IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.23924 of 2019
and W.M.P.No.23774 of 2019

Sri Mani Transports
Represented by its Proprietor
A.Suresh Kumar
Soolagri
Krishnagiri District ... Petitioner

Vs.

The State Tax Officer
Inspection Cell-5
Office of the Deputy Commissioner (ST)
Intelligence
Salem ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in GST MOV 01 SI.No.3/2019-2020 dated 30.07.2019 and quash the same as being without jurisdiction and authority of law and further direct the respondent to release the consignment with vehicle detained on 30.07.2019.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.V.Haribabu
Additional Government Pleader

ORDER

Mr.R.Senniappan, learned counsel on record for writ petitioner and Mr.V.Haribabu, learned Additional Government Pleader, who has accepted notice on behalf of sole respondent, are before this Court.

2.A notice dated 30.07.2019 issued by the respondent under Section 68(3) of the 'Tamil Nadu Goods and Services Tax Act, 2017' ('TNGST Act' for brevity) has been called in question in the instant writ petition and the same shall hereinafter be referred to as 'impugned notice' for brevity.

3.Adverting to Section 129(1)(b) of TNGST Act, learned counsel for writ petitioner submitted that on payment of applicable tax and penalty equal to 50% of the value of the goods, if paid by the transporter (in cases where owner of the goods does not come forward for such tax and penalty) the vehicle and consignment ought to have been released, but in the instant case, under pain of detention, the respondent has collected the entire tax liability and learned counsel for writ petitioner asserts that this has been done though the documents to show payment of entire tax liability has been shown. It is also submitted by learned counsel for writ petitioner that, according to the respondent, this has been done because the owner of the goods had allegedly generated 'e' way bills without supplying goods in the previous assessment years.

4. The moot question, according to learned counsel for writ petitioner is, the transporter cannot be proceeded against even if the allegations against the owner of the goods i.e., dealer under TNGST Act, are true.

5. However, in the instant case, what is of significance is, State counsel submits, on instructions, that the vehicle concerned, namely Truck with Registration No.TN 29 BD 2891 together with the entire consignment has since been released. On instructions, it is submitted with specificity by learned State Counsel that truck with the consignment has been released on 20.08.2019 at 08.30pm. This is recorded.

6. Under the aforesaid circumstances, it is submitted that the impugned notice has now culminated in proceedings dated 20.08.2019, which have been made under Section 129(3) of TNGST Act. It is submitted that the proceedings have been served.

7. Be that as it may, a photocopy of the proceedings has been handed over by the State counsel to the learned counsel for writ petitioner.

8. In these circumstances, learned counsel for writ petitioner submits that he is entitled to assail the aforesaid proceedings inter alia by way of an appeal / revision under Sections 107 /108 of TNGST Act.

9. As the vehicle and the consignment have since been released, this writ petition is disposed of preserving the rights of the writ petitioner to assail the aforesaid proceedings dated 20.08.2019 either by way of an appeal under Section 107 of TNGST Act or by way of a revision under Section 108 of TNGST Act. If the writ petitioner choses to assail the

aforesaid proceedings in any one of the aforesaid manners, the Appellate or Revisional Authority, as the case may be, shall consider the matter on its own merits and in accordance with law. It is made clear that no opinion is expressed on the merits of the matter. All questions are left open and this order will not impede legal proceedings, if any, before the Appellate Authority or Revisional Authority. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer,
Inspection Cell-5,
Office of the Deputy Commissioner (ST),
Intelligence,
Salem.

+1cc to the Special Government Pleader (Taxes) Sr.73491
+1cc to Mr.R.Senniappan, Advocate Sr.72870

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