

**High Court of Karnataka- Principal Bench at Bengaluru****Daily Status**

Principal Bench at Bengaluru

**In The Court Of** :Honorable Judge**Case Number** :WP/0009182/2022XIAOMI TECHNOLOGY INDIA PRIVATE LIMITED **Versus** UNION OF INDIA**Date** : 05-05-2022

**Business** : Sri S Ganesh, learned Senior Counsel appearing for the petitioner submits that the payments of Technology royalty made to three foreign companies situated outside the India is not a contravention as specified under Section 4 of the Foreign Exchange Management Act (for short `Act&rsquo) and the said payments have been held to be lawful by the Income Tax Department and allowed the same as deduction/s and it was also held that it is a value added activity which is evident from the order passed by the Dispute Resolution Panel-2, Bengaluru consisting of three Senior Commissioners at Annexure-M. He further submits that the technology royalty payments have been made during the period 2015-16 till date through authorised dealers and in the absence of any material that the petitioner is possessing foreign exchange outside India, the impugned order passed under Section 37A of the Act is unsustainable. He further submits that the similar payments made by other manufacturers and dealers of the mobile phones in India to the very same company at USA for the same technology have not been questioned and no steps are taken against the said companies for the alleged holding of Foreign Exchange in violation of Section 4 of the Act. He further submits that the condition precedent for invoking Section 37A of the Act is that the Foreign Exchange should be lying in a location situated outside the India and should be available for bringing it back to India and in the absence of any material that the foreign exchange is possessed by the petitioner in the foreign country, the impugned order of seizure passed under Section 37A of the Act is not sustainable in law. Hence, he submits that in view of the impugned order which per se is illegal, the business of the petitioner- company is disrupted and the petitioner is also not in a position to pay the salaries/ wages to its employees. He further submits that the writ petition is maintainable without availing the alternative remedy of appeal provided under Section 19 of the Act, since the tribunal is not functioning as the vacancies to the posts are not filled up. Issue emergent notice to respondents No.1 to 5. In addition, the petitioner is permitted to serve a copy of writ petition on Sri Madhukar Deshpande, learned CGSC. Operation of the order dated 29.4.2022 passed by the 2nd respondent at Annexure-A is stayed till the next date of hearing subject to the condition that the petitioner shall operate the Bank accounts which are seized under the impugned order only for the purpose of meeting the expenses for carrying out the day today activities of the Company and this order shall not confer any right on the petitioner to make payment in the form of royalty or any other form to the companies located outside India. The interim prayer for permission to make payments to foreign companies located outside India requires to be considered only after hearing the respondents. Liberty is reserved with the respondents to seek for vacation/modification of this interim order. List this matter for consideration of interim prayer on 12.5.2022.

**Short Order** : 1-NOTICE  
**Next Purpose** : PRELIMINARY HEARING  
**Next Hearing Date** : 12-05-2022

Honorable Judge