IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.28100 of 2021
(Through Video Conferencing)

Healthcubed India Private Limited,
Represented by its Authorized Signatory,
Mr.A.A.K.Apath Sakaayem,
No.7/1, Ulsoor Road,
Yellappa Chetty Layout,
Sivanchetti Grade,
Bengalauru. ...Petitioner

Vs

1. The Deputy Commissioner (ST)
GST Appeal Chennai-II,
Greams Road,Chennai- 600 006.

2. The Assistant Commissioner (ST),
Adjudication Cell,Intelligence-II
Room No.28, First Floor,
Greams Road,
Chennai – 600 006. ...Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to provisionally release the goods, forming the subject matter of the Order No.4153 to 4155 & 4157/2021/A8 dated 17.12.2021 passed by the 2nd respondent, under Section 67(6) of the CGST Act, 2017 and Rule 140 of the CGST Rules, 2017.

For Petitioner: Mr.Sharath Chandran

For Respondents: Ms. Amirta Poonkodi Dinakaran
Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

2. Already an order has been passed in a similar issue in W.P.No.27831 of 2021 vide order dated 23.12.2021. The operative portion of the order passed in the above writ petition reads as

under:-

''Ms.Amirta Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondents.

2. The petitioner has approached this Court for the second round. Earlier, the petitioner had filed W.P.Nos.25340 & 25341 of 2021. The said writ petitions were filed for a certiorarified mandamus, to quash Form GST MOV-7 dated 20.11.2021. By an order dated 26.11.2021, the writ petitions were disposed by giving liberty to the petitioner to file additional representations and reply to the Show Cause Notices immediately.

3.The exercise undertaking by the respondent pursuant to the aforesaid order has now resulted in order dated 17.12.2021. As per the impugned order, the petitioner has been directed to pay a sum of Rs.7,52,087/- towards CGST and SGST and an equal amount of penalty under the respective enactments.

4.The learned counsel for the petitioner submits that the seized oxygen cylinders are still in lying and are urgently required on account of the threat of Omicron (variant of Covid-19) and therefore submits that the petitioner may be allowed to take delivery of the seized oxygen cylinders to be sent to Karnataka. The learned counsel further submits that the petitioner is willing to furnish appropriate security under Section 67(6) read with Rule 140 of the respective enactments.

5.The learned Government Advocate for the respondents submits that she would require time to get further instructions.

6.Since, I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents, the petitioner has an alternate remedy as far as the levy of tax and penalty are concerned, by filing appropriate appeal under Section 107 of the respective enactments.

7.As far as the provisional release is concerned, the statute itself allows the authorities to release the goods subject to furnish the Bank Guarantee or payment of tax.

8.Considering the fact that the oxygen cylinders may be required urgently in view of threat by the out break of Omicron (variant of Covid-19), this Court is inclined to allow provisional release of the imported goods for being sent to Karnataka subject to the petitioner depositing a sum of Rs.7,52,087/- towards CGST and SGST to the credit of the Government and furnishing Bank Guarantee for the equal amount of penalty imposed under the respective enactments.

9.The amount paid by the petitioner shall be treated as a pre-deposit and will be subject to appropriation at the time of final outcome of the appeal to be filed by the petitioner.

10.This Writ Petition stands disposed of with the above observations. No costs.

3. The respondents have been directed to release the goods subject to payment of tax and furnishing the bank guarantee for the penalty. Same order is being passed in the present writ petition as well.

4. This writ petition stands disposed of in terms of the aforesaid order dated 23.12.2021 in W.P.No.27831 of 2021 with the above observations. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nst/jas

To

1. The Deputy Commissioner (ST)
   GST Appeal Chennai-II,
   Greams Road, Chennai- 600 006.

2. The Assistant Commissioner (ST),
   Adjudication Cell,Intelligence-II
   Room No.28, First Floor,
   Greams Road,Chennai – 600 006.

+1cc to Mr.Govind Chandrasekhar, Advocate, S.R.No.359

+1cc to the Government Pleader, S.R.No.864

W.P.No.28100 of 2021

SSD(CO)
RGA(10/01/2022)