IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM :

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.34288 of 2022

M/s.Alexis Steel Trading Private Limited,
Represented by authorised representative,
Prakash,
No.99/1, Kannayiram Street,
Shiva Sankar Nagar, Nagelkeni,
Chennai 600 044.

.. Petitioner

Vs.

The Assistant Commissioner (ST) FAC,
Adjudication, Intelligence-I,
Greams Road, Chennai 600 006.

.. Respondent

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings on the file of the respondent to quash the impugned show cause notice dated 14.12.2022 bearing notice No.647/2022-23 and to direct the respondent to release the conveyance bearing registration No.TN20AL6728 along with its goods which have been illegally and arbitrarily detained by the respondent.

For Petitioner : Mr.J.Ashish
For Respondent : Ms.Amirta Dinakaran,
Government Advocate (Taxes)

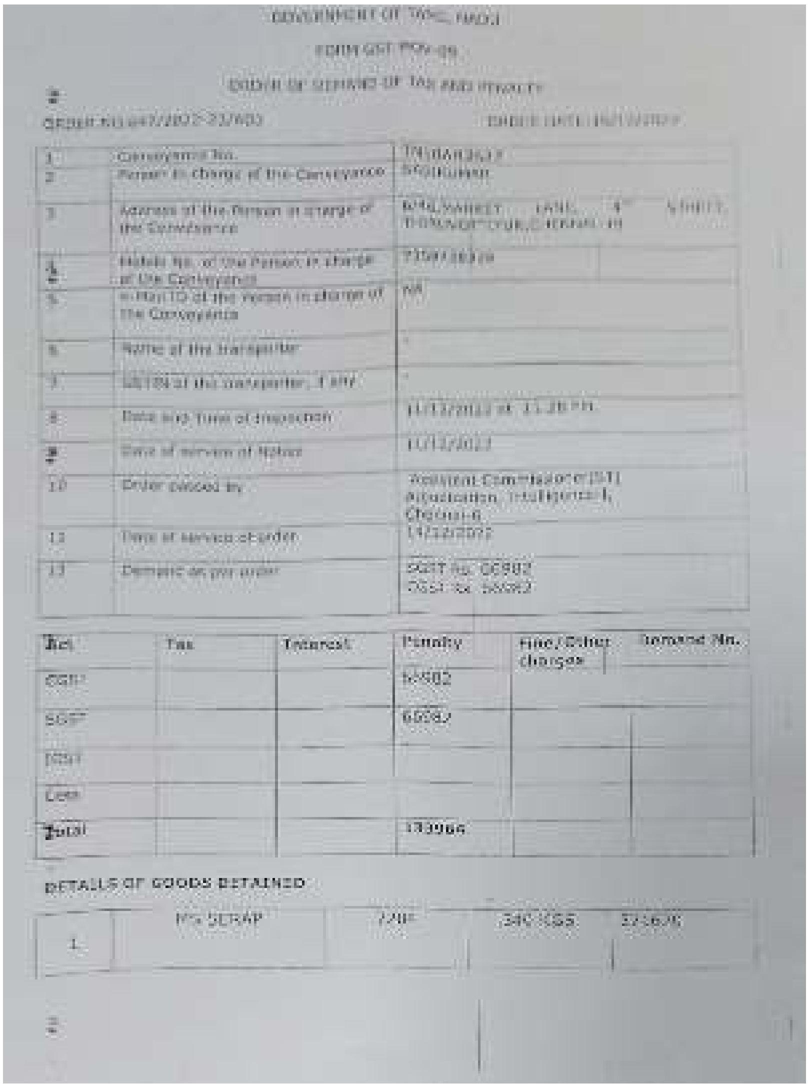
*****

O R D E R

Captioned writ petition has been filed assailing an order dated 14.12.2022 bearing Notice No.647/2022-23 made by the lone respondent *inter alia* under Section 129(3) of 'Central Goods and Services Tax Act, 2017' [hereinafter 'C-GST Act' for the sake of convenience and clarity], 'Tamil Nadu Goods and Services Tax Act, 2017 (Tamil Nadu Act 19 of 2017)' [hereinafter 'TN-GST Act' for the sake of convenience and clarity] and IGST, 2017.

2. Subject matter of the writ petition is detention of a truck carrying some consignment on the ground that e-invoice was not generated at the time of interception. To be noted the interception was on 11.12.2022 at about 11:28 pm. It is not necessary to dilate any further as Ms.Amirta Dinakaran, learned Revenue counsel, who accepts notice on behalf of the sole respondent submitted that an order after affording opportunity of personal hearing being order dated 16.12.2022 bearing

Order No.647/2022-23/ADJ has since been passed by the respondent. A scanned reproduction of the copy of the order which is placed before this Court is as follows:


GOVERNMENT OF TAMIL NADU

FORM GST MOV-09

ORDER OF DEMAND OF TAX AND PENALTY

ORDER NO.647/2022-23/ADJ ORDER DATE: [illegible]

1	Conveyance No.	[illegible]
2	Person in charge of the Conveyance	[illegible]
3	Address of the Person in charge of the Conveyance	[illegible] CHENNAI [illegible]
4	Mobile No. of the Person in charge of the Conveyance	[illegible]
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	11/12/2022 at 11.26 PM
9	Date of service of Notice	11/12/2022
10	Order passed by	Assistant Commissioner (ST) Adjudication, Intelligence-I, Chennai-6
11	Date of service of order	14/12/2022
12	Demand as per order	SGST Rs. 66982 CGST Rs. 66982

Act	Tax	Interest	Penalty	Fine/Other charges	Demand No.
CGST			66982		
SGST			66982		
IGST					
Cess					
Total			133964		

DETAILS OF GOODS DETAINED

1.	MS SCRAP	7204	340 KGS	[illegible]

2.

DETAILS OF CONVEYANCE DETAINED

Sl.No.	Description	Details
1	[illegible]	TN [illegible]
2	[illegible]	
3	Engine No.	-
4	Chassis No.	-

[illegible]

Signature

Designation of the Proper Officer

Assistant Commissioner (ST)
Adjudication
[illegible] Chennai-1

Order under Sec.129(3) of the SGST Act, 2017 read with the relevant provisions of the CGST Act, 2017/IGST Act, 2017/GST(Compensation to States) Act, 2017

1) The goods conveyance bearing No. TN28AL6726 was intercepted and inspected by THIRU MUTHUKRISHNAN, Deputy State Tax Officer, Roving Squad III on 11.12.2022 at 11.26 P.M. At PUZHAL the time of interception, the driver / person in charge of the goods / conveyance is Thiru SASIKUMAR

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 68(3) of the CGST / SGST Acts, 2017 on 11/12/2022 and the following discrepancies were noticed.

i)	At the time of interception E INVOICE NOT GENERATED

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 Acts or under section 20 of the IGST Act, 2017 read with Sec.68(3) and Sec.129(1) of the CGST/SGST Acts 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 11/12/2022

4) Section 129(1) of the CGST/SGST Acts, 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 equal to 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 equal to the fifty percent of the value of the goods reduced by the tax amount paid thereon under the CGST/SGST Acts, 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/SGST Acts, 2017 provide 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 at (i) and (ii) of para 4 above, in GST MOV-08.

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

2

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: Central Tax	Rate of Tax: State Tax	Rate of Tax: Integrated Tax	Rate of Tax: Cess	Penalty amount @ 200%: Central Tax	Penalty amount @ 200%: State Tax	Penalty amount @ 200%: Integrated Tax	Penalty amount @ 200%: Cess
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1	MS SCRAP	7204	340 KGS	371020	9	9	0	-	66982	66982		

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: Central Tax	Rate of Tax: State Tax	Rate of Tax: Integrated Tax	Rate of Tax: Cess	Penalty amount: Central Tax	Penalty amount: State Tax	Penalty amount: Integrated Tax	Penalty amount: Cess
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
-	-	-	-	-	-	-	-	-	-	-	-	-

7) Incorporating the above points, a notice in **Form GST mov-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.

Accordingly a notice dated 12-12-2022 as per notification No.17/2022 Central Tax, dated 01-08-2022 and Rule 48(4) of CGST rules notifies registered person, where aggregate turnover in a financial year exceeds 10 crore rupees, E invoice is mandatory. Since, Tvl.Alexis Steel Trading private limited have exceeded the aggregate turnover of Rs.10 crore rupees in the month of November 2022 itself, the reply filed by Tvl. Alexis Steel Trading private limited is summarily rejected.

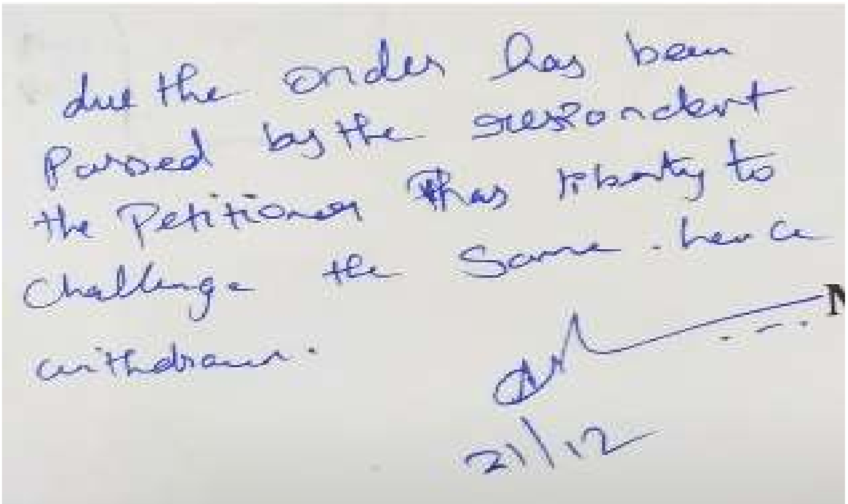
Hence the reply filed by Tvl. Alexis Steel Trading private limited is summarily rejected and the penalty already proposed is confirmed as detailed below :

Act	Penalty @ 200% Rs.	
CGST	66982	
SGST	66982	
TOTAL	133964	

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

To
Tvl. Alexis Steel Trading private limited,
GSTIN:33AAXCA6548D1ZB
No. 99/1, Karumariamman Street,
Shiva Sankar Nagar,
Nagalkeni, Chennai 44.
(By RPAD)

3. Owing to the aforesaid development, learned counsel for writ petitioner sought leave of this Court to withdraw the captioned writ petition but made a plea that all the rights and contentions of the writ petitioner including the contentions raised in the captioned writ petition may please be preserved for the writ petitioner to challenge the aforementioned order dated 16.12.2022. Learned counsel has made an endorsement in the case file. A scanned reproduction of the same is as follows:


due the order has been
Passed by the respondent
the Petitioner has liberty to
Challenge the Same. hence
withdrawn.
21/12

4. Learned counsel reiterates the aforementioned endorsement in the hearing.

5. In the light of the aforementioned endorsement and reiteration of the same, captioned Writ Petition is disposed of as withdrawn/closed albeit preserving all the rights and contentions of writ petitioner including contentions raised in instant writ petition for assailing aforementioned 16.12.2022 order. There shall be no order as to costs.

21.12.2022
(2/2)

Index: Yes/No
Speaking / Non-speaking order
nsa/kmi

To

The Assistant Commissioner (ST) FAC,
Adjudication, Intelligence-I,
Greams Road, Chennai 600 006.

M.SUNDAR, J.,

nsa/kmi

W.P.No.34288 of 2022

21.12.2022
(2/2)