enforcement).

Physical verification was conducted and initially impugned order of detention under section 129 of the GST Act, came to be passed detaining the conveyance and the goods.

6. It is further made out from the records that the report of the value by CAMPCO was to the effect that goods were undervalued.

7. Without the proceedings under section 129 of the Act having concluded, it is asserted that confiscation notice came to be issued followed by a confiscation order.

8. The said order was challenged by filing an appeal under section 107 of the Act and certain payments were made and upon dismissal of such appeal, further appeal was preferred and order in appeal under section 107(11)





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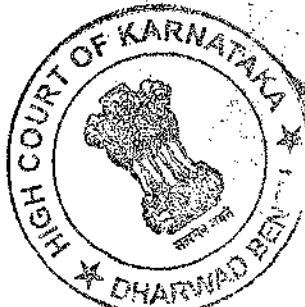
of KGST Act came to be passed, which order was challenged in the Writ proceedings.

9. The learned Single Judge on 25.09.2023, passed an order as follows:-

"Heard the learned counsel for the petitioner and learned HCGP for the respondents. This court in identical case has granted an interim order directing the respondent-authorities to release the goods confiscated subject to the petitioner depositing disputed tax amount and also furnishing bond.

This court has also taken cognizance of the modification made by the Division Bench of this court in W.A.No.100472/2023. The Division Bench though concurred with the interim order granted by this court, however, has imposed additional condition on the petitioner in the said case to furnish security by way of immovable property to the value of Rs.95,23,150/-. By way of interim relief, it is directed that concerned authority/respondent No.1 shall release the goods confiscated pursuant to order dated 09.01.2023 passed in Form GST MOV-11, subject to the following conditions:

- i) *The petitioner shall deposit 20% of the amount i.e., Rs.9,34,524.80.*
- ii) *The petitioner shall furnish bond to the tune of Rs.46,72,624/-.*





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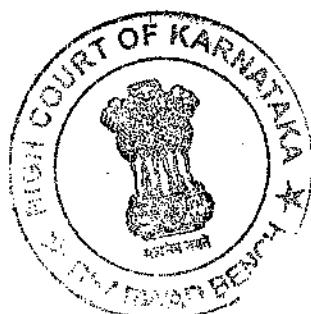
iii) Petitioner shall also furnish security by way of immovable property to the value of Rs.46,72,624/-.

iv) It is made clear that on receipt of 20% of the demand and bonds, the concerned authority shall release the goods within a period of two weeks."

10. The said order was modified insofar as time limit for compliance by order dated 10.10.2023, whereby, time limit of one week was granted, failing which the interim order granted on 25.09.2023 would stand automatically vacated.

11. It is the order dated 25.09.2023, imposing conditions that has been challenged.

12. The counsel for the petitioner has contended that the proceedings under section 129 of the Act having been initiated could not have been abandoned midway and proceedings for confiscation under section 130 of the Act be proceeded with. It is further contended that the conditions imposed are onerous and the question of





imposing conditions on the basis of value of goods does not arise.

13. Though various other contentions have been raised, it may not be appropriate to address regarding such contentions on merits being conscious of pendency of adjudication regarding the order of confiscation under section 130 of the Act.

14. Learned Additional Advocate General appearing for the revenue, on the other hand contends that there is a clear intention of evasion of tax as e-way bill was not being carried. Reliance was also placed on the order of the Apex Court in ***State of Uttar Pradesh and Other v. K Pan Fragrance and Others Private Limited***¹, contending that the learned Single Judge at the first instance ought not to have permitted the release of confiscated goods as release could be permitted only in terms of the statutory provisions, i.e., Rule 140 of GST

¹ 2020 (5) SCC 811





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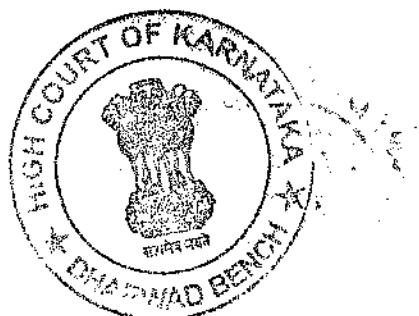
Rules and that the bank guarantee is required to be furnished for the entirety of the value of goods.

15. Heard both sides.

16. At the outset, it must be noted that the petitioner has challenged the imposition of conditions for release of goods in the impugned order.

17. The revenue not having challenged the interim order dated 25.09.2023, permitting release of goods, cannot now contend that the order of release could not have been passed on the conditions that were imposed and that the conditions should have been imposed regarding furnishing of bank guarantee for the entirety of the value of goods.

18. Accepting any argument by the revenue which places the petitioner worse off than the interim order passed on 25.09.2023 by the learned Single Judge, would not arise and accordingly, contentions of the State regarding the correctness of the interim order of release or regarding the



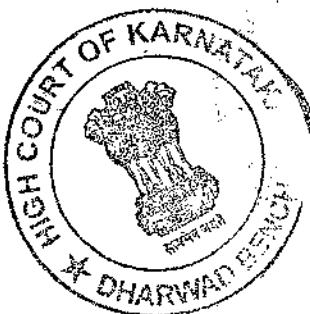


NC: 2023:KHC-D:14861-DB
WA No. 100629 of 2023 c/w
WA No. 100630 of 2023,
WA No. 100633 of 2023,
WA No. 100634 of 2023,
WA No. 100635 of 2023,
WA No. 100636 of 2023

insufficiency of imposition of conditions cannot be entertained.

19. The question relating to validity of the order under section 130 of the Act is a matter still pending adjudication before the learned Single Judge. Though the counsel for the petitioner has submitted that imposition of condition should be restricted to tax and penalty cannot be linked to the value of goods, such contention cannot be accepted. The proceedings under Section 130 of the Act relate to confiscation of goods and if such proceedings are upheld then the property would vest with the revenue and the revenue would be entitled to sell the property and appropriate the proceeds.

20. The concern of the State that the valuation of the petitioner being defective and actual valuation being much higher cannot be ignored though the aspect of valuation is also a matter for adjudication. However, it would be appropriate to put the petitioner on terms by ensuring that





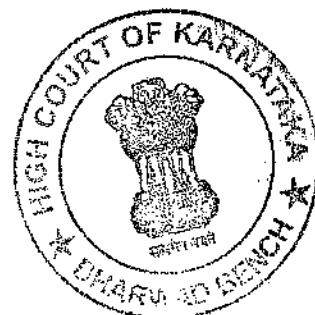
NC: 2023:KHC-D:14861-DB
**WA No. 100629 of 2023 c/w
WA No. 100630 of 2023,
WA No. 100633 of 2023,
WA No. 100634 of 2023,
WA No. 100635 of 2023,
WA No. 100636 of 2023**

the valuation of the goods as determined by the revenue is realizable if the validity of the proceedings under section 130 of the Act are upheld.

21. It must also be noted that the order passed in W.A.No.100472/2023, wherein, the Co-ordinate Bench had directed furnishing of security of immovable property was passed on the concession of the assessee.

22. In light of the above the following order could be passed modifying the interim order dated 25.09.2023 passed by the learned Single Judge:-

a) The appellants to make good the 25% deposit provided for in appeal proceedings as regards the order impugned in the writ proceedings. It is made clear that deposit made in the earlier appeals by the appellant could be adjusted.



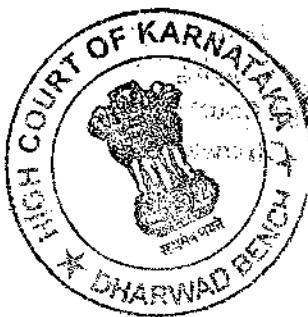


NC: 2023:KHC-D:14861-DB
WA No. 100629 of 2023 c/w
WA No. 100630 of 2023,
WA No. 100633 of 2023,
WA No. 100634 of 2023,
WA No. 100635 of 2023,
WA No. 100636 of 2023

- b) The appellants to make good tax and penalty as per the orders impugned before the learned Single Judge by securing the same by way of bank guarantee.
- c) The appellants to furnish bank guarantee insofar as the value of goods as per his invoice.
- d) The appellants to furnish personal bond of the Proprietor representing the appellants to the extent of differential value of the goods as per the invoice of the appellants vis-à-vis the valuation by CAMPCO made on behalf of the State.
- e) The Proprietor of the appellants shall furnish personal affidavit described in the appeal memo in all matters recording the compliance of the direction at (a) to (d).

For compliance of the aforesaid direction four weeks time is granted.

23. It is made clear that in the event there is any default of the undertaking, they would be exposing





NC: 2023:KHC-D:14861-DB
**WA No. 100629 of 2023 c/w
WA No. 100630 of 2023,
WA No. 100633 of 2023,
WA No. 100634 of 2023,
WA No. 100635 of 2023,
WA No. 100636 of 2023**

themselves to contempt of court proceedings apart from other proceedings.

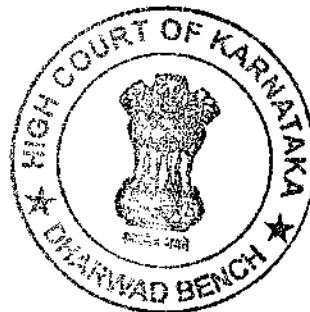
24. The observations and findings made in this order are in the peculiar facts of the present appeal and cannot be treated as a precedent for other matters and that findings and observations made herein are only for the purpose of disposing of the present appeals and are not deemed to be finding on facts and law. All contentions of the parties urged in these appeals are kept open.

25. Accordingly, the appeals are disposed off in terms of the above modifying the orders of the learned Single Judge dated 25.09.2023.

Sd/-
JUDGE

SAG

Sd/-
JUDGE



- a) The date on which the application was made
Np/..... 20/12/2023
- b) The date on which charges and additional charges, if any, are called for.....
- c) The date on which charges and additional charges, if any, are deposited / paid.....
- d) The date on which the copies ready..... 20/12/2023
- e) The date of notifying the copy is ready for delivery..... 20/12/2023
- f) The Date on which the applicant is required to appear on before.....
- g) The date on which copy is delivered to the applicant..... 21/12/2023
- h) Examined by..... dt

"TRUE COPY"

Section Officer
Copying Branch
High Court of Karnataka
Dharwad, Bench.