

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3920 of 2022
and W.M.P.No.4070 of 2022

M/s.Yash Pigments LLP
Rep.by its Authorised Signatory Mr.M.Vinoth Kumar
No.63, Mettu Street, Ayanavaram, Chennai
Tamil Nadu - 600 023. Petitioner

-Vs-

- 1.The Deputy State Tax Officer
Static Roving Squad
Intelligence-I, Greams Road
Chennai 600 006.
- 2.Assistant Commissioner (ST)
Adjudication, Intelligence-I
Greams Road, Chennai - 600 006. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 2nd respondent in Form GST MOV-06 vide Notice No.345/2021-22 dated 07.02.2022 and quash the same.

For Petitioner : Mr.M.Hariharan

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records of the 2nd respondent in Form GST MOV-06 vide Notice No.345/2021-22 dated 07.02.2022 and quash the same.

2. The petitioner's goods viz., pure lead was transported on 18.01.2022 in the vehicle bearing Registration No.TS-050UC-2346 which was intercepted by the tax authority of the State Tax Department consisting of Static Roving Squad at Gummidipoondi SIPCOT at 2.30 A.M.

3. At the time of interception, it was found that the conveyance did not have a valid E-Way Bill or the E-Way Bill already obtained had expired on 16.01.2022. Therefore, on that ground the vehicle with goods was detained and a detention order has been issued in this regard on 07.02.2022. On the same day ie., on 07.02.2022 in Form No.GST MOV-06 and notice under Form GST MOV-07 under Section 129(3) of the GST Act was issued seeking reply from the petitioner.

4. Challenging the said detention order as well as the show cause notice, the present writ petition has been filed.

5. Heard Mr.M.Hariharan, learned counsel for the petitioner, who would submit that, it is not the case where there was no E-Way Bill. With regard to the goods which were in transportation, the E-Way Bill already taken had expired on 16.01.2022. However, due to COVID-19 situation, the transportation could not take place on or before 16.01.2022. Therefore, two days after it was taken and hence it cannot be construed as if the transportation had taken place without documentation. Therefore, the very basis for issuing the show cause notice as well as the detention order for adjudication is bad in law, he contended.

6. However, Mr.V.Prashanth Kiran, learned Government Advocate appearing for the respondent Revenue would submit that, it is mandated under the provisions of the Act as well as the Rules made therein that, whenever the transportation is taking place, all valid documents must be available with the carrier / conveyance and on 18.01.2022, the vehicle in question which was transporting the goods belongs to the petitioner was intercepted, it was found that there is no valid E-Way Bill, since without which since the transportation had taken place, it was decided to adjudicate the matter. Therefore, the vehicle with goods was detained and detention order was passed on 07.02.2022. On the same day, a show cause notice was also issued.

7. Learned Government Advocate would further submit that, in response to the show cause notice and the detention order, the petitioner can submit his defence and if at all any personal hearing is required, that would also be given. But, despite the show cause notice and a date has been mentioned for personal hearing, the petitioner since has not chosen to appear before the respondent, it is evident that the petitioner is not cooperating with the respondents for completing the adjudication proceedings. Therefore, at this juncture the petitioner cannot approach this Court by filing the present writ petition challenging the very show cause notice itself.

8. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

9. As has been rightly pointed out by the learned Government Advocate appearing for the respondents, after the vehicle was intercepted in view of the lack of documents ie., E-Way Bill which was admittedly not valid on the date of transportation ie., on 18.01.2022, the vehicle was detained and detention order was issued.

10. Pursuant to which, it became the duty on the part of the Revenue to adjudicate the matter. Therefore, a show cause notice was issued and hence it should be faced by the petitioner by giving a reply and to appear before the Revenue and whatever defence he wants to take, he can take before the concerned authority of the Tax Department. Without taking the said route in replying to the show cause notice and cooperating with the Revenue for completing the adjudication proceedings, the petitioner has rushed to this Court challenging the very show cause notice itself along with the detention order. Therefore, this Court is not inclined to or impressed with the grounds raised by the petitioner to have a successful challenge against the impugned proceedings.

11. However, during the course of arguments, the learned counsel for the petitioner has submitted that, during the interregnum ie., pending adjudication proceedings, the petitioner is ready and willing to give a bank guarantee for the penalty amount proposed, against which the goods can be released by the respondents and after the adjudication is completed, for which the petitioner is ready and willing to cooperate, the further course of action can be decided, depending upon the decision to be made by the Revenue after completion of the adjudication proceedings.

12. In view of the said stand taken by the petitioner, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned detention order as well as the show cause notice are tenable. Therefore, the same do not require any interference of this Court.
- At the same time, it is open to the petitioner to give a bank guarantee for a sum of Rs.15,80,246/- being the proposed penalty against the petitioner and if such bank guarantee is given by the petitioner, after accepting the same, the respondent Revenue can release the goods in

question forthwith. Thereafter, the adjudication proceedings can go on, for which the petitioner can give fullest cooperation.

- It is needless to mention that once the adjudication proceedings is over, depending upon the final order to be passed on the adjudication, the bank guarantee given by the petitioner with regard to the proposed penalty and other aspects can be ultimately worked out and decided.

13. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

KST

To

1.The Deputy State Tax Officer,
Static Roving Squad,
Intelligence-I, Greams Road
Chennai 600 006.

2.The Assistant Commissioner (ST),
Adjudication, Intelligence-I
Greams Road, Chennai - 600 006.

+1 cc to Mr.S.Ravee Kumar, Advocate Sr.NO. 17552

+1 cc to Spl.Government Pleader(Taxes) Sr.NO. 17900

W.P.No. 3920 of 2022

NK(CO)

A.SK(16/03/2022)