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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.2146 of 2022
and
W.M.P.No.2303 of 2022
(Through Video Conferencing)

M/s.Haven Infra Projects & Power Limited,
Represented by its Director,
Mrs.Meena Chandrasekaran,
No.25, New 1, Thomas Nagar,
Saidapet, Chennai - 600 015.

...Petitioner

Vs.

1. The State Tax Officer,
(Intelligence) Roving Squad (spl),
Villupuram.

2. The Assistant Commissioner (ST),
Villupuram.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, calling for the records, relating to the Order in Form GST MOV-06, dated 31.01.2022, on the file of the first respondent, and quash the same as null and void.

For Petitioner : P.Raja

For Respondents: Ms.Amirta Poonkodi Dinakaran
Government Advocate

ORDER

Ms.Amirta Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondents.

2.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

3.The petitioner has challenged the impugned order of detention in Form GST MOV-06 dated 31.01.2022. By the impugned order of detention issued under Section 129(1) of the Central



Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017, the vehicle belonging to the petitioner and the goods in the petitioner's vehicle bearing Registration No.TN 09 CL 4635 were seized and detained on the ground that the E-Way Bill generated on 29.01.2022 had expired on 30.01.2022 at 23.59 p.m., and that the vehicle was moving goods without a valid E-Way bill.

4.Appearing on behalf of the petitioner, the learned counsel for the petitioner submits that the total value of the consignment in the vehicle was only Rs.74,000/- and in terms of Notification No.09/2018, dated 31.05.2018 issued under Rule 138 (14)(d) of the Tamil Nadu Goods and Services Tax Rules, 2017, E-Way Bill was not required as the value of the goods did not exceed Rs.1,00,000/-. It is further submitted that the driver had encountered technical problem in the vehicle enroute from the factory of the consignor viz., M/s.Chettinad Cement Corporation Private Limited for delivering the goods to the consignee M/s.Murugavel Traders in Validhareddy, Villupuram and the goods and the vehicle were seized on 31.01.2022 at about 08.15 am about 100 metres away from the place of delivery of the said M/s.Murugavel Traders.

5.It is submitted by the learned counsel for the petitioner that both the vehicle and the goods have been detained on 31.01.2022 and that the consignment of cement in the lorry is prone to get spoilt in view of the inclement weather conditions. It is therefore submitted that the goods and the lorry be released.

6.The learned counsel for the petitioner has also drawn attention to the decision of the Hon'ble Supreme Court in Assistant Commissioner (ST) and others Vs M/s.Satyam and Shivam Papers Private Limited and another, dated 12.01.2022 passed in Special Leave Appeal (C) No.21132 of 2021, wherein, the order intervening and setting aside levy of tax and penalty of the High Court was upheld.

7.Opposing the prayer, the learned Government Advocate for the respondents submits that the vehicle was seized and detained on 31.01.2022. It is submitted that the petitioner has not come forward to release the goods by furnishing any security.

8.The learned Government Advocate for the respondents further submits that the respondents will release the vehicle and goods subject to the petitioner paying tax and penalty to be imposed.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate



for the respondents.

10.The facts on record indicates that the value of the consignments including tax partially exceeds a sum of Rs.1,00,000/-. The issue as to whether the value would include tax and whether there was a violation has to be determined in the manner known to law by the authority under the Acts. At the same time, no useful purpose will be served by detaining the vehicle or the consignment of goods (cement) as it will only result in the cement getting spoilt.

11.Considering the same, I direct the respondents to release the vehicle and the goods if the consigner namely M/s.Chettinad Cement Corporation Private Limited or the consignee namely M/s.Murugavel Traders or the petitioner as the owner of the vehicle furnishes a Bank Guarantee for the tax and proposed penalty for a specified period subject to the satisfaction of the respondents, within a period of fifteen (15) days from the date of receipt of a copy of this order.

12.If such Bank Guarantee is furnished by the consigner namely M/s.Chettinad Cement Corporation Private Limited or the consignee namely M/s.Murugavel Traders or the petitioner as the owner of the vehicle, the vehicle and the goods shall be released by the respondents forthwith.

13.The petitioner is also directed to participate in the proceedings before the respondents by filing a suitable application against the prosed penalty that may be imposed on the petitioner, failing which, the respondents shall pass orders based on the available records.

14.This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To

1. The State Tax Officer,
(Intelligence) Roving Squad (spl),
Villupuram.



2. The Assistant Commissioner (ST),
Villupuram.

+1cc to Special Government Pleader(Taxes),
High Court, Chennai S.R.No.7803

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W.P.No.2146 of 2022
and
W.M.P.No.2303 of 2022

PMK (CO)
RGA (17/02/2022)