

30.08.2022

Sl no. 12

Ct no. 2

P.M.

WPA 18885 OF 2022

Md. Yusuf

- Vs -

**Stat Tax Officer, Bureau of
Investigation, Kharagpur Zone & Anr.**

Mr. Vinay Kr. Shraff,
Ms. Priya Sarah Paul,
Mr. Kaushal Agarwal

... for the petitioner

Mr. Anirban Ray, Ld. Govt. Pleader
Mr. T.M. Siddiqui,
Mr. D. Ghosh,
Mr. V. Kothari

.... For the State

Heard learned Counsel appearing for the parties.

By this writ petition, petitioner has challenged the impugned order passed by the respondent GST authority, under Section 129(1) of the CGST Act and WBGST Act, 2017 dated 10th August, 2022.

Mr. Ghosh learned advocate appearing for the respondent State GST authority was directed by the order dated 26th August, 2022 to take appropriate instruction in the matter and in compliance of the same he has filed written instruction dated 29th August, 2022 along with supporting documents issued by the Assistant Commissioner of Revenue, Bureau of Investigation (South Bengal), Kharagpur and on perusal of the same taken note of it

particularly in paragraphs 3 and 4 of the said instruction which are as quoted as hereunder : -

3. *The Physical verification of goods was made on 10.08.2022 on the strength of GST FORM MOV-03 issued by Senior Joint Commissioner of Revenue, Kharagpur Zone for extension of date for physical checking beyond three days. The report of the physical verification was drawn in GST MOV 04 on 10.08.2022 and a physical copy of GST MOV-04 is duly served to the driver, Mani N. on 10.08.2022. Upon physical verification approximately 312 cubic feet of teak sawn timber has been found in excess of what has been declared in e-way bill and invoice. Physical checking also reveals that the measurement details (length, breadth and height) of the teak sawn timber are not in coherence with measurement slip produce by the driver. So, completion of physical verification on 10.08.2022 unfolds that the vehicle was carrying a separate consignment of "Teak Sawn Timber" which is different in size, shape and quantity from that mentioned in the submitted tax invoice, e-way bill and Certificate of Forest Department. Also paper verification at the end of consignor on 05.08.2022 by BI/South Bengal Head Quarter reveled that consignor was non-existent at his*

registered place of business. The consignor is attempted to avoid tax liability. Hence goods loaded in the vehicle is seized and the vehicle is detained u/s 129 of WBGST Act, 2017 by issuing GST MOV 06 on 10.08.2022. A physical copy of the GST MOV 06 was duly issued and served on 10.08.2022 after explaining the content of the notice to the driver/person in charge, MANI N. The driver received it and put his signature on the office copy.

4. *A show cause notice in GST MOV 07 was issued on 11.08.2022 to the driver, MANI N after computing the applicable penalty for contravention of Section 68 read with Section 129 and Rule 138 of GST Act and rules. A physical copy of the GST MOV 07 was duly handed over on 11.08.2022 after explaining the content of the notice to the driver/person in charge, MANI. N. The driver received it and put his signature on the office copy.*

On the basis of aforesaid finding as appears from the instruction of the respondent GST authority the issue involved is highly disputed question of fact with regard to registration of the “Teak Sawn Timber” not tallying with the declaration made in the E-way

bill and invoices and further there is no existence of consignor at his registered place of business, this Court in exercise of constitutional writ jurisdiction under Article 226 of the Constitution of India cannot act as a fact finding and verification authority over transported the goods in question.

If the petitioner is not satisfied with the reasons given for detention of the goods in question and the order passed under Section 129(1) of the Act, the same is appellable before the appellate forum under Section 107 of the Act.

Mr. Ghosh shall hand over a copy of the instruction to learned advocate appearing for the petitioner who will take appropriate statutory remedy either before the appellate forum or before the Officer concerned in accordance with law.

With this observation and direction this writ petition being WPA 18885 of 2022 stands disposed of.

(Md. Nizamuddin, J.)