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W.P.Nos.476 of 2023 & 33851 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

**W.P.Nos.476 of 2023 & W.P.No.33851 of 2022 &
W.M.P.Nos.425 & 428 of 2023 & W.M.P.No.33322 of 2022**

Deepam Roadways
Represented by its Manager C.M.Babu,
56, Kanthappa Chetty Street,
Chennai - 600 001

... Petitioner in both W.Ps.

VS.

1.The Deputy State Tax Officer,
Roving Squad - IV,
Office of the Joint Commissioner (ST),
Intelligence - I, Chennai - 600 006.

2.The State Tax Officer,
Adjudication,
Intelligence - I,
Chennai - 600 006.

...Respondents in both W.Ps.

3.The Assistant Commissioner (ST),
Adjudication,
Intelligence - I,
Chennai - 600 006.

... 3rd Respondent in W.P.No.476 of 2023



Prayer in W.P.No.476 of 2023: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified Mandamus calling for the records on the files of the third respondent in Form GST MOV - 09 being order of Demand of Penalty in Order No.544/2022-23 ADJ dated 10.11.2022 passed under section 129(3) of the GST Act, 2017 and quash the same as being without jurisdiction and authority of law and further direct the respondents to arrange to release the consignment - goods with vehicle - AP 16 TY 7925 as requested vide representation dated 26.10.2022 and 03.11.2022.

Prayer in W.P.No.33851 of 2022: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified Mandamus calling for the records on the files of the second respondent in Form GST MOV - 09 being order of detention dated 31.10.2022 and quash the same as being without jurisdiction and authority of law and further direct the first and second respondents to arrange to release the consignment with vehicle - AP 16 TY 7925 as requested vide representation dated 26.10.2022 and 03.11.2022.

For Petitioner in
both W.Ps. : Mr.R.Senniappan

For Respondents in
both W.Ps. : Mr.M.Venkateswaran,
Special Government Pleader



COMMON ORDER

The issue that arises for consideration in these writ petition is whether section 129(3) of the Central Goods and Services Tax Act, 2017 was adhered to by the respondents or not.

2. Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.M.Venkateswaran, learned Special Government Pleader appearing for the respondents.

3. The petitioner has challenged the detention order dated 31.10.2022 as well as the consequential order dated 10.11.2022 calling upon the petitioner to pay a sum of Rs.4,16,862 towards CGST and another sum of Rs.4,16,862/- towards SGST as penalty, totalling Rs.8,33,724/-. Both the orders were passed as per the provisions of section 129 of the CGST Act, 2017. Section 129 of the CGST Act reads as follows:

"129. Detention, seizure and release of goods and conveyances in transit.—

*(1) Notwithstanding anything contained in this Act,
where any person transports any goods or stores any*



goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) 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 per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) 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, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be



detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) (omitted)

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).

(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3): Provided that the conveyance shall be released on



payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”

4. As seen from section 129(3) of the Central Goods and Services Tax Act, 2017, the proper officer after detaining the goods or conveyance shall issue a notice of such detention or seizure specifying the penalty payable and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of Sub-Section (1) of Section 129.

5. In the instant case, after detaining the petitioner's vehicle and the goods on 26.10.2022, notice was issued by the respondents on 31.10.2022 within seven days from the date of detention. However, the consequential order for payment of penalty was passed only on 10.11.2022 which is beyond the period of seven days from the date of service of notice on the petitioner. Having passed the impugned order beyond the period of



seven days from the date of service of notice on the petitioner which is contrary to section 129(3) of the CGST Act, 2017, the impugned orders have to be necessarily quashed and the writ petitions will have to be allowed.

6. The very same view was taken by two other learned Single Judges of this Court in the case of **Udhayam Steels Private Limited vs. Deputy Tax Officer (Int.) and another** dated 28.12.2022 in W.P.No.34268 of 2022 and in the case of **D.K. Enterprises vs. The Assistant/Deputy Commissioner and another** dated 29.08.2022 in W.P.No.22646 of 2022. It is brought to the notice of this Court by the learned Special Government Pleader appearing for the respondents that no appeals have been filed against the aforesaid orders passed by two learned Single Judges of this Court and therefore, the said orders have also attained finality.

7. For the foregoing reasons, the impugned detention order dated 31.10.2022 as well as the impugned consequential order dated 10.11.2022 are hereby quashed and the writ petitions are allowed and a direction is issued to the respondents to release the detained goods and conveyances of



the petitioner within a period of one week from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petitions are closed.

23.01.2023

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Note: Issue order copy on 24.01.2023

Index: Yes/No

Speaking/Non-speaking orders

Neutral Citations: Yes / No



To

- 1.The Deputy State Tax Officer,
Roving Squad - IV,
Office of the Joint Commissioner (ST),
Intelligence - I, Chennai - 600 006.
- 2.The State Tax Officer,
Adjudication,
Intelligence - I,
Chennai - 600 006.
- 3.The Assistant Commissioner (ST),
Adjudication,
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ABDUL QUDDHOSE, J.

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