IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2022

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.26991 of 2022

M/s.Sohams Foundation Engineering Private Limited,
Rep by its Managing Director,
Shri Vitthal Vasant Vaishampayan,
Registered Office at No.301, Thapar Complex,
Plot No.51, Sector 15, CBD Belapur,
Navi Mumbai 400 614. ... Petitioner

Vs.

1.The Joint Commissioner (CT),
Government CT Building, Fort Round,
Bharathiyar Salai,
Vellore 632 001.

2.The State Tax Officer,
Special Roving Squard,
Commercial Tax Department,
Government CT Building, Fort Round,
Bharathiyar Salai,
Vellore 632 001.

3.The State Tax Officer -I (Intelligence)
Adjudication Cell,
Commercial Tax Department,
Government CT Building, Fort Round,
Bharathiyar Salai, Vellore 632 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for records of the 2nd respondent in and connected with the Detention Order made under Section 129(3) CGST, 2017 in GDN No.1386/22-23 dated 24.09.2022 quash the same and direct the respondents herein to cause release of the vehicle bearing registered No.MH 43 BP 7677 as also the machinery sought to be transported namely Hyndai Excavator 340 bearing SR.No.N901D00205 having Engine No.D6ACGJ297451.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The petitioner has challenged the impugned notice issued under Section 129(3) of the Central Goods and Services Tax Act, 2017 dated 24.09.2022. By the impugned notice, the petitioner has been called upon to show cause as to why the penalty should not be imposed on the petitioner under Clause A of Sub Section 1 of 129 of the Central Goods and Services Tax Act which reads as under:

*"**129**.Detention, seizure and release of goods and conveyances in transit*

(i) 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 seizure and after detention or seizure, shall be released,

(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to tow percent 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 penalty;"

2. The specific case of the petitioner is that according to the respondents, there is an alleged discrepancy in the E-way bill generated by the petitioner for movement of its excavator from project site in Kerala to its branch office in Dhamra Port, Doshinga Village, Dist Bhadrak, Odisha.

3. The facts on record seems to indicate that the petitioner was awarded a contract by M/s.Vishwa Samudra Engineering Private Limited, Kerala, in connection with the widening of a road in Kerala and to this effect, the petitioner has entered into an agreement with the said company on 20.01.2022. The petitioner's excavator was moved from the petitioner's head office at Maharashtra to the project site viz., XXIII/752, Near CSI Church, Mission Compound, Chovva, Kerala-670 006. To this effect, E-way bill was also generated on 11.04.2022 valid upto 04.06.2022.

4. It is the case of the petitioner that the petitioner was awarded a new contract in Odisha and therefore, the petitioner wanted to move the excavator from Kerala to Odisha and therefore, its head office in Maharashtra generated a fresh E-way bill on 21.09.2022 valid upto 01.10.2022. While the excavator was in transit, it was seized by the State Tax Officer, Roving Squad Special RS Vellore, Tamil Nadu on 26.09.2022 and on the same date, the impugned notice has been issued.

5. It is submitted that there is no supply within the meaning of the Central Goods and Services Tax Act, 2017 or the Integrated Goods and

Services Tax Act 2017. It is further submitted that even otherwise the maximum penalty for discrepancy on account of the mistake in the E-way bill can be a maximum of only Rs.1000/- in terms of the circular of the Central Board of Indirect Taxes and Customs. A reference has been made to a circular bearing F.No.354/119/2017-TRU(Pt) dated 07.07.2022, F.No.354/320/2017-TRU(Pt) dated 22.11.2022 and Circular.64/38/2018-GST dated 14.09.2018.

6. The learned counsel for the petitioner has also drawn an attention to the decision of the Kerala High Court in the case of ***Greenlights Power Solutions*** vs. ***State Tax Officer, SGST Department, Ernakulam [2022 (61) G.S.T.L.561 (Ker.)]*** and also drawn an attention to the other decisions of this Court in the case of ***G.Murugan*** vs. **Government of India [2019 (29) G.S.T.L. 385 (Mad.)],** ***W.P (MD) No.1287 of 2019*** dated 24.01.2019 and ***W.P (MD) No.5720 of 2022*** dated 30.03.2022.

7. The learned counsel for the respondents on the other hand would submit that the petitioner has acquiesced into the notice issued under Section 129(3) of the Central Goods and Services Tax Act, 2017 and has given a

reply on 26.09.2022 and notice of personal hearing was issued on 30.09.2022 and fixing a date for hearing. It is submitted that instead of participating in the show cause proceedings, the petitioner has rushed to this Court and filed a writ petition on 06.10.2022. It is submitted that the writ petition is liable to be dismissed as the petitioner has an alternative remedy. It is further submitted that the writ petition is premature and therefore, on this ground also, this writ petition is liable to be dismissed.

8. I have considered the arguments advanced by both the learned counsel for the petitioner and the respondents. Prima facie, it appears invocation under Section 129(3) of the Act for imposing penalty under Section 129(1)(a) of the Act appears to be misplaced as there is no supply either within the meaning of Section 7 of the Central Goods and Services Tax Act, 2017 or within the meaning of provisions of the Integrated Goods and Services Tax Act 2017. Ultimately, the purpose of E-way bill is to ensure that there is no leakage of revenue when the goods are on the move. Prima facie it appears that there is no supply for attracting of levy either under the provisions of the Central Goods and Services Tax Act, 2017 or the Integrated Goods and Services Tax Act 2017. Be that as it may, the

matter would require a detailed consideration and considering the fact that the 2nd respondent has also issued the impugned show cause notice, I direct the petitioner to participate in the aforesaid proceedings. However, the detention of the excavator which is required for the petitioner's project in Odisha, may no longer be required, provided the petitioner agrees for adequate security for the proposed penalty to be imposed as per the impugned show cause notice.

9. Under these circumstances, I direct the petitioner to pay a sum of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) to the credit of the respondents and furnish a bond for the remaining amount to the satisfaction of the respondents. On such compliance being observed by the petitioner, the respondents shall release the excavator which was seized on 24.09.2022 together with the lorry on which the excavator was being transported. The amount directed to be paid by the petitioner shall be without prejudice to all the rights of the petitioner in the impugned proceedings before the 2nd respondent.

10. In the result, this Writ Petition stands allowed with the above direction. Once the petitioner complies with the requirements of this order, the respondents shall release the excavator and the lorry forthwith in which the excavator has been transported. Consequently, connected Miscellaneous Petition is closed.

07.10.2022

Index : Yes/No
Speaking/Non-Speaking Order

uma/vkr

To

1.The Joint Commissioner (CT),
Government CT Building, Fort Round,
Bharathiyar Salai,
Vellore 632 001.

2.The State Tax Officer,
Special Roving Squard,
Commercial Tax Department,
Government CT Building, Fort Round,
Bharathiyar Salai,
Vellore 632 001.

3.The State Tax Officer -I (Intelligence)
Adjudication Cell,
Commercial Tax Department,
Government CT Building, Fort Round,
Bharathiyar Salai, Vellore 632 001.

C.SARAVANAN, J.

uma/vkr

W.P.No.26991 of 2022

07.10.2022