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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NOS.7882 & 7886 OF 2022 AND
W.M.P.NOS.7885 & 7889 OF 2022

M/s.RKS Agencies
(Represented by Proprietor R.Venkatachalam)
1-6-18/7, Maruthi Plaza,
Salem Main Road, Sankari,
Salem - 637 301.

...Petitioner in both WPs

Vs

State Tax Officer-I,
Adjudication Vellore.

...Respondent in both WPs

Prayer in WP.No.7882/2022 : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records and to quash the Order bearing GDN 1239/2021-2022 dated 07.03.2022 issued by the respondent and consequently to direct the respondent to release the detained vehicle bearing TN 52 R 7372 of the petitioner immediately, pending disposal of this writ petition.

Prayer WP.No.7886/2022 : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records and to quash the Order bearing GDN 1240/2021-2022 dated 07.03.2022 issued by the respondent and consequently to direct the respondent to release the detained vehicle bearing TN 52 Q 6460 of the petitioner immediately, pending disposal of this writ petition.

In both WPs

For Petitioner	:	Mr.G.Natarajan
For Respondent	:	Mr.C.Harsha Raj Additional Government Pleader

COMMON ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records and to quash the Order bearing GDN 1239/2021-2022 and 1240/2021-2022 dated 07.03.2022 issued by



the respondent and consequently to direct the respondent to release the detained vehicle bearing Registration Nos.TN 52 R 7372 & TN 52 Q 6460 of the petitioner immediately, pending disposal of this writ petition.

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2. The petitioner purchased goods called cement from Andhra Pradesh, whereas, the petitioner is having the Branch office at Coimbatore which is the destination where the purchased goods has to reach. When the goods were transported, the vehicle was intercepted by the respondent Revenue Squad and they found that, there is a violation in the invoice that the full address of the buyer has not been mentioned.

3. For the said violation and also some alleged violation that there is no activities in Coimbatore Branch, where the address had been given by the petitioner buyer, that since has been shown as the receiving end of the buyer's office, for such violation, the Revenue detained the goods and therefore, in lieu of that, they issued a notice on 07.03.2022.

4. Though it has been styled as a notice, in the operative portion of the said notice dated 07.03.2022, it has been directed by the Revenue to the petitioner that, the petitioner shall pay the penalty imposed against the petitioner within three days, failing which, action would be taken under Section 130 of the Center/State Goods and Services Tax Act.

5. In view of the said mandate given in the said communication dated 07.03.2022 even though it is styled as a notice with the heading 'Notice', the same is challenged before this Court in these writ petitions.

6. Heard Mr.G.Natarajan, learned counsel appearing for the petitioner, who would submit that, the absence of the full address of the buyer is not such a big offence or violation, for which, the goods in question cannot be detained by the Revenue.

7. Be that as it may, if notice is given, definitely defence would have been taken or reply would have been given, however though that is styled as a notice, they passed an order directing the petitioner to pay the amount within 3 days, failing which, action would be initiated against the petitioner under the provisions of the Act.

8. Therefore, the learned counsel for the petitioner would submit that, though this 07.03.2022 notice/order is under challenge, subsequently on 11.03.2022, they passed an order stating that pursuant to 07.03.2022 proceedings which they treated as a notice, they passed the final order dated 11.03.2022.



9. He would also submit that, normally for these kind of omission assuming if it is a violation, a meagre penalty of Rs.5,000/- would be imposed, however, presently the Revenue sought for a fine of Rs.96,000/- in respect of the first writ petition and Rs.1,17,000/- in respect of the second writ petition. Therefore, such an exorbitant fine imposed through the impugned orders cannot be sustained and hence, he seeks indulgence of this Court.

10. However, Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondent Revenue would contend that, it is not the violation first time noticed, as this kind of violation from the petitioner has already been noticed, where also the full address of the petitioner, being a buyer, has not been mentioned in the document like invoice etc.

11. Moreover, the Branch office of the petitioner located at Coimbatore, as claimed by the petitioner, is a non-functional office, where, on inspection, it was found by the Revenue that, no such activities of buying or stocking anything taken place. Therefore, cumulatively considering all these, such a fine has been imposed through the order dated 11.03.2022 and that order since is the final order, it is staring on the petitioner, however, the petitioner has only challenged the present communication dated 07.03.2022 which is only a notice, even though in the operative portion of the said notice, which is impugned herein, it has been stated that, the amount shall be paid within three days.

12. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13. Now admittedly there has been an order dated 11.03.2022 which is a final order which is yet to be challenged before the Appellate Authority by the petitioner.

14. In the meanwhile, since the notice dated 07.03.2022 is having the operative portion of a direction to pay the amount, the petitioner was triggered to file this writ petition challenging the same.

15. It is also the contention of the petitioner counsel that, the two truck load of cements which were bought by the petitioner now been detained, by virtue of that, the petitioner's interest is greatly prejudiced. Therefore, whatever the usual penalty imposed against such alleged violation can be imposed as a condition precedent to release the goods, however, without prejudice to the right of the petitioner to urge before



the Appellate Authority against such an order now passed dated 11.03.2022.

16. The said submission made by the learned counsel for the petitioner is appealing to this Court.

17. Even though the petitioner's counsel says or indicates that, only a sum of Rs.5,000/- will be normally imposed, that kind of arrangement is not agreeable for the learned Additional Government Pleader for the respondent as according to him, this violation is a recurring one from the petitioner, therefore a larger fine has to be imposed.

18. Considering the facts and circumstances of the case and to balance the interest of both sides, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the petitioner on payment of 25% of the demand of the penalty in each of the case, the goods and vehicles in question detained by the respondent shall be released. Such payment of 25% of the penalty is without prejudice to the right of the petitioner to be urged or raised before the Appellate Authority against the final order now has been passed on 11.03.2022 if he is advised to do so.

(ii) It is made clear that, if he has not paid the 25% of the demand of penalty, the goods and vehicles in question need not be released.

(iii) It is further made clear that, after paying the 25% penalty as indicated above and the goods and vehicles are released, against which, subsequently if the petitioner has not chosen to assail the order of final penalty dated 11.03.2022, after lapse of 3 months period from the date of release of the goods, it is open to the respondent to proceed, in accordance with law, the 11.03.2022 order for recovering the remaining amount of the penalty.

19. With these observations and directions, these Writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

Sgl



To

The State Tax Officer-I,
Adjudication Vellore.

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+1cc to the Special Government Pleader (Taxes), Sr.No.24093

+1cc to Mr.G.Natarajan, Advocate Sr.No.25415 (13/04/2022)

W.P.Nos.7882 & 7886 of 2022

SRA (CO)

RVM(12/04/2022)