

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 22<sup>ND</sup> DAY OF NOVEMBER, 2022

BEFORE

**THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR**

**WRIT PETITION No.22779 OF 2022 (T-RES)**

**BETWEEN:**

M/S. MUNDKAR MADHAVARAYA PRABHU  
4-174, JEEVOTHAM, MUDUPERAR  
KARNATAKA, INDIA – 574 151  
(REP. BY SHRI TUKARAM PRABHU  
M/S. MUNDKAR MADHAVARAYA PRABHU)  
(PROPRIETOR)

...PETITIONER

(BY SRI. RAVI RAGHAVAN AND SRI. ROHAN KARIA AND  
SRI. NISHCHAL.K.M., ADVOCATES)

**AND:**

1. THE STATE OF KARNATAKA  
THROUGH ITS CHIEF SECRETARY  
VIDHANA SOUDHA  
BENGALURU – 560 001.
2. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
ENFORCEMENT, VANIJYA TERIGE BHAWAN  
VIVEKANANDA NAGAR, 4<sup>TH</sup> CROSS ROAD  
AJJARKADU, UDUPI  
KARNATAKA – 576 101.
3. THE JOINT COMMISSIONER OF COMMERCIAL TAXES  
VANIJYA TERIGE BHAWAN, NEHRU MAIDHAN ROAD  
MANGALORE – 575 001.

...RESPONDENTS

(BY SRI. HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA PRAYING TO ORDER OR DIRECTION  
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA  
QUASHING AND SETTING ASIDE THE IMPUGNED ORDER(S) NO.  
09/2022-23 AND BEARING NO.10/2022-23 DATED 09.11.2022 IN  
THE FORM GST MOV-09 PASSED BY THE R-2 U/S 129(3) OF THE  
CGST ACT, 2017 AT ANNEXURE-A AND ANNEXURE-B AND ETC.

THIS W.P. COMING ON FOR *ORDERS*, THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

In this petition, petitioner has sought for the following reliefs:

- a. *Issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India quashing and setting aside the impugned order(s) No.09/2022-23 and bearing No.10/2022-23 dated 09.11.2022 in the Form GST MOV-09 passed by the respondent No.2 under Section 129(3) of the CGST Act, 2017 at Annexure-A and Annexure-B;*
- b. *Issue a writ of mandamus or a writ in the nature of mandamus or other appropriate writ or order directing the respondent No.2 to forthwith release the Conveyance No.GJ-03-AX-7785 and GJ-03-BY-8577 along with the goods contained therein without directing any payment of penalty and / or security and bond;*
- c. *Issue an order or direction setting aside the demand of penalty amounting to Rs.2,60,272/- under Section 129(1)(a) or Rs.26,02,724/- under Section 129(1)(b) of the CGST Act, 2017 (in respect of Form GST MOV-09 bearing No. 09/2022-23 dated 09.11.2022 (Annexure-A)).*

- d. Issue an order or direction setting aside the demand of penalty amounting to Rs.3,19,261/- under Section 129(1)(a) or Rs.31,92,614/- under Section 129(1)(b) of the CGST Act, 2017 (in respect of Form GST MOV-09 bearing No. 10/2022-23 dated 09.11.2022 (Annexure B) ).*
- e. Hold that the absence of existence or jurisdictional facts stipulated under Section 129(3) of the CGST Act, 2017, the impugned order(s) at Annexure-A and Annexure-B passed by the respondent No.2 is without jurisdiction;*
- f. Hold that the petitioner has not violated the provisions of Section 31(1) of the CGST Act, 2017 and rule 46 (h) of the CGST Rules, 2017 and thus the goods could not have been detained by the respondent No.2.;*
- g. Pass such further order(s) and other reliefs as the nature and circumstances of the case may require.*

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. Though several contentions have been urged by both sides in support of their respective claims, having regard to the availability of equally efficacious and

alternative remedy by way of appeal before the First Appellate Authority, without expressing any opinion on the merits / demerits of the rival contentions, I deem it just and appropriate to dispose of this petition reserving liberty in favour of the petitioner to take recourse to such remedies as available in law including approaching the First Appellate Authority by way of challenge to the Annexure – A and B and in accordance with law.

4. It is further directed that having regard to the perishable nature of the subject goods involved in the present petition, in the peculiar / special facts and circumstances of the instant case, I direct the respondents to release the Conveyance No.GJ-03-AX-7785 and GJ-03-BY-8577 along with the goods contained therein in favour of the petitioner, within a period of 48 hours from the date of receipt of a copy of this order.

5. It is made clear that the present order is passed in the peculiar / special facts and circumstances of the instant case and shall not be treated as a precedent nor have any precedential value for any purpose whatsoever

Subject to the aforesaid directions, petition stands ***disposed of.***

All rival contentions are kept open and no opinion is expressed on the same.

It is further directed that in the event the petitioner prefers a statutory appeal before the First Appellate Authority, the First Appellate Authority shall consider the same and pass appropriate orders on merits and in accordance with law without being influenced by the observations and directions issued in the present order.

**Sd/-  
JUDGE**

SV