IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.12.2022

CORAM

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P. No.34268 of 2022
and
W.M.P. No. 33714 & 33715 of 2022

TVl.Udhayan Steels Private Limited,
Rep. by its Director Selvan,
No.2/2, Jakkarapalayam Post,
Pollachi Taluk,
Coimbatore - 642 202 … Petitioner

-vs-

1. Deputy State Tax Officer (Int.)
Roving Squad,
Coimbatore.

2. The Assistant Commissioner (ST),
Adjudication, Coimbatore. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari calling for the records on the files of the 2nd respondent in Order No.ADJ 187/2022-23 Order dated 15.12.2022 and Connected Order of the First respondent in Form GST MOV-06 being Order of Detention dated 07.12.2022 and quash the same as being without its jurisdiction and authority of law and beyond the period of limitation prescribed under Section 129(3) of the GST Act 2017.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.K.Vasanthamala
Government Advocate (Tax).

O R D E R

The present writ petition is filed challenging the impugned order dated 15.12.2022 and the connected Order of Detention in Form GST MOV-06 dated 07.12.2022, on the short ground that the impugned proceedings are barred by the limitation prescribed under Section 129(3) of the GST Act, 2017 (hereinafter referred to as 'Act').

2. Relying upon the order dated 10.10.2022 made in W.P.No.25931 of 2022, the learned counsel for the petitioner would submit that the scope of Section 129 of the Act, had come up for consideration before this Court in the above said writ petition. This Court has held that it is incumbent upon the authority to pass an order of detention prior to the period stipulated viz., 7 days under Section 129(3) of the Act. The relevant portion reads as under:

> "5. I have, in W.P.No.22646 of 2022 in the case of D.K.Enterprises V. The Assistant/Deputy Commissioner and another, order dated 29.08.2022 set out the scheme of events and timelines stipulated under Section 129 of the Act commencing from interception of vehicle upto passing of final order of penalty. Since the statutory show cause notice is to be issued within a period

of 7 days from date of interception, it becomes incumbent upon an authority to pass an order of detention prior thereto.

6. In this case, admittedly, neither order of detention nor show cause notice have been issued in time. The date of interception of vehicle is 01.08.2022 and the order of detention has been passed only on 11.08.2022. The show cause notice has been issued on 16.08.2022. The timelines as set out under Section 129 are completely vitiate the proceedings in full.

7. Learned Government Advocate draws my attention to the fact that the petitioner had earlier approached this Court in W.P.No.23816 of 2022 challenging show cause notice dated 16.08.2022. By order dated 06.09.2022 I had recorded the request of the learned counsel for the petitioner to withdraw the Writ Petition with liberty to file a reply to the show cause notice. The order reads as follows:

> "Learned counsel for the petitioner seeks permission to withdraw this Writ Petition with liberty to file a reply to show cause notice dated 16.08.2022. He has also made an endorsement to that effect.
>
> 2. In light of the endorsement made, this Writ Petition is dismissed as withdrawn granting liberty to the petitioner to file a reply to the show cause notice. Reply, if and when filed by the petitioner, shall be considered by the officer in accordance with law and proceedings disposed/closed, after hearing the petitioner, within a period of one (1) from date of receipt of reply. No costs. Connected Miscellaneous Petition is closed."

8. Thus, according to the learned Government Advocate, since the petitioner was permitted to file a reply to the show cause notice, the question of delay had already been taken note of and condoned by this Court and hence, order dated 13.09.2022 impugned in this Writ Petition is perfectly in order.

9. There is no merit in this submission. In fact, neither of the parties had argued the position of delay before me in the earlier round of proceedings and the direction to the officer in order dated 06.09.2022 is to consider the reply of the petitioner *'in accordance with law'* and thereafter pass an order.

10. The petitioner in its reply filed on the same day has specifically made reference to the order in this case of *D.K.Enterprises (s*upra) and has also referred to the statutory timeline under Section 129 of the Act. Thus, it was incumbent upon the authority to have taken note of the same. This has not been done.

11. For all the reasons as aforesaid, specifically since the admitted dates clearly reveal the lapses in adhering to the statutory and stipulated timelines, the case of the petitioner merits acceptance.

12. The impugned orders are set aside. The vehicle in question shall be released forthwith. This Writ Petition is allowed. No costs. Connected Miscellaneous Petitions are closed."

3. In this regard, it may be relevant to note the following dates.

(a) The date of detention is 07.12.2022;

(b) The notice was issued on 07.12.2022; and

(c) The order of detention is passed on 15.12.2022.

4. It is submitted by both the counsel for the petitioner and respondent that the order u/s.129(3) of the Act is passed on the eighth day from the date of service of notice, whereas the time line stipulated under Section 129(3) of the

Act is that the order ought to be passed within a period of 7 days from the date of service of such notice. Inasmuch as admittedly, the impugned proceedings are beyond the time lines stipulated under Section 129(3) of the Act, the same is fatal to the order in terms of the order of this Court in W.P.No.25931 of 2022. The impugned proceedings are set aside and the vehicles/goods in question shall be released forthwith.

5. With the above directions, the writ petition stands allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed. No costs.

28.12.2022

ars/dk

Index: Yes/No

Note : Issue Order copy on **30.12.2022**

To

1. Deputy State Tax Officer (Int.)
Roving Squad,
Coimbatore.

2. The Assistant Commissioner (ST),
Adjudication, Coimbatore.

MOHAMMED SHAFFIQ, J.

ars/dk

W.P. No. 34268 of 2022

28.12.2022