HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

WRIT APPEAL NO. 1390 OF 2024 (T-RES)

BETWEEN:

1. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
FINANCE DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU - 560 001.

2. COMMISSIONER OF COMMERCIAL TAX
HAVING OFFICE AT DGSTO -5
ROOM NO. 605, 6TH FLOOR, VTK - II
"B" WING, RAJENDRANAGAR,
KORAMANGALA,
BENGALURU - 560 047

3. THE JOINT COMMISSIONER
OF COMMERCIAL TAX
BENGALURU - 560 027

4. THE COMMERCIAL TAX OFFICER
KORAMANGALA,
BENGALURU - 560 047.

...APPELLANTS

(BY SMT. JYOTI M MARADI, HCGP)

AND:

AAM INDIA MANUFACTURING CORPORATION
PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013, GATE NO. 78, 788,
VILLAGE HUNGA, TALUKA PARNER,
AHMEDNAGAR - 414301, MAHARASHTRA
REPRESENTED THROUGH,
MR. VITTAL KULKARNI, DIRECTOR.

…RESPONDENT

(BY SRI. PRAKASH SHAH, SENIOR COUNSEL FOR
SRI.MOHAN MAIYA G.L, ADVOCATE)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 19/01/2023 PASSED IN WP NO.16845/2022.

THIS APPEAL, COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT
(PER: HON'BLE MR. JUSTICE RAJESH RAI K)

1. The State has preferred this intra court appeal challenging the order dated 19.01.2023 passed by the learned Single Judge in WP.No.16845/2022 (TIS), whereby the learned Single Judge passed the following order:

> "The petition is allowed, and the third respondent's impugned order dated 16.03.2022

a[Annexure - A] is quashed and the third respondent's *ex parte* order dated 09.11.2020 is modified confining the penalty payable by the petitioner to a sum of Rs.25,000/- and the fourth respondent is directed to ensure that the remaining amount deposited by the petitioner is refunded within the period of six [6] weeks from the date of receipt of a certified copy of this order."

2. The brief facts which are necessary for adjudication of this appeal are - that in the month of July, 2020, the respondent has purchased hydraulic fixtures and tooling body machines and the same was delivered to its unit at Ahmednagar, Maharashtra. The respondent after certain customization of machineries sent the same back to the seller in Coimbatore for performing testing. The transport of machine is under the cover of delivery challans, but without E-way bills. The Commercial Tax Officer, Koramangala i.e., appellant No.4 intercepted the said vehicle on 03.11.2020 and has issued detention order on 07.11.2020 in Form No.GSTMOV-06 along with notice in Form No.GSTMOV-07 under Section 129 (3) of the CGST Act. Accordingly, the respondent deposited the tax demanded with penalty vide challan No.54433946. Later the 4th

appellant has issued *ex parte* order dated 09.11.2020 confirming the demand of IGST and penalty. The same was appealed before the 3rd appellant and the 3rd appellant by order dated 16.03.2022 has disposed of the appeal under Section 107(11) of Karnataka Goods and Service Act, 2017 (KGST). The said order has been challenged before the learned Single Judge and the learned Single Judge, on assessing the documents, allowed the writ petition as stated supra. Challenge to the same is *lis* before this Court.

3. We have heard Smt.Jyoti M.Maradi, learned HCGP for the appellants and Sri Prakash Shah, learned Senior Counsel for Sri Mohan Maiya G.L., learned counsel for the respondent through video conference. Perused the impugned order and material on record.

4. Apart from urging several contentions, learned HCGP primarily contended that the respondent has failed to demonstrate before the Authority that the transportation of machinery under delivery challan was part of original transaction and independent of any fresh consideration by placing sufficient documents. In such circumstance, it must

necessarily deemed to be a supply and as such, the 3rd and 4th appellants are justified in levying and collection of tax. She would also contend that information was furnished before the commencement of transportation as contemplated under Rule 138 of CGST Rule. According to her, since the respondent not generated E-way bill with necessary information before the commencement of transportation, the respondent cannot claim benefit under the second part of either under Section 129(1)(a) or 129 (1)(b) of the CGST/KGST Act. The goods transported by the respondent are not exempted goods. These aspects of the matter have not been properly appreciated by the learned Single Judge. Hence, she prays to allow the appeal.

5. *Per contra*, learned counsel for the respondent submits that the transportation of machinery under a delivery challan without E-way bill was only by a *bonafide* mistake and the 3rd appellant in its order dated 16.03.2022 has opined that as per the provisions of Section 68 of CGST Act and the relevant CGST Rules, the movement of goods must be accompanied by a tax invoice or delivery challan and with E-way bills, if the value exceeds Rs.50,000/- and the exemption from generating E-way

bills is only in respect of specified goods and specified transactions specified under Rule 138(4) of GST Rules. According to learned counsel, the transportation from Ahmednagar, Maharashtra to Coimbatore does not come within the ambit of specified goods or specified transactions since the same would be a non-taxable supply and there cannot be any levy and collection of tax. He contended that these aspects of the matter have rightly been appreciated by the learned Single Judge. Accordingly, he prays to dismiss the appeal.

6. We have given our anxious consideration to the submissions made by learned counsel for both the parties.

7. The only question that would arise for our consideration is-

Whether the order under challenge requires any interference at the hands of this Court?

8. As could be gathered from records, undisputedly the respondent purchased the machinery under a purchase order and invoices in the month of July, 2020 from Coimbatore and transported to its unit at Ahmednagar, Maharashtra and later

the machinery was re-transported to Coimbatore for performing testing. The contention of the appellants is that the said transaction has to be treated as separate and distinct transaction and not part of the original transaction. The provisions of Section 7(1)(a) CGST/KGST Act stipulates that supply of goods or service or both goods either as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made must be for a consideration by a person in the course of furtherance of business would be a supply for the purpose of this enactment.

9. As stated supra, re-transportation would not attract consideration and the instant transaction does not come within the purview of Section 7(1)(a) of CGST/KGST Act. Rule 55 (1) of CGST Rules defines transportation of goods without issue of invoice, but on delivery challan for certain categories of supply and one of the categories would be transportation of goods for reasons other than by way of supply, but with generation of E-way bill as contemplated under Rule 138 of CGST Rules. The CGST/KGST Act and Rules provide for certain exemptions from generating E-way bills in certain cases. However, the same

does not cover the subject re-transportation. As such, the learned Single Judge has held that there is breach on the part of the respondent and he is liable to pay penalty as contemplated under the second part of Section 129(1)(a) of CGST/KGST Act. Accordingly, modified the *ex parte* order dated 09.11.2020 and directed the 4th appellant to refund the remaining amount deposited by the respondent. We find no error in the order passed by the learned Single Judge and accordingly, the point raised above is answered.

In the result, the writ appeal lacks merit and the same is ***dismissed***.

SD/-
(S.G.PANDIT)
JUDGE

SD/-
(RAJESH RAI K)
JUDGE

PKS
List No.: 1 Sl No.: 37