

KARNATAKA HIGH COURT

4/19/23, 7:19 PM

No.- W.P.NO.100514/2021 (T-RES)

Sreelakshmi Transport-Appellant

Versus

The Joint Commissioner of Commercial Taxes Appeals, The Commercial Tax officer Enforcement-4, The Deputy Commissioner of Commercial Taxes-Respondent

HONOURABLE MR. JUSTICE SACHIN SHANKAR MAGADUM

Date of order: 09/03/2021

Appearance:

Narayan G. Rasalakar, Adv. for the Petitioner.
Dhyan Chinnappa, Ag and Shivprabhu S. Hiremath, Aga for the Respondent.

In Favour of Assessee

Issue Involved:The petitioner/transporter challenged the order passed by appellate authority on the grounds that the order has been passed without following the principles of natural justice i.e. without providing the proper opportunity of being heard.**Held at:**The petitioner/transporter challenged the order passed by appellate authority. The petitioner prayed for directions to respondent to admit the appeal and decide the appeal on merits by providing adequate opportunity of hearing to the petitioner. The petitioner submitted that the respondent having commenced proceedings under [Section 129](#) have simultaneously proceeded to initiate proceedings under Section 130 and has issued notice for confiscation on 21.09.2020 and thereafter have passed ex parte confiscation order on 12.01.2021. The petitioner preferred an appeal but the appellate authority in gross violation of principles of natural justice has hurriedly passed the impugned endorsement.

The court observed that the order under challenge is passed without affording any opportunity to the petitioner. The petitioner has deposited the entire penalty tax and fine before the competent authority. The Hon'ble High Court set aside the order and remitted the matter back to the respondent to hear afresh by affording opportunity to the petitioner. The court directed the respondent to consider the application filed by the petitioner seeking release of goods and vehicle and directed the petitioner to appear before the respondent on 01.04.2021.

JUDGMENT

The captioned writ petition is filed by the petitioner/transporter challenging the order passed by respondent No.1/appellate authority. The petitioner has also sought writ in the nature of mandamus to issue directions to respondent No.1 to admit the appeal and decide the appeal on merits on all the points raised in the appeal by providing adequate opportunity of hearing to the petitioner.

2. Facts leading to this case are as under: The petitioner is running a transport business in the name and style of Sreelakshmi Transport as its sole proprietor. It is further stated that it is duly registered under GST Laws in the state of Kerala under NO.32BQPN 8124 M2 ZE. The case of the petitioner is that, one M/s Arvind Traders, Kasargod enquired about the willingness of the petitioner for transport of consignment of Arccant of 17500 Kg worth Rs. 49,00,000/- and GST at Rs. 2,45,000/- with total invoice value of Rs. 51,45,000/- from him to M/s Rohini Traders, Delhi. The petitioner ascertained the availability of vehicle plying return to Delhi from Kerala and found that one conveyance bearing RJ 06 BG 3838 is available. Having ascertained the availability of the above said vehicle, the consignee raised his invoice and the same was cross-verified by the petitioner. Petitioner has stated that, it was found to be in existence since 26.03.2020. The petitioner further stated that he has also verified GST of the consignee M/s Rohini Traders, Delhi and thereafter, collected the goods and invoice. It is further stated that consignee and owner of the goods raised E-way bill NO.511 9927 8944 on 01.09.2020 and handed over to the petitioner as per Annexure-D.

3. It is stated that when the goods and conveyance being transported by the petitioner was proceeding from Kasargod to Delhi via Karnataka, at Kushtagi National Highway No.50, the Commercial Tax Officer (Enforcement) 4 Ballari intercepted the goods and conveyance and demanded the production of invoice, E-way bill and carrier note in exercise of his powers under [Section 68](#) read with [Section 129\(1\)](#) of the CGST Act. It is the specific case of the petitioner that the driver of goods and conveyance handed over to Officer the original invoice, E-Way bill and carrier note. It is also stated that authorities, namely the Commercial Tax Officer, Enforcement 4, Ballari obtained a statement of the driver as per Annexure-F.

4. The petitioner has further stated that in spite of repeated demand by the driver, however, the concerned officer ordered for physical verification of the goods and conveyance. The petitioner has also stated that authorities have passed detention order on 08.09.2020 and being aggrieved by the same, the consignee made a representation to the Commercial Tax Officer, Ballari to release the goods.

5. It is further stated that consignee submitted representation expressing his willingness to offer security as per [Section 129\(1\)](#) of CGST Act. It is also stated in the present writ petition that consignee aggrieved by the detention order passed under [Section 129](#), has approached this Court in W.P.No.147799/2020 and the same is pending for consideration.

6. The grievances of the petitioner is that the respondent-authorities having commenced proceedings under [Section 129](#) have simultaneously proceeded to initiate proceedings under [Section 130](#) and has issued notice for confiscation on 21.09.2020.

7. The grievance of the petitioner is that the respondent-authorities without conducting fair and proper enquiry and without giving adequate notices to all stake holders and aggrieved persons has passed impugned ex parte confiscation order on 12.01.2021.

8. Being aggrieved by the said order, the present petitioner who is the transporter has preferred appeal in Appeal No. JCCT (AP) DVG/T-1027/2020-21. The grievance of the petitioner before this Court is that the Appellate Authority in gross violation of principles of natural justice has hurriedly passed the impugned endorsement. The impugned endorsement on this sole counts liable to be set aside by this Court.

9. The petitioner in support of his contention has raised several grounds in the present writ petition.

10. In the present case on hand, the learned Additional Advocate General, Sri Dhyan Chinnappa appearing for respondents would fairly submit to this Court that the order under challenge may not be sustainable and he has no objection if the order under challenge passed by the Appellate Authority is set aside and the same is remitted back to respondent No.1 to hear the matter afresh by affording an opportunity to the present petitioner herein.

11. The submission is taken on record. Since prima facie the order under challenge is passed without affording any opportunity to the petitioner, the impugned order/endorsement issued by the 1st respondent as per Annexure-T is not sustainable and the same is set aside. The matter stands remitted back to the 1st respondent to hear afresh by affording opportunity to the present petitioner herein.

12. At this juncture learned counsel appearing for the petitioner submits that, the transporter has deposited the entire penalty tax and fine before the competent authority. In that view of the matter, the Appellate Authority shall be directed to consider the application filed by the petitioner seeking release of goods and vehicle. I find some force in the submission made by the learned counsel for the petitioner. The said submission is taken on record.

13. The 1st respondent authority is directed to first hear the petitioner on application filed seeking release of goods as well as vehicle. The said application shall be dealt in accordance with law. The Appellate Authority shall pass appropriate orders on the application and thereafter proceed to hear the main matter in accordance with law after providing reasonable opportunity to the present petitioner herein.

14. With these observations, the writ petition stands disposed off. The petitioner before this Court is directed to appear before the 1st respondent on 01.04.2021. All the contentions are kept open.