



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 1ST DAY OF AUGUST, 2024
BEFORE
THE HON'BLE MS. JUSTICE JYOTI MULIMANI
WRIT PETITION NO. 102550 OF 2017 (T-RES)**

BETWEEN:

M/S THREE 1ST ENTERPRISES,
A REGISTERED PARTNERSHIP FIRM,
REP. BY ITS PARTNER,
SHRI. IMRAN S/O IQBAL KALKOTI,
AGE: 36 YEARS, OCC: BUSINESS,
P.B.ROAD, NEAR EX.MUNCIPAL TOLL NAKA,
DHARWAD-580 001.

...PETITIONER

(BY SRI. NARAYAN.G.RASALKAR., ADVOCATE)

AND:

1. THE COMMISSIONER OF COMMERCIAL TAXES,
KARNATAKA VANIJYE THERIGE KARYALAYA,
I MAIN, GANDHI NAGAR,
BENGALURU-560 009.
2. THE ADDITIONAL COMMISSIONER
OF COMMERCIAL TAXES
(INTELLIGENCE AND COORDINATION),
VANIJYE THERIGE KARYALAYA,
I MAIN, GANDHI NAGAR,
BENGALURU-560 009.
3. THE JOINT COMMISSIONER OF
COMMERICAL TAXES (ENFORCEMENT),
VANIJYE THERIGE BHAVAN, NAVANAGAR,
HUBBALLI-580 025.
4. THE COMMERCIAL TAX OFFICER
(ENFORCEMENT-8),





VANIJYE THERIGE BHAVAN,
NAVANAGAR, HUBBALLI-580 025.

5. THE COMMERCIAL TAX OFFICER
(ENFORCEMENT-10),
VANIJYE THERIGE BHAVAN,
NAVANAGAR, HUBBALLI-580 025.
6. THE COMMERCIAL TAX OFFICER
(AUDIT-1), VANIJYE THERIGE BHAVAN,
DC CAMPUS, HUBBALLI-580 008.

...RESPONDENTS

(BY SRI. SHIVAPRABHU.S.HIREMATH., AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS.

THIS WRIT PETITION IS FILED LISTED FOR PRELIMINARY
HEARING IN 'B' GROUP, THIS DAY, AN ORDER IS MADE AS
UNDER:

ORAL ORDER

Sri.Narayan G.Rasalkar., learned counsel for the
petitioner and Sri.Shivaprabhu S.Hiremath., learned AGA for
the respondents have appeared in person.

2. The petitioner contends that it is a registered
partnership firm and running a Bar, Restaurant and Lodging in
the name and style of M/s.Three 1st Enterprises at P.B.Road,
Dharwad. The firm is duly registered under the provisions of
the Karnataka Value Added Tax Act, 2003, Central Sales Tax
Act, 1956, and the Karnataka Tax on Entry of Goods Act, 1979



with effect from 01.04.2005 with TIN No.29360024161 and is borne on the files of the Local Vat Officer, 310, Dharwad.

On the 03rd day of October 2013, the Commercial Tax Officer, (Enforcement-8) Hubballi, and the Commercial Tax Officer (Enforcement-10), Hubballi, along with their Inspectors visited the place of business of the petitioner. After disclosing their identity, they claimed that they had jointly come for the inspection of the business premises of Trishul Bar and Restaurant as per the assignment of the Joint Commissioner of Commercial Taxes (Enforcement) Hubballi. The petitioner explained that the business place does not belong to Trishul Bar and Restaurant but belongs to M/s.Three 1st Enterprises. To ascertain the true position, the petitioner demanded a copy of the assignment. However, the officers neither showed the assignment nor furnished a copy of the same, and on the contrary, they threatened the petitioner with criminal prosecution and demanded the books of accounts. Hence, the petitioner furnished the purchase bills, sales register, and sales bills voluntarily which were rightly available on the table in an open space on the business premises. Aggrieved by the action on the part of the officers, the petitioner has filed the Writ



Petition on several grounds set out in the Memorandum of Petition.

3. Learned counsel for the respective parties urged several contentions.

Counsel Sri.Narayan G.Rasalkar., in presenting his arguments strenuously urged that the petitioner - M/s. Three 1st Enterprises and Trishul Bar and Restaurant are different entities. The Tax officers came with the assignment for the inspection of the business of Trishul Bar and Restaurant. He argued by saying that the petitioner had nothing to do with the Trishul Bar and Restaurant. He vehemently contended that the officer concerned had no authority to make a sudden visit; the action taken by the tax officials was untenable in law. Counsel, therefore, submits that an appropriate order may be passed.

By way of reply, the learned AGA justified the action of the Tax Officers. He argued by saying that, in the assignment note the trader's name has been shown as M/s.Three 1st Enterprises (Trishul Bar and Restaurant). He argued by saying that the endorsement issued by the Commercial Tax Officer is just and proper. He vehemently contends that there is an



alternative efficacious statutory remedy under Section 62 of the KVAT Act, 2003, and prayed for the dismissal of the writ petition.

Heard, the contentions urged on behalf of respective parties and perused the Writ papers with utmost care.

4. The facts are sufficiently stated and do not require reiteration. The petitioner contends M/s. Three 1st Enterprises and Trishul Bar and Restaurant are different entities. The Tax Officers could not have made a sudden visit. The objection is also raised about the authority of the Tax Officers to make a sudden visit. Several contentions are urged regarding the identity of the petitioner and that of the Trishul Bar and Restaurant. It is a disputed question of fact. In general, the disputed question of fact is not investigated in a proceeding under Article 226 of the Constitution of India. As far as the endorsement issued by the Commercial Tax Officer, seeking the production of books of accounts, the petitioner has an alternative efficacious statutory remedy before the jurisdictional Joint Commissioner of Appeals by filing an appeal as per the provisions of the Act. Hence, the petitioner is at liberty to avail



the statutory remedy. The time spent before this court shall be excluded.

5. With the above observations, the Writ Petition is ***disposed of***, directing the petitioner to avail statutory remedy as provided under law.

**Sd/-
(JYOTI MULIMANI)
JUDGE**

MRP
LIST NO.: 2 SL NO.: 32