



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY, 2024**

**BEFORE**

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

**WRIT PETITION NO.100378/2022(T-RES)**

**BETWEEN:**

1. M/S. DIVYA JYOTHI PETROCHEMICALS CO.,  
A PARTNERSHIP FIRM, CMC 1366/II,  
DATTATREYA COMPLEX, II FLOOR,  
NEAR SAI MANDIR ROAD,  
KARWAR TALUKA,  
DIST: UTTAR KANNADA KARWAR – 581 301,  
REP. BY ITS PARTNER, SHRI ASHUTOSH DUBEY  
S/O. SRI BHUVANESHWAR DUBEY,  
AGE: 27 YEARS,  
OCC: RESIDENT OF KARWAR.

...PETITIONER

(BY SRI NARAYAN G. RASALKAR, ADVOCATE)

**AND:**

1. THE JOINT COMMISSIONER OF  
COMMERCIAL TAXES – APPEALS,  
DHARWAD DIVISION, NAVANAGAR,  
HUBBALLI, TALUK HUBBALLI,  
DIST: DHARWAD, HUBBALLI – 580 021.
2. THE COMMERCIAL TAX OFFICER  
(ENFORCEMENT), MADHUGIRI,  
MADHUGIRI, TUMKUR TALUKA AND  
DISTRICT MADHURIGI,  
PC - 572132.
3. THE REGISTRAR,  
KARNATAKA APPELLATE TRIBUNAL,  
M. S. BUILDING,  
DR.B. R. AMBEDKAR ROAD,  
BENGALURU – 560 001.

...RESPONDENTS

(BY SRI P.N.HATTI, AGA)





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.29 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 18.09.2021 IN FORM GST MOV.09 BEARING NO.CTO(ENF)/GS/MDR/GCE/24/2021-2022 PASSED BY THE RESPONDENT NO2, CTO ENFORCEMENT MADHUGIRI, 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 issue the writ in the nature of certiorari to quash Annexure-D dated 18.09.2021 passed by the respondent No.2 and Annexure-G dated 30.11.2021 passed by the respondent No.1.

2. Heard learned counsel Sri. Narayan G. Rasalkar, appearing for petitioner and Sri.P.N.Hatti, learned Additional Government Advocate 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 (for short, 'the GST 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 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 order dated 18.09.2021 determining the tax and penalty.

4. Learned counsel submitted that the said determination of tax and penalty was challenged before the respondents by preferring an appeal. In the said appeal the respondent passed the impugned order as per Annexure-G confirming the levying of tax and penalty and same is challenged by filing this writ petition.

5. Learned counsel submitted that none of the provisions under State Goods and Services Tax Act, 2017



(for short, 'the SGST Act') and Central Goods and Services Tax Act, 2017 (for short, '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, 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 submitted that the petitioner being suppliers is required to pay tax well in advance. Accordingly, he has paid the tax. Since penalty was imposed along with the tax, the petitioner has paid it once again. Therefore, he prays for allowing the petition and setting aside Annexure-D and G and also to order for refund or the tax and penalty for which the petitioner is entitled to. Accordingly, prays for allowing the petition.

8. *Per contra*, learned Additional Government Advocate opposing the petition submitted that the respondent has referred to Rule 138-A of the SGST and Section 68 of the CGST, according to which the persons in charge of conveyance is required to be carried the Invoice or Bill of delivery challan with him along with other documents. Since the appellant was not carrying the Original Tax Invoice, the tax and penalty was imposed and same was confirmed by the respondents by passing the



order as per Annexure-G there is no illegality in the order and therefore, he prays for dismissal of the petition.

9. The only contention raised by the 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. On the other hand, Rule 48 of the CGST, deals with the manner of issuing the Invoice. Accordingly, to which the Invoice shall be prepared in triplicate in case of supply of goods. The original copy marked as such is meant for recipient or the purchaser and therefore, same will not be carried by transporter. As per Section 48(1)(b) of the CGST, it is only the duplicate copy is meant for transporter and the triplicate copy is for the supplier as per clause-C. Therefore, it is clear that the transporter is not required to carry Original Tax Invoice but law



mandates him to carry the duplicate copy. Under such circumstances, the contention taken by the respondents that the petitioner is liable for tax and penalty as the transporter had not carried Original Tax Invoice cannot be accepted. It is stated that the petitioner is levied with double tax as he has already paid the tax as required to be paid and once again he paid the tax with penalty and therefore, 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 Annexure-D dated 18.09.2021 and Annexure-G dated 30.11.2021, are quashed.
- c) Respondent is directed to refund of the tax paid in excess and the penalty to the petitioner within three months.

**SD/-**  
**JUDGE**