IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.04.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.12595 of 2023 and
WMP Nos.12399 and 12401 of 2023

M/s.Lodha Roadways,
Represented by its Partner Ajith Lodha,
Fleet Owner & Transport Contractors,
428, Vidyavihar Soc, A-1, Preetkunj Hou. Soc.,
Gokhale Road, Shivaji Nagar,
Pune – 411 016.

... Petitioner

Vs

Deputy State Tax Officer,
Inspection Cell-4,
Office of Deputy Commissioner (ST),
(Intelligence), Salem-636 007.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned proceedings vide impugned order of detention dated 08.04.2023 bearing no.14004/23-24/Rs-8.S in Form GST MOV-06 and consequent penalty imposed vide Form GST MOV-07, Impugned order of demand of tax and penalty dated 16.04.2023 bearing Form GST MOV-09 issued by the Respondent and to quash the same.

For Petitioner : Mr.Jaishankar Ramakrishnan

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate accepts notice for the respondent and is armed with instructions to enable final disposal of this matter, even at the stage of admission.

2. This Writ Petition is misconceived. The petitioner is a transporter and thus the prayer which addresses an order of detention passed under Section 129(1) of the Tamil Nadu Goods and Services Tax Act, 2017 read with the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017 seeking quashing of the order and consequential release cannot be entertained.

3. The provisions of Section 129 provides for detention, seizure and release of goods and conveyances in transit. Sub-section (6) and the proviso thereto read as follows:

> *129.Detention, Seizure and release of goods and conveyances in transit.*
>
> *(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. I have in the case of *TCI Freight Vs. The Assistant Commissioner and another* (W.P.No.18753 of 2022 dated 25.08.2022) set out my understanding of Section 129 qua a transporter in the following terms:

"7. The petitioner herein is the transporter of the consignee. The petitioner was engaged by an entity in Madras for transportation of carbon electrodes to the consignee in Assam. The services of a third party vehicle was engaged and the consignments transported. The said consignments were intercepted on 26.06.2022 by the State Tax Officer, who alleged discrepancies in the e~way bill and other documents.

8. The consignments have been detained at Manjabakkam check post on 27.06.2022. An order of detention has been passed on 27.06.2022 accompanied by a show cause notice calling for the petitioner-s response. After consideration of the response, an order has come to be passed confirming the penalty on 06.07.2022. In the present case, the owner has responded neither to the show cause notice nor to the order levying penalty, both of which have been served upon it.

9. Thus, it falls upon the transporter to take appropriate action, at the least to safeguard the conveyance, in which the consignment had been transported. However, the transporter goes one step forward and argues that the provision of Section 129 of the Act, that deal with 'detention, seizure and release of goods and conveyances in transit', and permit the release of detained goods upon compliance with the conditions set out therein, would be equally applicable to it.

10. I will first decide the above issue, that arises only in WP.No.18753 of 2022 before passing a final consolidated set of directions that would be applicable to all petitioners. The provisions of Section 129 read 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:

11. The case of the petitioner is that the benefit granted to the owner of the goods to seek release of the detained goods on payment of penalty or furnishing of security, would be equally applicable to the case of a transporter as well. In this context, my attention is drawn to the provisions of

Section 129(6) that deploys the phrase -person transporting any goods or the owner of such goods- and reads thus:

-129.Detention, Seizure and release of goods and conveyances in transit.

(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.

Thus, learned counsel would argue that the statute permits not just the owner, but also the transporter, to seek release of the goods.

12. The stand of the revenue hinges upon the proviso to Section 129(6) which states that the 'conveyance' shall be released on payment by the transporter of penalty or a sum of Rs.1,00,000/~ whichever is less.

13. Upon a consideration of Section 129, read with other relevant provisions of the Act, I would agree with the revenue. Section 129(1) specifically addresses any person transporting any goods or storing any goods. This aligns with the use of the phraseology, person transporting any goods or the owner of such goods that is used in sub~Section 6.

14. Thus, the entitlement to seek release under Section 129 is only qua the owner/agent/representative of the owner.

This interpretation is supported by the language used in the first proviso that specifically uses the term -transporter- and states that such transporter may seek release of the conveyance on payment of penalty or of a sum of Rs.1,00,000/~ whichever was less.

15. Thus, legislature has been conscious of the roles of the various persons involved in a transaction of carriage of goods such as the consignor/agents/representatives, the consignee/purchasers and transporter. The entitlement to seek release has also been carefully and consciously sculpted. While the owner or any person transporting the goods has been granted the right to seek release, only a limited benefit has been made available to a transporter, and that too, qua the release of conveyance alone.

16. At this juncture, I clarify my understanding of the phrase 'person transporting the goods' in Sections 129(1) and (6) to mean the owner or his agent who has contracted to supply the goods, and not the transporter who will provide the carriage for the same. Both sub~Sections (1) and (6) use the phrase -goods or conveyance- whereas the proviso extends the benefit of release, upon terms, to the transporter, but restricted to the conveyance alone. Thus, I conclude that the transporter may seek release of only the conveyance, upon satisfaction of the statutory conditions.

17. As far as the goods are concerned, if the owner/agent/representative does not come forward to claim the same after receipt of notices from the department and upon satisfaction of the conditions under Section 129, it is open to the revenue to take such steps as it may deem fit in that regard. This question is answered accordingly, and adverse to the transporter, petitioner in W.P.No.18753 of 2022."

5. The aforesaid order in TCI Freight was taken in appeal in W.A.No.2313 of 2022. Pending Writ Appeal, Eveready Industries India Ltd./consignee in that matter, whose consignment had been carried by TCI Freight, had approached the

authorities, paid the applicable penalty and obtained release of the goods. Thus, vide order dated 18.10.2022, the Division Bench closed the Writ Appeal holding that the issue had become academic by then.

6. I reiterate the scheme of Section 129 in this matter as well. Though Section 129 provides for various situations where release of conveyance and goods may be sought, Section 129(6) is specific to a transporter and enables a transporter to seek release of the conveyance in the circumstances mentioned therein, being, upon payment of penalty under sub-section (3) or a sum of Rs.1.00 lakh, whichever is less.

7. Thus the benefit as above, is always available to the petitioner before me. The submission made now seeking release of conveyance, is on the ground that tax has been paid in full. It is not for the transporter to make this submission as such payment, if at all would have been borne by the assessee concerned, and not the transporter. To be noted that the assessee is not on affidavit before this Court attesting to the aforesaid position.

8. Reliance is placed upon the decision of this Court in *Thiruannamalaiyar Transport V. The Deputy State Tax Officer and another* (W.P.No.32960 of 2022 dated 13.12.2022). In that case, the distinction between the manner in which Section 129 would operate qua a consignor/consignee on the one hand, and transporter on the other, has not been specifically argued and thus not taken note

of or addressed. This Court has proceeded to decide the matter on the basis of Circular No.10 of 2019, Q1/17253/2019 dated 31.05.2019 that has been amended subsequently, most recently by Circular No. 1W1/3365394/2022, dated 24.02.2023.

9. In light of the detailed discussion as aforesaid, I find no merit in this Writ Petition and the same is dismissed, as are the connected Miscellaneous Petitions. No costs.

24.04.2023

Index : Yes / No
Speaking/non-speaking Order
Neutral Citation: Yes/No
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To

Deputy State Tax Officer,
Inspection Cell-4,
Office of Deputy Commissioner (ST),
(Intelligence), Salem-636 007.

W.P.No.12595 of 2023 and
WMP Nos.12399 and 12401 of 2023