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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.14374 of 2022

Tvt.LAF Enterprises,
Represented by its Proprietor,
Mohammed Wasim Khan,
18/3, Thiruvalluvar Street,
Menambedu, Chennai-600050

...Petitioner

Vs.

1. The Commissioner of Commercial Tax,
Ezhilagam Chepauk,
Chennai 600005

2. The Deputy State Tax Officer,
Roving Squad Static, Intelligence-I
Commercial Tax Office, Greams Road,
Chennai-600006.

...Respondents

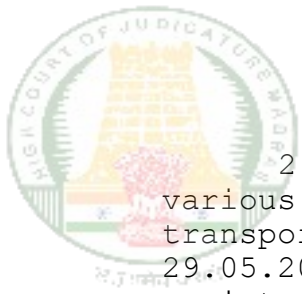
Prayer:Writ Petition filed under Article 226 of the Constitution of India, to issue aWrit of Certiorarified Mandamus, calling for and quashing impugned order in O.R.No.37/2022-23 (RS- Static) dated 30.05.2022 and its consequential notice and orders issued by the 2nd respondent i.e., The Deputy State Tax Officer, and direct the 2nd Respondent to release the conveyance bearing registration No.AP16TE0016 and its goods.

For Petitioner : Mr.J.Ashish

For Respondents: Mr.V.Prasanth Kiran
Government Advocate

O R D E R

Mr.V.Prasanth Kiran, learned Government Advocate accepts notice for the respondents and is fully armed with instructions to enable consideration of the relief sought for in this writ petition. Thus, by consent expressed and in fact at request, final orders are passed disposing this writ petition, though it is listed for admission.



2. The petitioner claims to have purchased iron scrap from various dealers and states that it was in the process of transporting the same from Guwahati to Coimbatore. On 29.05.2020, the vehicle carrying the consignment, bearing registration No.AP16 TE 0016 (vehicle in question) is stated to have suffered a mechanical difficulty as a result that the driver was forced to deviate from the planned route leading to the place of destination to identify a service shop for addressing the issue.

3. According to the petitioner, the vehicle had been stationed at the Sri Veeraragavar service station that night. On 30.05.2022 at 12.30 a.m. the vehicle was intercepted at Sholavaram by the Deputy Tax Officer, Roving Squad, who upon a perusal of the documents that the driver was carrying arrived at the conclusion that the goods were being re-routed without proper e-way bill. The interception is justified by the respondent relying upon a statement of the driver that was adverse to the petitioner. However, and admittedly, a copy of the said statement has not been supplied to the petitioner.

4. In law and on the clear language of Section 129 of the Central Goods and Services Tax Act, 2017 (in short 'Act'), the impugned retention of the vehicle is clearly invalid. The provisions of Section 129 provide for the detention and seizure of the vehicle and contents upon condition that an order of detention/seizure shall be passed at the time of detention/seizure, and duly served upon the person transporting the goods.

6. In the present case, Mr. Prasanth, on instructions, confirms that no such order of detention has been issued and consequently the question of service upon the petitioner does not arise. That apart, the provisions of Section 129 (3) require the proper officer detaining or seizing the goods to issue a notice specifying the penalty payable and thereafter pass an order within 7 days from the date of service of the notice in relation to the detention/seizure effected.

7. In the present case, admittedly, no such notice has been issued till date though the seizure has been effected as early as on 30.05.2022. In the aforesaid circumstances, the act of the respondent in insisting that the petitioner retain the vehicle at the present location is in gross contravention of the statutory provisions.

8. The petitioner thus succeeds and is entitled to the relief sought. Since the physical verification report has outlived its purpose as verification is complete, the prayer for a certiorari is unnecessary at this juncture and need not be addressed. However, mandamus as sought for is issued to R2 to release the conveyance in question along with the goods contained, forthwith and in any event, within 24 hours from today.



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9. This writ petition is allowed in the above terms. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Commercial Tax,
Ezhilagam Chepauk,
Chennai 600005
2. The Deputy State Tax Officer,
Roving Squad Static, Intelligence-I
Commercial Tax Office, Greaves Road,
Chennai-600006.

+2cc to Mr.J.Ashish, Advocate, S.R.No.34058

+1cc to the Special Government Pleader, S.R.No.34685

W.P.No.14374 of 2022

RK(CO)
RGA(15/06/2022)