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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.25322 of 2022
and
W.M.P(MD).Nos.19410 and 19411 of 2022

M/s AMCO Batteries Limited,
Represented by its Company Secretary,
No.803, Anna Salai,
Chennai-600 002. ... Petitioner

Vs.

1.The State Tax Officer (Intl.),
Adjudication-1,
Madurai.

2.The State Tax Officer (Intl.),
RS (Main),
Madurai. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 1st Respondent in his proceedings in ADJ-I/Order No.57/2022-23/Madurai(Int), quash the order dated 02.11.2022 passed therein.

For Petitioner : Mr.R.L.Ramani
Senior Counsel
For Mr.S.Raja Jeya Chandra Paul

For Respondents : Mr.T.Amjad Khan
Government Advocate

ORDER

This writ petition is filed challenging the impugned proceedings under Section 129 of the Tamil Nadu Goods and Services Tax Act, whereby, penalty of 200% of the alleged tax due amounting to Rs.5,71,200/- (Rupees Five Lakhs Seventy One Thousand and Two Hundred only) has been imposed.

2. It is submitted by the learned Senior Counsel for the Petitioner that Petitioner is a limited company engaged in the manufacture of two wheeler and four wheeler batteries having its

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registered office at Chennai and factory/warehouse at M[illegible]ai Nagar, Kancheepuram District. The supply of batteries are with a fixed period of warranty and under the warranty policy, the defective batteries are replaced free of charge during the warranty period. It is submitted that the goods seized represents replacement for defective batteries, which would be evident from the delivery challan, which says nature of transaction, Warranty FOC. However, by mistake, it is submitted that in the E-way bill, it was indicated as "outward supply".

3. These goods are meant as replacement for defective batteries to dealers in Kerala from Chennai via Madurai. The consignment was intercepted at Madurai and it was found that the consignment was not supported by valid invoices and without appropriate GST documents. It was thus seized in terms of Section 129 of the Tamil Nadu Goods and Services Tax Act. It may be relevant to note that interception took place on 19.10.2022, show cause notice was issued on 22.10.2022 and reply was submitted by the Petitioner on 26.10.2022 and the order came to be passed after affording personal hearing on 02.11.2022.

4. It is pointed by the learned Senior Counsel for the Petitioner that in terms of Section 129(3) of the Tamil Nadu Goods and Services Tax Act, the order ought to have been passed within 7 days from 26.10.2022. However, impugned order, dated 02.11.2022 is beyond the period prescribed under Section 129(3) of the Tamil Nadu Goods and Services Act. It was thus submitted that the proceedings are bad in law inasmuch as it is barred by limitation prescribed under Section 129(3) of the Tamil Nadu Goods and Services Tax Act.

5. It is submitted by the learned Government Advocate for the Respondents that the provisions are intended to serve as an anti-evasion measure and the reason for seizure was only in view of the fact that it was not supported by appropriate documents including invoices. It was further submitted that by way of an interim measure, the Petitioner may be directed to pay one time tax although provision of Section 129(1) of the Act would indicate that these goods shall be released on payment of penalty equal to 200%, in view of the fact that impugned order itself is *prima facie* contrary to the limitation prescribed under Section 129(3) of the Act.

6. It is submitted that consignment shall be released on payment of penalty of one time tax i.e., 100% tax and it is open to the Petitioner to agitate the rights finally by way of filing an appeal, if they are so advised. The learned counsel for the Petitioner submitted that they are willing to pay one time tax for the limited purpose of release of consignment and submit that the payment of 100% of tax as penalty may be adjusted towards 25% pre-deposit for filing an appeal, which was consented to by the learned Government Advocate for the Respondents.

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(*) "7. Recording the same, the writ petition stands dis of with the following directions:

a) The Respondents shall release the consignment on the petitioner paying 100% tax forthwith.

b) In the event of the petitioner filing an appeal, 100% taxes paid shall be adjusted towards 25% pre-deposit for filing appeal.

c) Registry is directed to return the original copy of impugned order to the petitioner, after retaining the Photostat copy.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

(*)corrected as per order of this court dated 09/02/2023 made in WP (MD).No. 25322 of 2022

Sd/-

Assistant Registrar (CS III)

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/11/2022

Sub Assistant Registrar(CS)

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(*) TO be substituted the order already despatched on 21.11.2022

To

1.The State Tax Officer (Intl.),
Adjudication-1,
Madurai.

2.The State Tax Officer (Intl.),
RS (Main),
Madurai.

Copy to

The Section Officer, E.R.Section,
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-53543[F] dated 08/11/2022)

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+1 CC to M/s.SPL.GP (SR-53675[F] dated 09/11/2022)

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08.11.2022

SS/18/11/2022/ 4P 5C

KB/23/02/2023/ 4P 6C

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