



W.P.No.17241 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.17241 of 2023

Luminous Power Technologies Private Limited,
Represented by Ram Chander Yadav
Authorized Representative
No.10, 2E, 2B Poochi Athipad Village,
Uthukottai Taluk,
Thiruvallur District.

... Petitioner

Vs.

1.State Tax Officer,
Adjudication-I,
Salem Intelligence, Salem.

2.Deputy State Tax Officer,
Roving Squad-IV,
Salem Intelligence, Salem.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned notice bearing ADJ.No.91/2022-23/Adjudication-I dated 30.12.2022 issued by the first respondent and quash the same and further direct the first respondent to refund the tax and penalty



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of Rs.1,07,816/- which was coercively received in an illegal manner within a stipulated period.

For Petitioner : Mr.V.Prakash
Senior Counsel
for Mr.K.Krishnamoorthy

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The petitioner has challenged the impugned notice dated 30.12.2022 issued under Section 129(3) of the Central Goods and Services Tax (CGST) Act, 2017 read with the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017, seeking to impose the penalty on the petitioner.

2. Relevant portion of the impugned notice reads as under:-

"2. The goods in movement were inspected under the provisions of sub-section (3) of section 68 of the Central Goods and Services Tax Act, 2017 read with sub-section (3) of section 68 of the State/Union Territory Goods and Services Tax Act, 2017 or under section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (3) of section 68 of the Central Goods and Services Tax Act, 2017 on 29.12.2022 and the following discrepancies were noticed.

As per the invoice goods are transported from Chennai to Tiruppur. At the time of interception, goods are moving from Tiruppur to Chennai. It is



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presumed that goods are returnable due to unfructified sales. However in terms of sec 34 of the Act any goods returned due to unfructified sales it should accompanied with delivery challan/credit/debit note.

In this case the taxable person has failed to issue the credit/debit note. Therefore, the goods under movement is treated as movement without document prescribed under sec 34 read with rule 55 of the Act thereby invoking sect 129 is warranted. Accordingly penalty under sec 129 of the Act is levied.

3. In view of the above, the goods and the conveyance used for the movement of goods were detained under sub-section (3) of section 68 of the Central Goods and Services Tax Act, 2017 and sub-section (1) of section 129 of the Central Goods and Services Tax Act, 2017 read with sub-section (3) of section 68 of the State/Union Territory Goods and Services Tax Act, 2017 or under section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (3) of section 68 of the Central Goods and Services Tax Act, 2017 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 30.12.2022(date)."

3. The case of the petitioner is that the petitioner had transported the consignment of solar power generating systems/solar panels of different descriptions to the buyer in Tiruppur under four different invoices as detailed below:



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Sl.No.	Date	Invoice No.	Amount (in Rs.)
1.	25.12.2022	102233014804	73,396/-
2.	25.12.2022	102233014805	1,30,314/-
3.	25.12.2022	102233014806	1,62,374/-
4.	25.12.2022	102233014807	1,37,050/-

4. For the above invoices, corresponding e-way bills were also generated. It is submitted that the when the goods were being transported from Chennai to Tiruppur, due to heavy down pour, the solar panels got wet and therefore, the buyer namely Attrib System, Tiruppur, refused to take delivery of the goods mentioned in the four invoices.

5. Therefore, the petitioner generated fresh e-way bills, all dated 28.12.2022, valid up to 31.12.2022 and re-transported to its factory, which was intercepted by the second respondent on its way back, namely, the Deputy State Tax Officer, Roving Squad-IV, Salem Intelligence, Salem.

6. It is submitted that the detention was incorrect, as the consignee namely Attrib System, refused to take delivery. Therefore, issuance of Credit Notes under Section 34 of the respective GST enactments does not arise.



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WEB COPY 7. It is further submitted that the question of issuance of Credit Note or Debit Note would arise, only after delivery is taken and the goods are thereafter returned, whereas, in this case there was no delivery as the consignee/buyer refused to take delivery of the goods and therefore, the question of issuance of Credit Note for re-delivery by the petitioner did not arise.

8. The learned counsel for the petitioner has also drawn attention to Rule 138(A)(1) of the respective Rules, which reads as under:-

"138A.Documents and devices to be carried by a person-in-charge of a conveyance.-

(1) The person in charge of a conveyance shall carry-

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner."



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9. It is submitted that invocation of Section 129(3) of the respective GST enactments was unwarranted. The reasons given in the detention notice was unsustainable and prayed for quashing of the notice.

10. The learned counsel for the petitioner would further submit that since the goods were at the risk of further getting deteriorated, the petitioner paid the penalty to salvage the wet and damaged goods back to the factory.

11. Arguing on behalf of the respondents, the learned Government Advocate would submit that payment having been made, the question of passing an order under Section 129(3) of the respective GST enactments did not arise in the light of the Section 129(5) of the respective GST enactments.

12. It is submitted that the petitioner had voluntarily paid the amount to by-pass the Show Cause Notice proceeding that was issued on 30.12.2022 in Form GST MOV-07. It is further submitted that in the Show Cause Notice dated 30.12.2022, the petitioner was also called upon for a personal hearing on 02.01.2023 at 12.00 p.m. Thus, the question of passing a final order under Section 129(3) in Form MOV – 09 did not arise as the petitioner paid



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the penalty and moved the goods.

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13. The learned Government Advocate for the respondents has placed reliance on the decision of the Hon'ble Allahabad High Court in the case of *M/s.ASP Traders Vs. State of U.P.*, [2022] 141 taxmann.com 504 (Allahabad).

14. The learned counsel for the petitioner would submit that the payment that has been made was not a voluntary payment, as the goods had to be taken back for being salvaged as otherwise it would have resulted in total loss.

15. The learned counsel for the petitioner has placed reliance on the decision of the Kerala High Court rendered in **Hindustan Steel and Cement Vs. Assistant State Tax Officer**, [2022] 141 taxmann.com 342.



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16. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

17. There is no dispute that the petitioner had dispatched the goods to the consignee/buyer by four different invoices all dated 25.12.2022 as detailed in the above Table.

18. The goods also accompanied e-way bills all dated 26.12.2022. The goods were not received by the consignee/buyer and therefore, they were re-transported back by the petitioner after generating four different e-way bills all 28.12.2022. Copies of these e-way bills are also available in the typed set of papers, which has not seriously disputed by the respondents. These e-way bills have been generated at about 1.14 p.m., 1.19 p.m., 1.22 p.m., and 1.25 p.m on 28.12.2022.

19. When the goods were transmitted back to the petitioner's factory in Chennai, they were detained by the Deputy State Tax Officer, Roving Squad-IV, Salem Intelligence, Salem at about 5.56 p.m on 29.12.2022. The statement of the driver, who was driving the vehicle carrying goods back was



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recorded on 28.12.2022. A Physical Verification Report was also generated on 30.12.2022. Thereafter, an Order of Detention under Section 129(1) of the TNGST Act, 2017 read with CGST Act, 2017 was issued in Form GST MOV-06. The discrepancy that was noticed by the Officers of the Roving Squad reads as under:-

"a) As per goods transported from Tirupur to Chennai the Vehicle No.TN923580 on 28.12.2022 at Sankari Toll at 5.56 PM The verification of the document produced by the incharge of the vehicle Luminous Power Technologies PVT LTD (33AAACS3561K1ZE) they raised tax invoice No.102233014804, 102233014805, 102233014806, 102233014807 dated 25.12.2022. On 28.12.2022 verification of the vehicle with reveals that, goods returned from Tirupur to Chennai. Mention that of 'E' way bill raised from same tax invoice no but reason of the transpiration (sic) for supply from Tirupur to Chennai. But reason of the transpiration goods return from Tirupur to Chennai. And not create the Credit note. On account of sales return by the buyer. Hence the tax payer fails to issue Credit note under sec 34 of SGST Act 2017 and Hence the tax payer intent to evade tax for the present movement of goods."

20. A reading of the above discrepancy that was noticed indicates that according to the Roving Squad, no Credit Note was issued for return of the goods that was being re-transported back to the petitioner's factory as is contemplated under Section 34 of the respective GST enactments.



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21. Under Section 34(1) of the CGST Act, where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient [one or more credit notes for supplies made in a financial year] containing such particulars as may be prescribed.

22. Under Section 34(2) of the CGST Act, any registered person who issues a Credit Note in relation to a supply of goods or services or both shall declare the details of such Credit Note in the return for the month during which such Credit Note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.



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23. Thus, the goods which are being returned need not necessarily accompany a Credit Note. The Credit Note or Debit Note as the case may be are intended only for adjustment of tax liabilities on account of return of the goods and where tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply.

24. Admittedly, in this case, the goods that were detained on 28.12.2022, covered by the four invoices as detailed in above table.

25. Therefore, the detention of the goods was *per se* illegal and unwarranted particularly in the light of the fact that the goods accompanied the e-way bills, which were generated for return of the goods as mentioned above.

26. Under Section 129(3) of the CGST Act, the proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).



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27. Under Section 129(5) of the CGST Act, 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.

28. The procedure for payment has been prescribed under Rule 142(3) of the CGST Rules. For comparison, sub-clauses (1), (2) and (3) to Section 129 and rule 142(3) of the respective GST enactments, are reproduced below:-

<i>Section 129 of the CGST Act</i>	<i>Rule 142(3) of the CGST Rule</i>
<u>129. Detention, seizure and release of goods and conveyances in transit</u> (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 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 the applicable	<u>142. Notice and order for demand of amounts payable under the Act</u> (1) (2) (3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of



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<i>Section 129 of the CGST Act</i>	<i>Rule 142(3) of the CGST Rule</i>
tax and penalty equal to one hundred percent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two percent 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 tax and penalty; (b) on payment of the applicable tax and penalty equal to the fifty percent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five percent 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 tax and 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. (2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances. (3) the proper officer detaining	the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.



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<i>Section 129 of the CGST Act</i>	<i>Rule 142(3) of the CGST Rule</i>
or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).	

29. The system that is available in the GST portal for making payment in the GST DRC-03 is only by treating all the payments as voluntarily payment and if such payments are made, the proceedings are deemed to have concluded with issuance of GST DRC-05.

30. There is no other option available to an assessee/dealer to take the goods back by paying the amount under protest.

31. Therefore, the system and procedure cannot be used against the petitioner particularly in the light of the fact that the detention itself was illegal. Credit note under Section 34 is not required to be issued at the stage, when the goods were being returned without even they having been received by the recipient. Issuance of Credit Note and/or Debit Note under Section



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34(1) of the CGST Act, is only for adjustment of tax liability. Credit Notes are to be issued for supplies made in a financial year containing the following details in Rule 53(1A) of CGST Rules, which reads as under:-

"53. Revised tax invoice and credit or debit notes:

(1A) A credit or debit note referred to in section 34 shall contain the following particulars, namely:-

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) nature of the document;
- (c) a consecutive serial number not exceeding sixteen characters, in one or more multiple series, containing alphabets or numerals or special characters-hyphen or dash or slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- (d) date of issue of the document;
- (e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is unregistered;
- (g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;
- (h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
- (i) signature or digital signature of the supplier or his authorised representative."



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32. The petitioner has to merely declare the details of the Credit Note in the monthly return during which Credit Note is issued for adjustment of tax liability.

33. The question of issuing Credit Note also will arise only by the supplier and not by the recipient.

34. In view of the same, I am inclined to interfere with the impugned notice by allowing this writ petition.

35. Accordingly, this Writ Petition stands allowed and the impugned notice dated 30.12.2012 of the first respondent is set aside. No costs.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To
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- 1.State Tax Officer,
Adjudication-I,
Salem Intelligence, Salem.
- 2.Deputy State Tax Officer,
Roving Squad-IV,
Salem Intelligence, Salem.



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C.SARAVANAN, J.

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