IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

Writ Petition No.1431 of 2020
WMP.Nos.1695 & 1696 of 2020

M/s. Ideal Movers Private Limited,
Represented by its Authorized Signatory
Mr.V.Sathyamoorthy ...Petitioner

Vs.

The State Tax Officer, (ENF)
Roving Squad
Vellore ...Respondents

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the respondent pertaining to the impugned proceedings dated 17.01.2020 in Form GST MOV-01 and quash the same.

For Petitioner : Mr.Raveendran B.

For Respondent : Mr.Mohammed Shafiq
Special Government Pleader

O R D E R

The petitioner is a transporter and had been engaged to transport a consignment by Essar Steel India Limited from Kancheepuram District to one Neel Metal Products Ltd. situated at Krishnagiri District. Essar Steel and Neel Metal are referred to as 'consignor' and 'consignee' hereafter.

2. The consignment was accompanied by invoices. An e-way bill had been generated on 12.01.2020 at 7:23 p.m., valid till 16.01.2020. However, the lorry had broken down on 13.01.2020 with major gear box damage near Vellore and

was thus lying in Vellore at one Lawrence Automotive Private Limited, who vide certificate dated 16.01.2020 confirms this position also stating that the delay in carrying out the repair was on account of the intervening Pongal holidays.

3. After repair, the lorry proceeded to deliver the goods to the destination, however, accompanied by the e-way bill that had expired/lapsed on 16.01.2020 itself. The lorry was intercepted at Vellore and detained for non-possession of valid e-way bill.

4. One of the grounds taken by the petitioner is that no valid Goods Detention Notice has been issued by the respondent. However, records that were summoned reveal that a notice in terms of Section 129(3) of the Goods and Service Tax Act, 2017 (in short 'Act') has been issued on 17.01.2020 and served on the lorry driver, one Mr.Deepak Kumar Singh. On being confronted with these facts, the petitioner does not pursue this ground thereafter.

5. What remains is the question of quantifying the remittance required, conditional upon which, the goods are liable to be released. For this purpose, I may refer to the provisions of Section 129 of the CGST Act dealing with the procedure for '*detention, seizure and release of goods and conveyances in transit*' reading as follows:

> ***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 and seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyance.

(3)The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

6. Section 129 applies in situations where there are contraventions of the provisions of the Act or Rules in the conveyance of goods by transport. Section 129 deals with two situations; it provides, in Section 129(1)(a), for the release of the goods detained/seized *where the owner of the goods has come forward to pay* (i) the applicable tax as well as penalty equal to one hundred per cent. of the tax payable or (ii) where the goods are exempt from tax, an amount equal to two per cent. of the value of the goods or twenty-five thousand rupees, whichever is less. We are concerned with 129(1)(b), that deals with a situation *where the owner of the goods has not come forward to pay the tax and penalty,* thus necessitating the transporter to pay applicable tax, in addition to penalty equal to 50% of the value of the goods, reduced by the tax paid.

7. Some discussions took place on the phrase *owner of the goods coming forward/not coming forward to pay tax and penalty* and whether the phrase *come forward* could include an *offer* by the consignor to make the payment. However, since clauses (a) and (b) of sub-section (1) commence with the phrase *on payment*, it is not sufficient for the consignor to merely make an offer or undertake to remit the tax as in the present case, but actually remit the payment.

8. Section 129 is a complete code for the purpose of addressing all violations committed in transit leading to detention, seizure and release of goods and brings within its sweep all such contraventions, irrespective of the gravity of the violation itself. This observation is made in response to the submission of the petitioner that the offence in this case is only the lapsing of e-way bill, and that too for bonafide reasons, and this offence may not be viewed very harshly. I may, in this regard refer to Chapter 16 of the Central CST Rules 2017, setting out the E-way Rules in Rule 138. The second proviso under Rule 138(10) permits a transporter to extend the validity of the expired e-way after updating the details in the relevant Form and this benefit would be available in a case such as the present.

9. In fine, the amount to be remitted would, in terms of Section 129(1)(b), be Rs.86,700/- each towards CGST and SGST. As for penalty, the petitioner enjoys the benefit of Circular no.10 of 2019 dated 31.05.2019 where at para 10, the Commissioner reduces the penalty payable in certain circumstances to Rs.5000/-. Mr.Shafiq agrees that the case on hand would be covered by this beneficial provision. Thus upon remittance of the taxes of a sum

of Rs.86,700/- each towards Central and State Taxes and penalty of Rs.5000/-, the consignment shall be released forthwith.

10. This writ petition is disposed in the aforesaid terms. Consequently, connected miscellaneous petitions are closed. No costs.

24.01.2020

Index : Yes/No
Speaking Order/Non speaking Order
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Note: Issue order copy on 27.01.2020.

To

The State Tax Officer, (ENF)
Roving Squad
Vellore

DR. ANITA SUMANTH, J.

Writ Petition No.1431 of 2020
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27.01.2020