

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

**DATED THIS THE 20<sup>TH</sup> DAY OF NOVEMBER 2020**

**BEFORE**

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

**WRIT PETITION No.3337/2020 (T-RES)**

**BETWEEN :**

M/S HEMANTH MOTORS  
NO.17/9, 10, 11, 12,  
OPP. RAIL WHEEL FACTORY,  
DODDABALLAPURA ROAD,  
'A' SECTOR, YELEHANKA NEW TOWN,  
BENGALURU – 560 064,  
REPRESENTED BY ITS PARTNER  
SRI NARAYANASWAMY.

... PETITIONER

(By SRI. MOHAMMED MUJASSIM., ADVOCATE)

**AND :**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY,  
FINANCE DEPARTMENT,  
VIDHANA SOUDHA,  
BENGALURU – 560 001.
2. THE COMMISSIONER OF COMMERCIAL  
TAXES IN KARNATAKA  
“VANIJYA THERIGE KARYALAYA”,  
GANDHINAGAR,  
BENGALURU – 560 009.

3. COMMERCIAL TAX OFFICER  
VIGILANCE-1,  
O/O JOINT COMMISSIONER OF  
THE COMMERCIAL TAXES (VIGILANCE)  
VTK-2, KORAMANGALA,  
BENGALURU – 560 047.
4. JOINT COMMISSIONER OF  
GOODS AND SERVICE TAX (APPEALS)-5,  
ROOM NO.222, 'B' BLOCK, 2<sup>ND</sup> FLOOR,  
BMTc, TTMC, SHANTHINAGAR,  
BENGALURU – 560 027.
5. THE UNION OF INDIA  
THROUGH ITS REVENUE SECRETARY,  
DEPARTMENT OF REVENUE,  
MINISTRY OF FINANCE,  
128-A/NORTH BLOCK,  
NEW DELHI – 110 001.
6. THE CENTRAL BOARD OF INDIRECT  
TAXES AND CUSTOMS  
THROUGH THE CHAIRMAN,  
NORTH BLOCK,  
NEW DELHI – 110 001.

... RESPONDENTS

(By SRI. HEMA KUMAR., AGA, FOR R1 TO R4;  
SRI. VIKRAM A HUILGOL., ADVOCATE FOR R5 & R6)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED PROVISIONS, VIZ, SECTION 129 OF THE KGST/CGST ACT, 2017 AS NULL AND VOID AND ULTRA VIRES THE CONSTITUTION OF INDIA AND/OR BE PLEASED TO STRIKE DOWN THE SAID PROVISIONS AS ILLEGAL, ARBITRARY AND VIOLATIVE OF ARTICLE 14,19(1)(G) OF THE CONSTITUTION OF INDIA; AND ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED NOTICE BEARING NO. JCCT (VIG)/CTO-VID-11/P-

10/18-19 DATED 07.01.2019 AND ORDER DATED 08.01.2019 PASSED BY RESPONDENT NO.3 VIDE ANNEXURE-A & B, TO THE WRIT PETITION AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

The petitioner has filed this petition for the following prayers:

- “[a] Declare the impugned provisions, viz, Section 129 of the KGST/CGST act, 2017 as null and void and ultra vires the Constitution of India and/or be pleased to strike down the said provisions as illegal, arbitrary and violative of Article 14,19(1)(g) of the Constitution of India.*
- [b] Issue a writ of certiorari quashing the impugned notice bearing No. JCCT (VIG)/CTO-VID-11/P-10/18-19 dated 07.01.2019 and Order dated 08.01.2019 passed by Respondent No.3 vide Annexure-A & B, to the Writ Petition.*
- [c] Issue a writ of Certiorari quashing the impugned order in GST AP.12/18-19 dated*

*28.11.2019 passed by Respondent No.4 vide Annexure-C, to the Writ Petition.”*

However, the learned Counsel for the petitioner submits that he would confine the writ petition, given the facts and circumstances of the case, to the prayers as per Columns [b] and [c] above.

2. The petitioner, a dealer in TVS motor vehicles and an assessee registered under the provisions of the Central Goods and Services Tax Act, 2017 [for short '*the Act*'], purchased two wheeler vehicles from a wholesale dealer under the tax invoice dated 31.12.2018 and the motor vehicles purchased were dispatched from Hosur, Tamil Nadu to the place of destination *viz.*, Doddaballapura Road, Yelahanka, Bengaluru after generating the corresponding e-way bills. The e-way bills were valid from 31.12.2018 10.37 pm to 1.1.2019. The third respondent visited the petitioner's premises and issued an order for physical verification

culminating in notice dated 7.1.2019 under the provisions of Section 129[3] of the Act and the other relevant provisions. The petitioner is also served with demand dated 8.1.2019 as per Annexure-B. The appeal filed by the petitioner under Section 107[11] of the KGST Act is dismissed by the order dated 28.11.2019. As such, the petitioner is before this Court with the prayers as aforesaid.

3. The dispute in the present case lies within a narrow compass. It is undisputed that the petitioner ensured transportation of the vehicles under appropriate e-way bills that were valid from 31.12.2018 at 10.37 pm to 1.1.2019. The petitioner contends that the conveyance carrying the vehicles reached the place of destination on 1.1.2019 before the expiry of the validity of the e-way bills but the vehicles could not be unloaded on the same day and were being unloaded on 2.1.2019. The authorities while not disputing these assertions contend that the e-way bills had to be valid

even as at the time of the inspection as the vehicles were being unloaded from the conveyance.

4. In the facts and circumstances of the case where there is no dispute that the conveyance had reached the place of destination well within the expiry of e-way bills, and the conveyance was being unloaded without any further transit, this Court is of the considered view that the appellate authority should have considered the merits of the proceedings against the petitioners in the light of the provisions of Rule 138[10] of the Central Goods and Services Tax Rules, 2017 which prescribes the validity of an e-way bill with the extension of further period by eight hours after the expiry. The failure to consider the petitioner's case in the light of the provisions of Rule 138[10] of the Central Goods and Services Tax Rules, 2017 has resulted in an improper and untenable order. Therefore the following:

ORDER

*[a] The writ petition is allowed.*

*[b] The impugned order dated 28.11.2019 in GST AP.12/18-19 passed by the fourth respondent [Annexure-C] and the notice bearing No.JCCT[VIG]/CTO-VIG-11/P-10/18-19 dated 7.1.2019 [Annexure-A] and order dated 8.1.2019 passed by the third respondent [Annexure-B] are quashed.*

**SD/-  
JUDGE**

AN/-