W.M.P.Nos.33003 & 33006 of 2022
in
W.P.No.32960 of 2022

M.SUNDAR.J.,

Read this in conjunction with and in continuation of earlier proceedings made on Friday i.e., on 09.12.2022 which reads as follows:

'Captioned writ petition was in the Admission Board on 07.12.2022, it was re-notified for being taken up on 08.12.2022, it was listed in the Admission Board on 08.12.2022, Mr.B.Raveendran, learned counsel on record for writ petitioner started making submissions in the presence of Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes) and the matter was kept in the Admission Board for further hearing today.

2. To be noted, captioned writ petition has been filed assailing 'proceedings dated 02.12.2022, bearing reference GDN No.4554/22-23/OR No.4554/22-23' [hereinafter 'impugned proceedings' for the sake of convenience and clarity) made by the respondent.

3. The impugned proceedings have been made under Section 129(3) of 'The Central Goods and Services Tax Act, 2017' [hereinafter 'C-G&ST Act' for the sake of convenience and clarity] read with 'The State/Union Territory Goods and Services Tax Act, 2017' [hereinafter 'State/Union Territory G & ST Act' for the sake of convenience and Clarity] besides Section 20 of 'Integrated Goods and Services Tax Act, 2017' [hereinafter 'Integrated G & T Act' for convenience].

4. Short facts are that a truck bearing Registration No.TN28-AQ-9203 which was carrying a consignment of Angles from Gummidipoondi to Ranipet was intercepted in the wee hours i.e., at about 04.00 am at Walaja toll. After interception, the impugned proceedings came to be made detaining the truck with the consignment. The only ground on which the impugned proceedings have been made is that e-way bill had expired.

5. Adverting to 'Goods and Services Tax Rules, 2017' [hereinafter 'said Rules' for the sake of convenience] being substantive legislation under C-G & ST Act, learned counsel for writ petitioner pointed out that Rule 138 and more particularly, 138(10), the second and third provisos thereat provide for extension of validity of period of e-way bill within 8 hours from the time of expiry. Learned counsel for writ petitioner submitted that the validity of the e-way bill qua aforementioned consignment elapsed at 23.59 hours on 01.12.2022 and at the time of interception, 8 hours therefrom had not elapsed.

6. Learned counsel for writ petitioner submitted that on interception and detention, the portal was blocked and therefore, the extension of e-way bill could not be done though the writ petitioner had a good four hours from the time of detention.

7. Learned Revenue counsel brought to the notice of this Court an order dated 25.08.2022 made in W.P.Nos.18753 of 2022 and etc., batch and submitted that in cases of this nature, the owner of the consignment should come before writ

Court and not the transporter. On a perusal of the order, it comes to light that 25.08.2022 order made by a Hon'ble single Judge pertains to cases where the goods transported were not accompanied by documents, the documents accompanying the consignment were deficient and in another case where there were alleged discrepancies in the e-way bill and the document and therefore this 25.08.2022 order made in ***TCI Freight Vs. The Assistant Commissioner and another*** *is distinguishable on facts. In this regard, this Court deems it appropriate to remind itself of the* ***Padma Sundara Rao*** *case law [****Padma Sundara Rao Vs. State of Tamil Nadu*** *reported in* ***(2002) 3 SCC 533****], more particularly paragraph 9 thereat, which reads as follows:*

> *"**9.**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

8. Today, learned Revenue counsel submits that the respondent is the proper Officer qua the aforesaid proceedings and it passed an order yesterday for payment of penalty of Rs.6,76,764/-.

9. In the normal circumstances, the sequitur would have been the writ petition would have become infructuous but the order came to be made when the writ petition was being actively heard by this Court. However, Section 129(3) prescribes a time line of seven days from the date of service of notice specifying the penalty payable. Such notice was served on 02.12.2022 and therefore, the order came to be made yesterday. 10. As a one off cases, making it clear that this order will not serve as a precedent, considering the peculiar facts and circumstances and the trajectory the hearing has taken, writ petitioner is permitted to move an amendment application to assail 08.12.2022 order made by the respondent.

List on Monday in the Admission Board i.e., 12.12.2022.

2. In the light of the aforementioned earlier proceedings, captioned Writ Miscellaneous Petitions are ordered as prayed for.

3. <u>Registry to carry out necessary and consequential amendments in the main writ petition (W.P.No.32960 of 2022) by today and list W.P.No.32960 of 2022 and W.M.P.Nos.32360 & 32361 of 2022 in the Admission Board i.e., Motion List tomorrow. List on 13.12.2022.</u>

12.12.2022

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M.SUNDAR.J.,

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in
W.P.No.32960 of 2022

12.12.2022