IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.4106 of 2019
and
W.M.P.No.4609 & 4613 of 2019

G.Murugan ....Petitioner

--Vs--

1. Government of India
   Rep.by the Commissioner of Commercial Taxes
   O/o Commissioner of Commercial Taxes,
   Ezhilagam, Chepuk, Chennai

2. The State Tax Officer/Proper Officer,
   Roving Squad-V,
   Enforcement (North), Chennai-6 ...Respondents

PRAYER in WPs: Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records in connection with FORM GSTMOV-06 dated 04.02.2019 issued by the 2nd respondent and quash the same.

For Petitione : Mr.K.Krishnamoorthy

Respondent : Mr.Dhana Madhri
Government Advocate

O R D E R

This writ petition challenges FORM GSTMOV-06 dated 04.02.2019 issued by the 2nd respondent, the State Tax Officer/Proper Officer Roving Squad-5 Enforcement (North) on various grounds.

2. Ms.Dhanamadhri, learned Government Advocate took notice on behalf of the respondents on 12.02.2019 and sought time to take instructions.

3. Heard Mr. K.Krishnamoorthy, learned counsel for the petitioner and Ms.Dhanamadhri, learned Government Advocate for the respondents. By consent of learned counsel on both sides, the writ petition is taken up for final hearing and disposal at the stage of admission, finally.

4. The admitted facts are that the petitioner had carried goods of Schaeffler India Ltd, from its warehouse at Chettipedu, Sriperumbudur, Tamil Nadu to Sriperumbudur. According to the petitioner, the goods were accompanied by all required documents, such as tax invoices , E-Way bills and delivery Challan. The value of the goods was Rs.8,63,595/-.

5. While this was so, the vehicle was intercepted by the officials of the Commercial Taxes, Department who proceeded to cause inspection of the same. A statement had been recorded in Form GST Mov-01, from the driver who was incharge of the goods in conveyance. Admittedly, the statement at Column 10 thereof, admits that there is a mistake in the vehicle number mentioned. Thereafter, Form GST Mov-02, ordering the physical verification/inspection of the conveyance, goods and documents was issued. The order, dated 04.02.2019, though signed by the Proper Officer is blank in so far as all relevant fields are concerned.

6. The Form, in toto, is extracted herein for ready reference:

Form GST MOV-02

ORDER FOR PHYSICAL VERIFICATION/INSPECTION OF THE CONVEYANCE, GOODS AND DOCUMENTS

The goods conveyance bearing no.TN19U/7873 carrying goods was intercepted by the undersigned STO RS-I (Designation of the Officer), on 04.02.2019 at PM at 4.00 (Place). The owner/driver/person-in-charge of the goods conveyance has:

1. Failed to tender any document for the goods in movement, or

2. Tendered the documents mentioned in the Annexure to FORM GST MOV-01 for verification.

Upon verification of the documents tendered, the undersigned is of the opinion that the inspection of the goods under movement is required to be done in accordance with the provisions of sub-section (3) of section 68 of the Central Goods and Service Tax Act, 2017 read with State/UT goods and Services Tax Act, 2017 or under section 20 of the integrated Goods and Services Tax Act, 201 for the following reasons.

	The Owner/driver/person-in-charge of the conveyance has not tendered any documents for the goods in movement.
	Prima Facie the documents tendered are found to be defective

	The Owner/driver/person-in-charge of the conveyance has not tendered any documents for the goods in movement.
	The genuineness of the goods in transit (its quantity etc) and/or tendered documents requires further verification
	E-Way bill not tendered for the goods in movement
	Others (Specify)

Hence you are hereby directed,-
(1). To station the conveyance carrying goods at_______ (place) at your own risk and responsibility,
(2) to allow and assist in physical verification and inspection of the goods in movement and related documents,
(3) not to move the goods and conveyance from the place at which it is stationed until further orders and not to part with the goods in question.

Proper Officer
sd/-

7. Pursuant thereto, the impugned order has been issued on 04.02.2019 and the order in the prescribed Form is also extracted below:

GOVERNMENT OF INDIA
FORM GST MOV-06
ORDER OF DETENTION UNDER SECTION 129(1) OF THE CENTRAL GOODS AND SRVICES TAX ACT, 2017 AND THE STATE/UNION TERRITORY GOODS AND SERVCES TAX ACT, 2017/UNDER SECTION 20 OF THE INTEGRATED GOODS AND SERVICES TAX ACT,2017

The goods conveyance bearing No.TN19U7873 was intercepted and inspected by the undersigned on 04.02.2019 at 04.00 (place and time) P.M. at the time of interception, the owner/driver/person in charge of te goods/conveyance is Shri G.Murugan, S/o A.Gandhi.

	The owner/driver/person in charge of the goods conveyance Shri________________________ has not tendered any documents for the goods in movement.
	Prima Facie, the documents tendered are found to be defective.
	The genuineness of the goods in transit (its quantity etc) and/or tendered documents requires further verification
	E-Way bill not tendered for the goods in movement
	Others (Specify)

For the above said reasons, an order for physical verification/inspection of the conveyance, goods and documents was issued in Form GST Mov-02 dated 04.02.2019 and served on the owner/driver/person in charge of the conveyance. A physical verification and inspection of goods in movement was conducted on __________ by ________ (name and designation) in the presence of the owner/driver/person in charge of the goods in (name and designation) in the presence of the owner/driver/person in charge of the conveyance Shri___________ and a report was drawn in FORM GST MOV-04. The follwing discrepancies were noticed.

In view of the above discrepancies, the goods and conveyance are required to be detained for further proceedings. Hence, the goods and above conveyance are detained by the undersigned and the driver/person in charge of the conveyance is hereby directed to station the conveyance at Sriperumbudur Tool Sale (place) at his own risk and responsibility and not to part with any goods, till the issue of release order in FORM GST MOV-05.

State Tax Officer/Roving Squad-V
Enforcement (North), Chennai-6

To,
Shri G.Murugan S/o.A.Gandhi
Driver/Person in Charge
Vehicle/Conveyance No:TN19U7873
Address: Manthahveli Street,
Annamangalam Post,
Gingee, Villupuram District

8. The provisions of Section 129 of the Goods and Services Tax, 2017 provide for detentions, seizure and release of goods and conveyances in transit in a situation where the transit is in contravention of the provisions of the Act or the Rules made therein. Section 129(1) is extracted herein.

129 Detention, Seizure And Release Of Goods And Conveyances In Transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,- (a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two

per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty; (b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty; (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.'

9. Thus, detention/seizure is provided for only in cases where the Department is prima facie convinced that there is a contravention of the provisions of the Act and the Rules. The order of detention has to reflect the reasons for which the seizure of the conveyance/goods has been effected.

10. A perusal of the impugned order reveals that none of the relevant fields have been ticked and almost all fields have been left blank. It is thus entirely unclear as to what statutory provision or Rule the petitioner has contravened. A pointed query put in this regard to the learned Additional Government Pleader appearing on behalf of the respondents also elicits no details and he is also unable to enlighten the Court on what the contraventions might be.

11. Admittedly, in the sworn statement recorded from the lorry driver, a mistake had crept in, in the mentioning of the lorry number as TN 19 U 7857 instead of TN 19 U 7873. One assumes this to be a reason for the detention. However, detention of the conveyance and goods is an extreme step that seriously prejudices an assessee and it is incumbent upon the statutory authority/the Proper Officer arrayed as respondent No.2, to have made mention of the contravention in the field provided in the impugned order for such purpose. This has not been done.

12. Though Section 107 of the Act provides for appeals or revisions that may be filed by any person aggrieved by any decision or order passed under this Act by an adjudicating authority, I am not inclined, in the circumstances of the present case, to relegate the petitioner to the statutory remedy provided. Any appeal that the petitioner might file would have to assume the contraventions that the impugned order is based

upon since the impugned order is incomplete and wholly non-speaking, leaving even mandatory fields in the order, blank.

13. In the light of the above discussion, I am of the view that the present order of detention cannot be sustained and the same is quashed. The vehicle shall be released forthwith upon receipt of a copy of this order. The writ petition is allowed and connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To
1. The Commissioner of Commercial Taxes
O/o Commissioner of Commercial Taxes,
Ezhilagam, Chepuk, Chennai

2. The State Tax Officer/Proper Officer,
Roving Squad-V,
Enforcement (North), Chennai-6

+1 CC to Mr.K.Krishnamoorthy, Advocate sr 13925.
+1 CC to Spl. Govt. Pleader(T) sr 14286.

W.P.No.4106 of 2019
and
W.M.P.No.4609 & 4613 of 2019

SV(CO)
SP(21/03/2019)