IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **14.12.2022**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.33472 of 2022

M/s.New Royal Ferrous and Non-Ferrous Trading Corporation
Represented by authorised representative
P.A.Suman
17/2a1a, Mahaveer Nagar
Vembakkam, Abdullapuram
Thiruvannamalai-631 702 ... Petitioner

Vs.

The Deputy State Tax Officer
Roving Squad Intelligence
Office of the Deputy Commissioner (ST) Intelligence
Salem -7 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to quash the impugned notice dated 04.12.2022 bearing Order No.20031/2022-23 passed by the respondent and its consequential orders, further direct the Respondent to release the conveyance bearing Registration No.KA01AG4894 along with its goods which have been illegally and arbitrarily detained by the respondent.

For Petitioner : Mr.J.Ashish

For Respondents : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

ORDER

Captioned writ petition has been filed *inter alia* assailing a 'notice dated 04.12.2022 bearing reference Order No.20031/2022-23 made by the respondent' [hereinafter 'impugned notice' for the sake of brevity and convenience]. This is the Certiorari limb of the prayer. The mandamus limb of the prayer is for a direction to the respondent to release the vehicle and consignment. To be noted, impugned notice has been issued under Section 129(3) of 'The Central Goods and Services Tax Act, 2017', 'Tamil Nadu Goods and Services Act, 2017' and 'Integrated Goods and Services Tax Act, 2017' [hereinafter 'C-G&ST Act', 'TN-GST Act' and 'Integrated G & ST Act' respectively for the sake of brevity, convenience and clarity].

2. Learned counsel for writ petitioner submits that the petitioner is engaged in the business of dealing in Ferrous and Non-Ferrous goods; that writ petitioner raised an invoice for transport of battery scrap from Tiruvannamalai to Malur in State of Karnataka; that

the consignment was being carried in a Truck bearing Registration No.KA01-AG-4894; that the truck was intercepted by the respondent on 04.12.2022 at 10.00am at Krishnagiri Toll Plaza; that the statement of the driver/ person in-charge of the vehicle was recorded on 04.12.2022; that there was interception of goods under Section 68 (3) of 'The Central Goods and Services Tax Act, 2017' [hereinafter 'C-G&ST Act' for the sake of brevity, convenience and clarity]; that it is the case of the respondent that vide impugned notice that transport of the consignment is from Tiruvannamalai to Malur in Karnataka vide invoice dated 09.12.2022 but a vehicle track App shows the movement of the same truck on 03.12.2022 at Thoppur Toll at around 10:56pm but E-way bill has been generated at 09:56.pm on 03.12.2022; that this is in contravention of Rule 138 of 'Goods and Services Tax Rules, 2017' is the basis for the impugned notice.

3. Considering the narrow scope of the captioned writ petition and the acute angle in which the core point turns i.e., the point on which captioned matter is primarily predicated, Mr.T.N.C.Kaushik, learned Additional Government Pleader accepted notice and the main writ petition was taken up with the consent of both sides. Considering the

nature of the matter, a counter affidavit is really not necessary. This is more so owing to further proceedings under Section 129(3) of C-G&ST Act under which the impugned notice has (*inter alia*) been issued.

4. Notwithstanding very many averments in the writ affidavit, Mr.J.Ashish, learned counsel for writ petitioner predicates his argument against the impugned notice on one point and that one point is there is no violation of any provision of C-G &ST Act or the Rules thereunder and therefore, the impugned notice is liable to be interfered with.

5. In response to the aforementioned submission, learned Revenue counsel drew the attention of this Court to Rule 138 of C-G&ST Rules captioned '***Information to be furnished 'prior' to commencement of movement of goods and generation of e-way bill***'. Learned Revenue counsel submitted that E-way bill has been generated at 09.56pm at 03.12.2022 at Tiruvannamalai but movement of the vehicle was noticed on 03.12.2022 at 10:56pm at Thoppur Toll. Learned Revenue counsel submits that it is 08.56pm. As would be evident from the order made in W.M.P.No.32912 of 2022 (dispense with WMP), the original impugned notice is not before this Court and the handwritten portion of the impugned notice is not very clear.

6. In any event, on a demurrer even if it is construed as 10.56p.m, the question as to whether the vehicle could have crossed Thoppur Toll within one hour of declaration of e-way bill are all matters turning on facts. Section 129 provides for issue of notice / hearing before order is made. This Court is informed that notice has been issued on 04.12.2022. The order has to be made within 7 days but owing to the captioned writ petition being filed on 09.12.2022, making of the order has been put on hold is learned Revenue counsel's say.

7. In the light of the narrative and discussion thus far, this is not a fit case for interfering with the impugned notice. Let the petitioner respond to 04.12.2022 notice, let the respondent consider the same on its own merits and in accordance with law after affording an opportunity to the writ petitioner as per Section 129(3) of C-G &ST Act. Though obvious, it is made clear that if the order is adverse to the writ petitioner, it is open to the writ petitioner to assail the same in a manner known to law.

Sequitur is, captioned writ petition fails and the same is dismissed albeit preserving the rights of the writ petitioner to the limited extent indicated supra. There shall be no order as to costs.

14.12.2022
(2/2)

Index: yes/no
gpa

To

The Deputy State Tax Officer
Roving Squad Intelligence
Office of the Deputy Commissioner (ST) Intelligence
Salem -7

M.SUNDAR, J.,

gpa

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(2/2)