

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MAY, 2019

BEFORE

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT PETITION NO.20007 OF 2019 (T-RES)

BETWEEN:

M/s. Sri. Sharada Ganapathi Cold
Storage Private Limited,
S. No.116, Nannewala Village,
Bellari Road,
Challakere – 577 522
Represented by
Potru Surendra Babu,
Authorized Representative.

... Petitioner

(By Sri. G. Shivdas, Senior Counsel for
Sri. M.S. Nagaraja, Advocate)

AND:

1. The Commissioner of Commercial Taxes
Department of Commercial Taxes,
Vanijya Therige Karyalaya,
Kalidasa Marg, Gandhi Nagar,
Bengaluru – 560 009.

2. The Assistant Commissioner of
Commercial Taxes,
Office of the Additional Commissioner
Of Commercial Taxes (Enforcement),
Koramangala,
Bengaluru – 560 047.

... Respondents

(By Sri. Vikram Huilgol, HCGP)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the impugned order of prohibition dated 21.03.2019 vide Annexure-A and direct respondent Nos.1 and 2 to release the detained goods forthwith along with exemplary damages and costs of litigation to the petitioner.

This writ petition coming on for Orders this day, the court made the following:

ORDER

Heard the learned counsel for the parties.

2. The petitioner has challenged the order of Prohibition dated 21.03.2019 at Annexure-A to the writ petition seeking directions to respondent Nos.1 and 2 to release the detained goods forthwith along with exemplary damages and costs of litigation to the petitioner.

3. The petitioner is claiming to be an assessee, providing service of renting space in the cold storage to the agriculturists and traders for storage of agricultural produce like ground nut seeds, lentils, ginger, chillies, onion seeds, coriander seeds, toor, moong, etc., The Assistant Commissioner of Commercial Taxes (Enforcement), Challakere having

inspected the business premises of the cold storage to ascertain the nature of activity undertaken by the petitioner has appraised that some goods are not agricultural produce and are liable to tax under the GST, pursuant to which, the petitioner has obtained registration under the CGST/KGST Act, 2017 and appears to have paid the taxes relating to the said activity carried on by it.

4. It is the grievance of the petitioner that respondent No.2 violating the principles of natural justice issued the notice dated 21.03.2019 proposing to confiscate the goods and has simultaneously passed the prohibition order detaining the goods without affording an opportunity to file written reply and arbitrarily detaining the perishable goods belonging to third parties without there being any liability to make the payment of taxes on the said detained goods by the petitioner.

5. Learned Senior Counsel, Sri. G. Shivdas appearing for the petitioner, reiterating the grounds urged in the writ petition, would submit that pursuant to the filing of the writ petition certain orders have been passed by respondent No.2 after holding enquiry relating to the goods stored in the cold storage maintained by the petitioner herein and the said orders have been placed on record along with statement of objections filed on behalf of respondent-State. However, relating to copy of summons not being served on some other persons/dealers who have stored the goods and the addresses available with the petitioner, being made known to the respondent-revenue, the respondent-revenue has requested the petitioner to serve the copy of the summons and submit the acknowledgment thereof. In the circumstances, the petitioner would be deprived of carrying his legitimate business in accordance with law, if the enquiry proceedings are spread over for a long time and the responsibility is

fastened on the petitioner to serve the copy of the summons on the unserved dealers of the persons.

6. Learned counsel for the respondents submits that pursuant to the Prohibition order impugned herein, enquiry has been conducted relating to the goods stored in the cold storage inasmuch as the taxes liable to be paid relating to the said goods. It is submitted that out of several persons who have stored the goods in the cold storage, some persons have appeared and produced some relevant documents and some other persons who have not approached respondents yet, can even at this stage come forward to show relevant documents to prove ownership of the goods, in which case, respondent No.2 will be duty bound to release the goods.

7. In view of the enquiry proceedings having been initiated by respondent No.2 to ascertain the genuineness of the ownership of the goods stored in

the cold storage in question and certain release orders being passed, this Court is of the considered opinion that the ends of justice would sub-served in directing respondent No.2 to conclude the enquiry relating to the goods in question in an expedite manner, in any event, not later than two weeks from the date of receipt of certified copy of this order and is ordered accordingly. This order is required to be passed keeping in mind that the petitioner is providing the cold storage facility for different traders/persons and is also a registered dealer under the KGST and CGST Act, 2017. Accordingly, it is necessary for the authorities to release prohibition order in accordance with law, in an expedite manner.

3. It is made clear that the address available with the petitioner having been forwarded to respondent No.2, necessary action shall be initiated by respondent No.2 for service of summons on the unserved persons/dealers. However, the petitioner shall co-operate for the service of summons on the

unserved persons/dealers and thereafter suitable action shall be taken by respondent No.2 in accordance with law in an expedite manner as aforesaid.

With the aforesaid observations and directions, the writ petition stands disposed of.

**Sd/-
JUDGE**

MBM