

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 12TH DAY OF AUGUST 2020

BEFORE

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

WRIT PETITION NO.116528/2019 (T-RES)

BETWEEN

M/s THOPPIL AGENCIES,
A PROPRIETARY CONCERN AND
DEALER IN ARECANUT OWNED BY
SRI MUHAMED S/O: IBRAHI KHANEEFA,
AGE: 35 YEARS, OCC: BUSINESS,
NO.GSTIN32COFP8318NIZK,
AT 3/228, CHERAYI ROAD,
PUNNAYURKULUM, THRISSUR,
DIST: THRISSUR, KERALA.
PC 679564.

REP. BY SPECIAL POWER OF
ATTORNEY HOLDER SRI AZAS AHAMED
S/O: ABDUL GAFFAR SHAIKH,
AGE: 25 YEARS, OCC: DRIVER,
R/O: 548/2 GANESH NAGAR,
TOTIKOPPA ROAD, SIRSI-581402.
UTTAR KANNADA DISTRICT.

... PETITIONER

(BY SRI ARVIND KAMATH, SR.ADVOCATE FOR
SRI S.M.KALWAD, ADVOCATE)

AND

1. THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES, (ENFORCEMENT-2)
NAVANAGAR, HUBBALLI-580021.
2. THE JOINT COMMISSIONER OF
COMMERCIAL TAXES, (ENFORCEMENT-2)
NAVANAGAR, HUBBALLI-580021.

... RESPONDENTS

(BY SRI SHIVAPRABHU HIREMATH, AGA)

THIS PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS AND TO ISSUE WRIT OF CERTIORARI QUASHING THE IMPUGNED PENALTY ORDER PASSED UNDER SECTION 129(3) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017, BY THE RESPONDENT NO.1 ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (ENFORCEMENT-2), HUBBALLI, BEARING NO.ACCT/ENF-2/HBL/ORD 04/2019-20 DATED 25.11.2019 IN FORM GST OV 09 AS PER ANNEXURE-E BEING WITHOUT JURISDICTION AND AUTHORITY OF LAW AND ETC.

THIS PETITION COMING ON FOR HEARING INTERLOCUTORY APPLICATION, THIS DAY, THE COURT, MADE THE FOLLOWING:

ORDER

This petition is filed seeking quashing of the impugned penalty order at Annexure-E bearing No. No.ACCT/ENF-2/HBL/ORD 04/2019-20 dated 25.11.2019 in Form GST OV 09 by the respondent No.1 under Section 129 (3) of the Central Goods and Services Act, 2017 (for short 'the Act') and for other relief's.

2. I have heard Sri Arvind Kamath, learned Senior Counsel appearing on behalf of the petitioner and learned AGA for the respondents and perused the material on record.

3. In addition to making submissions with regard to the various contentions urged by the petitioner in the petition with reference to the documents and the impugned order, learned Senior counsel also submitted that the impugned order is violative of principles of natural justice. He points out that a perusal of the show cause notice at Annexure-B4 dated 13.11.2019 will indicate that only certain documents have been referred to by the respondent No.1 and that the same has been duly replied to by the petitioner vide Annexures-C and C1. However, without giving any personal hearing to the petitioner and without affording sufficient and reasonable opportunity to the petitioner, the respondent NO.1 has proceeded to pass the impugned order at Annexure-E placing reliance upon several documents which were never brought to the notice of the petitioner prior to passing of the impugned order. It is therefore, contended that apart from other legal and factual infirmities contained in the impugned order, the same is in total contravention of the principles of natural justice

and that the same is liable to be quashed on this ground alone.

4. Per contra, learned AGA appearing for the respondents would support the impugned order and contend that there is no merit in the petition, particularly in the light of the remedy by way of appeal available to the petitioner and as such, the writ petition is liable to be dismissed.

5. Having heard both sides and perused the material on record, I am of the considered opinion that without going into the legal and factual aspects of the matter, it can be seen from the impugned order at Annexure-E that several documents and circumstances which were neither referred to nor enumerated in the show cause notice at Annexure-B4 have been relied upon by the respondent No.1 in the impugned order. It is not in dispute that no opportunity of personal hearing was given to the petitioner before passing the impugned order. The material on record also indicates that several documents relied upon by the respondent No.1 in the

impugned order at Annexure-E were neither brought to the notice of the petitioner nor was he permitted to cross-examine the witnesses with reference to the said documents. Further, no opportunity to produce additional documents was given to the petitioner.

6. The aforesaid facts and circumstances will indicate that in the absence of sufficient and reasonable opportunity being granted in favour of the petitioner, the impugned order is clearly in contravention of principles of natural justice and that the same deserves to be set aside on this ground alone and the matter deserves to be remitted back to the respondent No.1 to consider and dispose off the same afresh in accordance with law after providing sufficient and reasonable opportunity to the petitioner to put forth his contentions and documents and to hear the petitioner before passing suitable orders.

7. In the result, I pass the following;

ORDER

- (i) The impugned order at Annexure-E dated 25.08.2019 is hereby quashed;

- (ii) The matter is remitted back to the respondent No.1-Assistant Commissioner for fresh disposal in accordance with law after hearing the petitioner on all aspects of the matter including the documents relied upon by the respondents and by affording sufficient and reasonable opportunity to the petitioner to contest the proceedings;
- (iii) The respondent No.1 is directed to furnish copies of all the documents relied upon by him in the impugned order and all other documents he wishes to rely upon to the petitioner;
- (iv) The respondent No.1 is also directed to dispose off the matter afresh bearing in mind the circular dated 31.12.2018 issued by the Government of India under Section 168 of the Act;
- (v) The petitioner is also at liberty to cross-examine any witness with reference to any of the documents relied upon by the respondents;

- (vi) The petitioner is also at liberty to produce the additional documents in support of his contentions;
- (vii) Having regard to the Covid-19 pandemic exigency, the respondent No.1 is directed to permit the petitioner to contest the proceedings online by Video Conferencing. However, all arrangements in this regard are directed to be made by the petitioner at his own cost;
- (viii) Having regard to the fact that the goods involved are perishable items, the respondent No.1 is directed to dispose off and conclude the proceedings within a period of one month from today;
- (ix) All rival contentions are kept open.

In view of the disposal of the petition, pending applications, if any, do not survive for consideration.

Sd/-
JUDGE

msr