

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.495 of 2024

R.G. Group having office at Malay Nagar, Bypass Road, Agartala, West Tripura, Pin-799004 represented by Proprietor Mr. Rakesh Debnath, S/o-Sri Ranjit Kumar Debnath, R/o-North Banamalipur, B.K. Road, Agartala, P.S.-East Agartala, Dist.-West Tripura, 799001

.....Petitioner(s);

Versus

1. Union of India represented by the Secretary, Ministry of Finance, Government of India, North Block, Raisina Hills, New Delhi-110001
2. The State of Tripura, represented by Secretary, Finance Department, New Capital Complex, PS-NCC PS, Agartala, West Tripura
3. Commissioner of State Tax, Government of Tripura, P.N. Complex, Gurkhabasti, Agartala, West Tripura
4. The Assistant Commissioner of State Taxes, Enforcement Wing-III, Udaipur, Gomati Tripura
5. Superintendent of State Taxes, Government of Tripura, Enforcement Wing-III, Udaipur, Gomati Tripura
6. Inspector of State Taxes, Government of Tripura, Enforcement Wing-III, Udaipur, Gomati Tripura

.....Respondent(s).

For Petitioner(s) : Mrs. S. Deb (Gupta), Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Deputy SGI,
Mr. P. Gautam, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

24/07/2024

Heard Mrs. S. Deb (Gupta), learned counsel for the petitioner and Mr. P. Gautam, learned counsel for the respondents-revenue.

2. Petitioner claiming himself to be the transporter who is under a franchisee agreement with Merchant Express Logistic Private Limited, Guwahati to carry out pickup and delivery service at 'Tripura Sector' provided the vehicle bearing No.TR-01-AH-1562 for delivery of the goods from its warehouse at Bypass Road, Dukli, West Tripura for delivery at Udaipur, Gomati Tripura. The goods were unloaded from vehicle No.AS-01-MC-7350 at

the petitioner's go-down. According to the petitioner, due to disruption of electric supply, petitioner could not timely extend the E-Way bills which ought to be updated on or before 11.59 PM on 07.07.2024 as per the E-Way bill which expired on that date and time. While on course of delivery, the vehicle was intercepted on 09.07.2024 at 2:16 PM at Bagma, Gomati Tripura by respondent No.6-Inspector of State Taxes. Thereafter the proceedings under Section 129 of the TSGST Act were initiated by issuance of GST MOV-01 upon the Driver on 09.07.2024 and GST MOV-02 on the same date. On 10.07.2024, the respondent No.6 issued physical verification report in Form GST MOV-04 to the said driver. Respondent No.6 further issued Form GST MOV-06 mentioning reasons for the movement of taxable goods without E-Way bill in contravention of the provisions of TSGST Act, 2017 and the Rules. These MOVs are annexed as Annexure-5 to 8. On 11.07.2024, respondent No.6 issued Form GST MOV-07 under Section 129(3) of the CGST Act, 2017 and the TSGST Act, 2017 read with Section 20 of the IGST Act, 2017 [Annexure-9].

3. Petitioner claiming himself to be the transporter made a request to respondent No.6 on 16.07.2024 to upload EWB 03 Part A & B on the common portal upon issuance of GST MOV-02 and GST MOV-04 as per circular No.41/15/2018-GST dated 13.04.2018. Since no decision has been taken on the show cause notice under GST MOV-07 neither any response to the petitioner's reply on the show cause notice on 18.07.2024 has been made by the respondent No.6, petitioner has approached this Court with a prayer to set aside the proceedings arising upon issuance of GST MOVs and the show cause notice

GST MOV-07 dated 11.07.2024. Petitioner has also prayed for release of the vehicle bearing registration No.TR-01-AH-1562 along with the goods/consignment forthwith.

4. Mrs. Deb (Gupta), learned counsel for the petitioner, submits that the respondent No.6 has failed to comply with the guidelines prescribed in the circular dated 13.04.2018 issued by the Central Board of Indirect Taxes and Customs [Annexure-11] by failing to upload the relevant GST MOV notices upon the portal for the petitioner-transporter to take notice of and submit his response. Learned counsel for the petitioner further submits that the adjudication order on GST MOV-07 has further not been passed within seven days time. A fresh date has been indicated by respondent No.6 i.e. 30.07.2024 vide communication dated 23.07.2024 which is addressed to the proprietor of the petitioner-firm and the person in charge of the conveyance/driver Shri Chandan Paul. It indicates that the request for personal hearing made by the petitioner on 18.07.2024 has been acceded to and the date for personal hearing has been fixed on 30.07.2024 at 12.30 PM; failure to comply with may lead to finalization of the Demand Order in MOV-09 without any further reference as per the provision of law. Learned counsel for the petitioner also submits that initiation of proceedings under Section 129 of the GST Act is suffering from technical violations. No adjudication order has either been passed upon hearing the petitioner-transporter. Meanwhile the consignment and the vehicle both remained in the custody of the detaining authority. Therefore, the reliefs prayed for may be allowed.

5. Mr. P. Gautam, learned counsel for the respondents-revenue, submits that since the matter has been taken up today, though instructions are not available but on the basis of the pleadings on record with enclosed annexures, it is clear that the proceedings pursuant to detention of the vehicle moving without a valid E-Way bill are under adjudication. Therefore, this Court may not interfere in the pending proceedings. He further submits that if the petitioner claims himself to be the transporter of the consignment as it appears from his reply dated 18.07.2024 before the respondent No.6, he may duly appear on the date fixed and explain his position in law as well as on facts. It is always open for the petitioner or the person in charge of the conveyance to seek release of the consignment pending adjudication under Section 129 of the TSGST Act, 2017 upon furnishing a security equivalent to the amount payable under Clause (a) or Clause (b) thereof in such form and manner as may be prescribed.

6. We have considered the submission of learned counsel for the parties. The relevant facts disclosed in the foregoing paragraphs give an impression that proceedings for violation of the provisions of Section 129 of the TSGST Act have been initiated by respondent No.6 during inspection and detention of the vehicle bearing No.TR-01-AH-1562 on 09.07.2024 allegedly loaded for delivery of consignment from the warehouse of the petitioner at Bypass Road, Dukli, West Tripura to Udaipur, Gomati Tripura after the E-Way bill had expired on 07.07.2024. This fact does not appear to be in dispute even as per the reply submitted by the petitioner at Annexure-13. The relevant MOV-01, MOV-02 and MOV-07 also indicate that there was a mismatch in the

number of the vehicle with the vehicle number mentioned in the E-Way bill which had expired. It further appears that the petitioner has also been intimated on his request the next date of physical hearing on 30.07.2024. As such, the proceedings are underway. On these facts, therefore, this Court is not required to interfere in the matter since the proceedings are inchoate. Needless to say, the authorized officer/respondent No.6-Inspector of State Taxes has to conclude the proceedings in accordance with law upon giving opportunity of physical hearing to the petitioner and/or the driver of the conveyance within the stipulated time. However, if the petitioner-transporter or the driver fails to cooperate in the matter, the respondent No.6 shall take a decision in accordance with law in a time bound manner. Meanwhile if the petitioner is able to furnish security as required under Section 129 of the TSGST Act, 2017 before the authorized person/detaining authority, the respondent No.6 would consider and release the consignments on being satisfied with the security so furnished in any encashable form.

7. With these observations and directions, the instant writ petition is disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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