



W.P.No.33742 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.33742 of 2022

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W.M.P.No.33252 of 2022

in

W.P.No.33742 of 2022

M/s.Sri Balaji Transport
Rep. by its Proprietor
Mr.L.R.Shasee Kumar
Having Office at No.15, Balaji Garden
Bye-Pass Road
Gummudipoondi
Tiruvallur District – 601 201

.. Petitioner

Vs.

- 1.The Principal Secretary/
Commissioner of Commercial Taxes
2nd Floor, Ezhilagam, Chepauk
Chennai – 600 005
2. The Deputy State Tax Officer
Roving Squad – VI, Intelligence -I
Office of the Joint Commissioner (ST)
Intelligence-I, Chennai – 600 006
3. The Assistant Commissioner (ST)
Adjudication, Intelligence-I
Chennai – 600 006

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in Proceedings O.R.No.142/2022-24 (RS-VI) dated 06.12.2022 and quash the same and consequently direct the 2nd and 3rd respondents to release the vehicle bearing No.TN 32-AE-9889 to the petitioner.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader (Tax)

ORDER

This common order will govern the captioned main writ petition and captioned 'Writ Miscellaneous Petition' ['WMP'].

2. Captioned matter is in the Admission Board today. Mr.S.Vijayakumar, learned counsel for writ petitioner and Mr.C.Harsha Raj, learned Additional Government Pleader (Tax) who accepted notice on behalf of all the three respondents are before this Court.

3. Owing to the limited perimeter within which the captioned matter perambulates, main writ petition was taken up with the consent of both sides and for this very reason, a counter affidavit from the



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respondents is really not necessary.

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4. Short facts shorn of granular particulars are that the writ petitioner transported 'Carbon Black Feedstock Oil' ['CBFS Oil' or 'said consignment' for the sake of convenience]; that the writ petitioner imported said consignment from Singapore by sea; that thereafter it was transported by Rail from Mumbai to Chennai; that in Chennai when the truck was moved by surface, the truck was intercepted on 06.12.2022 at 09.35 a.m at Tondiarpet (Kasimedu); that the truck bears Registration No. TN 32-AE-9889; that one Deepak, who was in the truck, had given a 'statement which has been recorded on 06.12.2022 in FORM GST MOV-01, bearing reference O.R.No.142/2022-23 (RS-VI)' [hereinafter 'impugned proceedings' for convenience] and this has been impugned in captioned writ petition; that the impugned proceedings says owner/driver/person incharge but the options have neither been scored off or ticked by the Authority concerned; that the Revenue counsel, on instructions, submits that Deepak was at the wheel (it would be desirable for the respondents to be careful when such options with obliques are available in templates while making order); that proceedings are under Section 129 of 'The Central Goods and Services Tax Act, 2017' [hereinafter 'C-G&ST Act' for



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the sake of brevity, convenience and clarity] are underway.

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5. Learned counsel for writ petitioner submits that the consignment was transported by truck from the Railway yard to a weigh bridge and the interception occurred during such transit. Adverting to the impugned proceedings, learned Revenue counsel pointed out that only a statement has been assailed and in any event, the interception was owing to the reason that the writ petitioner was not in a position to produce E-way bill. Learned counsel for writ petitioner submitted that E-way bill can be applied for only after weighment at the weigh bridge.

6. Learned Revenue counsel for respondent entered upon a disputation saying that the writ petitioner himself has made an internal weighing and therefore, it is an ingenious but fallacious argument.

7. In the light of the disputations and contestations, considering that the same turns heavily on facts, this writ Court refrains itself from expressing any opinion or view on the same. There is another reason as to why this writ Court refrains itself from expressing any opinion and



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proceeds to dispose of the writ petition. That other reason is, learned Revenue counsel, on instructions, submits that pursuant to interception on 06.12.2022, a show-cause notice as statutorily required under Section 129(3) of C-G&ST Act has been issued to the writ petitioner on 07.12.2022, the writ petitioner has sent a reply on the same day, the third respondent has considered the same and has made an order dated 09.12.2022, which has been placed before this Court. A scanned reproduction of 07.12.2022 notice and 09.12.2022 order made by the third respondent are as follows:



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FORM GST MOV-07

**Notice under Sec.129(3) of the CGST Act, 2017 and the TNGST Act, 2017
/ under Sec.20 of the IGST Act, 2017**

Notice No. 698/2022-23 **Dated : 07.12.2022**

1) The goods conveyance bearing No. TN32AE5559 was intercepted and inspected by THIRU. SALAMRUGAN, Deputy State Tax Officer, Roving Station of on 06.12.2022 TONDIAHMET, at 09.30 A.M. At the time of interception, the driver / person in charge of the goods / conveyance is Thiru. DIPAK.

2) The goods in movement were inspected under the provisions of Section 59(1) of the Central Goods and Services Tax Act, 2017 and the Tamil Nadu Goods and Services Tax Act, 2017 or under section 20 of the Integrated Goods and Services Tax Act, 2017 read with Section 68(3) of the CGST / SGST Act, 2017 on 06.12.2022 (date) and the following discrepancies were noticed.

3) AT THE TIME OF INTERCEPTION No valid documents such as Invoice / B way bill, Delivery challan / Bill of supply were not furnished for the goods available in the conveyance No. TN32AE5559.

3) In view of the above, the goods and the conveyance used for the movement of goods were detained under Section 129(1) read with Section 68(3) of the CGST/SGST Act or under section 20 of the IGST Act, 2017 read with Sec.68(3) and Sec.129(2) of the CGST/SGST Act by issuing an order of detention in Form GST MOV-06 and the same was served on the person in charge of the conveyance on 06.12.2022.

4) Section 129(1) of the CGST/SGST Act, 2017 provides for the release of goods and conveyance detained on the payment of penalty in an order:-

(i) 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 two hundred per cent. Of the value of goods where the owner of the goods comes forward to pay such penalty.

(ii) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent. Of the tax payable on such goods, whichever is higher, and in case of exempted goods, the owner of the goods does not come forward for payment of such penalty."

5) Section 179(1)(c) of the CGST/SGST Act, 2017 provides for the release of goods on furnishing of a security equivalent to the amount payable under clause (a) or clause (b) of the Section 179(1), as indicated under at (i) and (ii) or para-4 above, in GST MOV-08.

6) The calculation of proposed penalty is as under:-



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1) CALCULATION OF APPLICABLE PENALTY UNDER CLAUSE (a) OF SUB-SECTION (1) OF SECTION 129

Sl. No.	Description of goods	HSN Code	Qty.	Total Value (Rs.)	Rate of Tax				Penalty amount @ 200%			
					Central Tax	State Tax	Integrated Tax	Cess	Central Tax	State Tax	Integrated Tax	Cess
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1	CARBON BLACK FEED STOCK	2707	38620 KGS	1303385	9	9			270717	270717		

2) CALCULATION OF APPLICABLE PENALTY UNDER CLAUSE (b) OF SUB-SECTION (1) OF SECTION 129

Sl. No.	Description of goods	HSN Code	Qty.	Total Value (Rs.)	Rate of Tax				Penalty amount			
					Central Tax	State Tax	Integrated Tax	Cess	Central Tax	State Tax	Integrated Tax	Cess
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
-	-	-	-	-	-	-	-	-	-	-	-	-

7) You are hereby directed to show cause, within seven days from the receipt of this notice, as to why the proposed penalty mentioned above should not be payable by you, failing which, further proceedings under the provisions of the Customs Act, 1962 or the IGST Act, 2017 and the Goods and Services Tax (Compensation to States) Act, 2017 shall be initiated.

8) You are hereby directed to appear before the undersigned on 13.12.2022 (DD/MM/YYYY) at 11.00 A.M. (HH/MM).

9) If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex-parte on the basis of available records and on merits.

Signature:
Name and Designation: Assistant Commissioner (ST)
of the Proper District: Adjudication, Intelligence-I

To:
TALOIPAK, DRIVPR
Government Barring No. TN32AE889

[Signature]
7/12/22
MADHUSUDAN SANKAR
9694038399
Vik Chinn

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GOVERNMENT OF TAMIL NADU
FORM GST MDV-03
ORDER OF DEMAND OF TAX AND PENALTY

ORDER NO.635/C22-23/AJJ ORDER DATE:05/12/2022

1	Conveyance No	TR 32AE0880
2	Person in charge of the Conveyance	DIPAK
3	Address of the Person in charge of the Conveyance	RAJPLUGA, BEDDUGUARDI- RAJPLUGA, BHANGAL, BANGHADRA, UP, 231215
4	Mobile No. of the Person in charge of the Conveyance	
5	e-Mail ID of the Person in charge of the Conveyance	NA
6	Name of the transporter	
7	GSTIN of the transporter, if any	
8	Date and Time of Inspection	05/12/2022 at 08:35 A.M.
9	Date of service of Notice	05/12/2022
10	Order passed by	Assistant Commissioner (ST) Adjudication, Intelligence I, Chennai-6
11	Date of service of order	07/12/2022
12	Demand as per order	CGST Rs. 226717/- SGST Rs. 226717/-

Act	Tax	Interest	Penalty	Fine/Other charges	Demand No.
CGST			226717		
SGST			226717		
IGST					
2Cent					
Total			453434		

DETAILS OF GOODS DETAINED

Sl.No.	Description of goods	HSN Code	Quantity	Value
1	CARBON BLACK FEED STOCK	2807	29520 KGS	1503985

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DETAILS OF CONVEYANCE DETAINED

Sl.No.	Description:	Details
1	Conveyance Registration No.	YN32AE9889
2	Vehicle Description	
3	Engine No.	*
4	Chassis No.	*

ORDER ENCLOSED

Signature: 

Designation of the Proper Officer:
Assistant Commissioner (D1)
Adjudication
Intelligence-I, Chennai-6



Order under Sec.129(1) of the CGST Act, 2017 read with the relevant provisions of the CGST Act, 2017/IGST Act, 2017/Section 129(1) of the CGST Act, 2017

1) The goods conveyance bearing No.TN32AE9659 was intercepted and inspected by THIRU, BALASUBRAMANIAM, Deputy State Tax Officer, Revenue Squad VI on 06.12.2022 TONOSABET, at 09.30 A.M. At the time of interception, the driver / person in charge of the goods / conveyance is THIRU, DIPAK.

2) The goods in movement were inspected under the provisions of Section 68(3) of the Central Goods and Services Tax Act, 2017 and the Tamil Nadu Goods and Services Tax Act, 2017 or under section 20 of the Integrated Goods and Services Tax Act, 2017 read with Section 58(3) of the CGST / IGST Act, 2017 on 06.12.2022 and the following discrepancies were noticed.

1)	AT THE TIME OF INTERCEPTION No valid documents such as: Invoice, E-way Bill, Delivery challan / Bill of supply were not furnished for the goods available in the conveyance No. TN32AE9659.
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3) In view of the above, the goods and the conveyance used for the movement of goods were detained under Section 129(1) read with Section 58(3) of the CGST/IGST Act or under section 20 of the IGST Act, 2017 read with Sec.68(3) and Sec.129(1) of the CGST/IGST Act by issuing an order of detention in Form GST MCV-06 and the same was served on the person in charge of the conveyance on 06-12-2022.

4) Section 129(1) of the CGST/IGST Act, 2017 provides for the release of goods and conveyance detained on the payment of tax and penalty as under:-

(i) the applicable tax and penalty shall be one hundred per cent of the tax payable on such goods, where the owner of the goods comes forward to pay such tax and penalty.

(ii) the applicable tax and penalty shall be the fifty percent of the value of the goods reduced by the tax amount paid thereon under the CGST/IGST Act, 2017 calculated separately or the applicable tax and penalty equal to the value of the goods reduced by the tax amount paid thereon under the Integrated Goods and Services Tax Act, where the owner of the goods does not come forward to pay such tax and penalty.

5) Section 129(1)(c) of the CGST/IGST Act, 2017 provides for the release of goods upon furnishing of a security equivalent to the amount payable under clause (a) or clause (b) of the Section 129(1), as indicated supra as (i) and (ii) of para 4 above, in GST MCV-06.

6) The calculation of proposed penalty is as under:-

1) CALCULATION OF APPLICABLE PENALTY UNDER CLAUSE (a) OF SUB-SECTION (1) OF SECTION 129

Sl. No	Description of goods	HSN Code	Qty.	Total Value (Rs.)	Rate of Tax				Penalty amount @ 100%			
					Central Tax	State Tax	Integrated Tax	Cess	Central Tax	State Tax	Integrated Tax	Cess
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1	CARBON BLACK FEED STOCK	2707	29620 KGS	1533985	9	9			270717	270717	0	



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2) CALCULATION OF APPLICABLE PENALTY UNDER CLAUSE (5) OF SUB-SECTION (1) OF SECTION 129

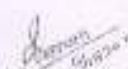
Sl. No.	Description of goods	HSN Code	Qty.	Total Value (Rs.)	Rate of Tax				Penalty amount			
					Central Tax	State Tax	Integrated Tax	Cess	Central Tax	State Tax	Integrated Tax	Cess
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

7) Incorporating the above points, a notice in Form GST move-07 was issued and duly served on the person in charge of the conveyance, providing him an opportunity to show cause against the demand of tax and penalty as applicable and make payment of the same and to get the goods and conveyance released.

8) Accordingly a notice dated 07-12-2022 was issued on 07-12-2022. On behalf of Tvl. Sri Balaji Transport, a representative appeared in person on 07-12-2022, filed a reply and put forth their contention. Their reply was carefully examined with the relevant documents and deputed as below.

- No valid documents such as Invoice / E-Way bill / Bill of entry / Delivery challan was furnished at the time of interception at Tondirapet.
- After receiving the notice, a letter of Entry (Importer Tvl. Bida Garden India private limited) was furnished with the reply saying that, on behalf of Tvl. Bida Garden India private limited, Conveyance TN 32 AB 9889, which belongs to Tvl. Sri Balaji Transport was sent to load the goods from Royapuram goods yard. After weighing only, they could generate E way bill to reach Gummidipoondi.
- The reply filed by Tvl. Sri Balaji Transport cannot be accepted, because the Conveyance TN 32 AB 9889 was not intercepted in and around Royapuram goods yard. The Conveyance commenced its movement of goods and it was intercepted at Tondirapet. Since no relevant documents such as bill of entry/packing list/delivery challan were furnished to substantiate for the weighment purpose only. Moreover, the penalty the calculation of confirmed penalty as under:

Ass	Penalty @ 200% Rs.
CGST	270717
SGST	270717
TOTAL	541434

Signature: 
Name and Designation Assistant Commissioner (SI)
of the Proper Officer Adjunction, Intelligence I

To
Tvl. Sri BALAJI TRANSPORT,
15, BALAJI GARDEN, BYE PASS ROAD,
GUMMIDIPPOONDI-605 005.

(F. 10/11/2022)
14/12/2022

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8. The matter has been carried to its logical end (to be noted, there is a seven days time line ingrained in Section 129 of C-G&ST Act), it is now too late in the day for the writ petitioner. In any event, the writ petitioner has assailed only a record of statement given by the person at the wheel qua the truck that was intercepted. In this view of the matter, it is now for the writ petitioner to assail the aforementioned 09.12.2022 order bearing reference Order No.635/2022-23/ADJ if so desired and if so advised. To be noted, copy of the 09.12.2022 proceedings has been handed over by the learned Revenue counsel to the learned counsel for writ petitioner today. If the writ petitioner chooses to do the same in accordance with law, the Authority / forum / Court would consider the same on its own merits and in accordance with law untrammelled by any observation in this order which has been made for the limited purpose of disposal of captioned writ petition.

9. Sum sequitur is, the writ petition fails and the same is dismissed. Consequently, captioned WMP is also dismissed. To be noted, dismissal albeit preserving the rights of the writ petitioner is limited



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to the extent indicated supra i.e., providing a window to the writ petitioner

to the limited extent set out supra. There shall be no order as to costs.

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Index: yes/no
gpa

To

1. The Principal Secretary/
Commissioner of Commercial Taxes
2nd Floor, Ezhilagam, Chepauk
Chennai – 600 005
2. The Deputy State Tax Officer
Roving Squad – VI, Intelligence -I
Office of the Joint Commissioner (ST)
Intelligence-I, Chennai – 600 006
3. The Assistant Commissioner (ST)
Adjudication, Intelligence-I
Chennai – 600 006



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M.SUNDAR, J.,

gpa

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