IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.25774 & 25776 of 2021
(Through Video Conferencing)

1.C.Ranganathan ...Petitioner in W.P.No.25774 of 2021

2.S.Arivuselvan ...Petitioner in W.P.No.25776 of 2021

Vs

1. The Commissioner of Commercial Tax,
Ezhilagam, Chepauk, Chennai - 600 005.

2. The State Tax Officer,
Inspection Cell-V, Deputation for Roving Squad-II,
Salem, No.2, Ground Floor,
Commercial Tax Department,
Hosur - 635 109. ...Respondents in both W.Ps

Prayer in W.P.No.25774 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the second respondent to release the conveyance and goods bearing No.TN-52-B-6305 which was confiscated through Form GST MOV-11 in Order No.14/2021-2022 dated 24.08.2021 by issuing release order in FORM GST MOV-05.

Prayer in W.P.No.25776 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the second respondent to release the conveyance and goods bearing No.TN-39-Y-6799 which was confiscated through Form GST MOV-11 in Order No.15/2021-2022 dated 24.08.2021 by issuing release order in FORM GST MOV-05.

For Petitioners (In both W.Ps) : Mr.J.Ashish

For Respondents (In both W.Ps) : Mr.Richardson Wilson Additional Government Pleader

COMMON ORDER

By this common order, both the writ petitions are being disposed of.

2. The petitioners have allowed the vehicles for transport of goods by the consigner who had allegedly used/expired e-way bills to evade tax. These vehicles were seized along with the consignments of goods loaded by the consigner on 13.08.2021.

3. The petitioners who are the owners of the vehicles state that 10% of the tax has been paid pursuant to an order passed under Section 129 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as the TNGST Act) and therefore no further amounts are required to be paid and the vehicles along with the consignments should be released.

4. Opposing the prayer, the learned Additional Government Pleader for the respondents submits that though there is no direct evidences to substantiate that the petitioners are regularly involved in transport of goods of the consigner namely M/s.Prime Gold International Private Limited, who has a known track record of using expired e-way bill to evade tax, nevertheless, the impugned orders which have been passed under Section 130 of the TNGST Act, 2017 and the CGST Act, 2017 demands a sum of Rs.2,46,248/- from the petitioner in W.P.No.25774 of 2021 and a sum of Rs.2,31,508/- from the petitioner in W.P.No.25776 of 2021 should be paid.

5. The Additional Government Pleader further submits that 10% of the amount has been deposited by the consigner of the goods only represents the value of the goods seized and detained in the tax invoices and were not on the value of the track which have been seized and ordered to be confiscated vide impugned orders. It is submitted that the petitioners have an alternate remedy by way of appeal against the impugned orders passed under the respective GST enactments.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents. I have perused the impugned Assessment Orders.

7. The petitioners are in the business of transportation of goods. They have to be careful and cautious while transporting goods. They cannot allow the employer who employs them for transportation of the goods to evade tax. If the goods are being removed in the clandestine manner on the strength either expired e-way bills or forged/fabricated invoice, the petitioners are not expected to transport the goods. At the same time, no useful purpose will be served by allowing the vehicles to be detained any longer as the vehicles will loose their intrinsic value. There is also no evidence to suggest that the respective petitioners conspired with the said M/s.Prime Gold International Private Limited to facilitate evasion of tax.

8. There shall be an order for releasing the respective vehicles subject to the respective petitioners paying the amounts determined in the impugned orders. The petitioners in W.P.No.25774 of 2021 shall pay the amounts of Rs.2,46,248/- and the petitioner in W.P.No.25776 of 2021 shall pay the amounts of Rs.2,31,508/- within a period of fifteen days from the date of receipt of a copy of this order. On such payment, the respective vehicles of the petitioners shall be released immediately.

9. It is however made clear that the revenue/respondents are free to transfer the seized/confiscated goods in the respective vehicles to any Government warehouse pending further proceedings that may be initiated by M/s.Prime Gold International Private Limited. The release of the respective vehicles pursuant to this order is also without prejudice to rights of the respondents to initiate appropriate proceedings against the petitioners in accordance with law.

10.These Writ Petitions stand disposed with the above observations. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Commercial Tax,
   Ezhilagam, Chepauk,
   Chennai – 600 005.

2. The State Tax Officer,
   Inspection Cell-V, Deputation for Roving Squad-II,
   Salem, No.2, Ground Floor,
   Commercial Tax Department,
   Hosur – 635 109.

+2cc to Mr.J.Ashish, Advocate, S.R.No.66730

W.P.Nos.25774 & 25776 of 2021

SRA(CO)
RGA(15/12/2021)