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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

WP.Nos.14811 & 14813 of 2022 and
WMP Nos.14009 & 14010 of 2022

M/s.Sharoff Steel Traders,
Rep. by Partner Anil Kumar Agarwal,
67/B, Timber Yard Layout,
Mysore Road, Bangalore - 560 026. ... Petitioner in both WPs

Vs

1.The State Tax Officer,
Roving Squad,
Vellore.

2.The State Tax Officer,
Adjudication, Intelligence,
Vellore.

... Respondents in both Wps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent proceedings in GD Nos.68/2022-23 and GD Nos.69/2022-23 dated 01.06.2022 respectively and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law and direct the respondent to release the consignment in Vehicle No.NL 01 K7719 and Vehicle No.NL 01 AB 2149 as per the petitioner representation dated 28.05.2022.

(In both WPs)

For Petitioner : Mr.D.Vijayakumar

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

COMMON ORDER

Mr.C.Harsha Raj, learned Additional Government Pleader accepts notice for the respondents and has received instructions to enable final disposal of these Writ Petitions even at the stage of admission.



2.The petitioners had conveyed goods under vehicles bearing No.NL 01 K 7719 in WP.No.14811 of 2022 and No.NL 01 AB 2149, in WP.No.14813 of 2022. The vehicles had been intersected and upon verification of the documents, the respondents claim to have found various discrepancies in the shipment of the goods and the documents accompanying the consignments.

3. Orders of detention have been passed on 24.05.2022 in both cases, proposing penalty for the non-compliances noted therein. The details of the same are not referred to as they are not relevant to decide the question of relief sought. Penalty has been computed in the case of the petitioner in WP.No.14811 of 2022, at a figure of Rs.9,15,924/- and in the case of the petitioner in WP.No.14813 of 2022, at a figure of Rs.9,49,678/-.

4.The petitioners had admittedly, filed objections to the proposals contained in the show cause notice on 31.05.2022, which the assessing authority rejects in the impugned notices dated 01.06.2022. The procedure followed by the authority does not appear to be in order insofar as, though styled as 'notices', the officer has proceeded to reject the arguments of the petitioners, effectively passing orders adverse to interests of the petitioners.

5.Be that as it may, Mr.Harsha, would submit that orders are in the pipeline and will be passed expeditiously. All that remains as far as the present writ petitions are concerned, is as regards the release of the goods on a provisional basis and subject to statutory conditions.

6.The impugned notices, proceed on the basis that the penalty proposed is liable to be confirmed and call upon the petitioners to remit the amounts of penalty, within three (3) days from date of receipt of the notices under threat of action under Section 130 of the Central Goods and Service Tax Act, 2017 (in short 'Act') dealing with confiscation of goods or conveyances and levy of penalty.

7.The petitioner is willing to furnish bank guarantees equivalent to the amount of penalty quantified by the authority under show cause notices/impugned notices dated 24.05.2022 / 01.06.2022 respectively to obtain release of the goods. In such an event, all that remains is for the authority to release the goods in terms of Section 129 of the Act, if the condition set out therein, stands satisfied.

8.Section 129 reads as follows:

'129. Detention, seizure and release of goods and conveyances in transit:



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(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,--

a. on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

b. on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

c. upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

.....'

9. The statutory provision envisages detention and seizure, if the goods in question are found to have been conveyed in contravention of the provisions of the Act or Rules. Post such detention or seizure, the seized goods 'shall' be released subject to satisfaction of the conditions set out under clauses (a) to (c) of Section 129(1) of the Act.

10. Clauses (a) and (b) deal with the quantification of the penalty, clause (a) in the case of voluntary payment by the assessee and clause (b) in cases where the assessee does not come forward to remit the penalty. In either case, the remittance of the penalty is to be by way of security equivalent to the amount payable under clauses (a) or (b), furnished in the prescribed manner.

11. Let the petitioners furnish bank guarantees for the amounts quantified in terms of the impugned notices dated 01.06.2022, in proper form, upon receipt of which, the goods shall be released forthwith by the Officer. In the



circumstances, as noticed and narrated above, the challenge to the notices fails.

12. These writ petitions are disposed as above. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vs

To

1. The State Tax Officer,
Roving Squad,
Vellore.

2. The State Tax Officer,
Adjudication, Intelligence,
Vellore.

+2ccs to Mr. D. Vijayakumar, Advocate SR.No. 35000, 35001

+1cc to Special Government Pleader (Taxes) SR.No. 36250

WP.Nos. 14811 & 14813 of 2022 and
WMP Nos. 14009 & 14010 of 2022

EV (CO)
GMY (21/06/2022)