IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.1868 & 1872 of 2022
and
W.M.P.Nos.2017 & 2022 of 2022

(Through Video Conferencing)

J.R.Metal Chennai Limited,
Represented by its Authorised Signatory,
Periyapuliyur Village,
Poovalampedu Post,
Via Kavarapettai,
Gummudipoondi Taluk,
Thiruvallur District - 601 206.
Tamil Nadu. ... Petitioner in both W.Ps

Vs.

The Deputy State Tax Officer,
Roving Squad-7, Int.I,
Chennai - 600 006. ... Respondent in both W.Ps

Prayer in W.P.No.1868 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in Order No.62/2021-2022 RS7 dated 27.01.2022 and quash the same and further direct the respondent to release the goods detained and also compensate the petitioner for any damages it incurs due to the delay in release of the goods by way of container retention charges etc.

Prayer in W.P.No.1872 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in Order No.64/2021-2022 RS7 dated 27.01.2022 and quash the same and further direct the respondent to release the goods detained and also compensate the petitioner for any damages it incurs due to the delay in release of the goods by way of container retention charges etc.

For Petitioner : Mr.Adithya Reddy
(In both W.Ps)

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

COMMON ORDER

Mr.Richardson Wilson, learned Additional Government Pleader takes notice on behalf of the respondent.

2. The petitioner has challenged the Impugned Communication dated 27.01.2022 in Form GST MOV-2. The reasons for issuing Form GST MOV-2 is in Sl.No.5 of the impugned communication is that the previous movement of goods was not covered an E-Way bill.

3. It is the case of the petitioner that the petitioner had imported the goods and had filed a Bill of Entry in B.E.No.7115031 dated 17.01.2022. The customs duty was paid after the goods were assessed at the container freight station. It is submitted that for movement of goods from the port to the container freight station for the purpose of assessment does not require an E-Way bill.

4. In this connection, a reference was made to Rule 138(14) (c) of the E-Way Rules, which reads as under:-

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated-

(a) ....

(b) ....

(c) Where the goods are being transported from the port, airport, aircargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs.

5. The learned counsel for the petitioner further submits that since the petitioner is exempted from generating E-Way bill for movement of goods from port of import to the assessment, impugned communication in Form GST MOV-2 is liable to be declared as illegal. It is therefore submitted that the Impugned Proceedings are arbitrary and liable to be quashed.

6. Opposing the prayer, the learned Additional Government Pleader (Taxes) for the respondent submits that the writ petitions are devoid of merits inasmuch as it is premature.

7. It is submitted that after Form GST MOV-2 issued, the issue has to be adjudicated and appropriate orders for confiscation has to be made. It is therefore submitted that the writ petitions are therefore premature and the petitioner should

submit to the jurisdiction of the respondent.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondent.

9. It is noticed that at the time of seizure, the goods accompanied E-Way bill. However, the allegation that no E-Way bill was generated for the previous transport from the port of import to the CFS. It is not clear as to whether for movement of goods from CFS to the petitioner's premises accompanied an E-Way bill and whether it was generated or not.

10. This matter would require a detailed consideration. At the same time, no useful purpose will be served by detaining the goods other than the inflict of financial loss on the petitioner. Even if the petitioner is eventually found guilty of the violation of the provisions of the Act and the Rules made thereunder, Penalty and Fine are only to be imposed.

11. Therefore, I direct the petitioner to pay the disputed tax and furnish a bank guarantee for the tax and 25% of the tax amount towards penalty within a period of seven days from the date of receipt of a copy of this order to the satisfaction of the respondent. The respondent shall release the goods as and when the petitioner complies with the directions and thereafter proceed to pass appropriate orders in merits. Petitioner is permitted to make submissions and also appear before the respondent.

12. Needless, to state the Bank Guarantee can be encashed by the respondent and appropriated subject to final orders to be passed by the respondent.

13. These writ petitions stand disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Digit)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The Deputy State Tax Officer,
Roving Squad-7, Int.I,
Chennai - 600 006.

+2ccs to Mr.Adithya Reddy, Advocate, S.R.No.6755

+1cc to the Special Government Pleader (Taxes), S.R.No.7798

W.P.Nos.1868 & 1872 of 2022
and
W.M.P.Nos.2017 & 2022 of 2022

NR(CO)
SU(18/02/2022)