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W.P.No.14628 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.05.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14628 of 2023

Haresh Kumar,
Proprietor,
Trade Name : Mahalaxmi Metal Company,
SF No.276/3, Ganesh Nagar,
Coimbatore - 641 021.

... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Adjudication,
Commercial Taxes Annex Building,
Dr.Balasundaram Chettiar Road,
Coimbatore - 641 108.

2.The Deputy Commissioner of ST (Appeals),
Commercial Taxes Annex Building,
Dr.Balasundaram Chettiar Road,
Coimbatore - 641 108.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the first respondent to forthwith release the consignment and vehicle, which is under detention as the continuance of such detention is absolutely illegal, unlawful, contrary to the facts and evidence on record, violative of principles of natural justice and against the provisions of the Act and Rules framed thereunder.



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For Petitioner : Mr.G.Natarajan

For Respondents : Mr.C.Harsharaj
Additional Government Pleader

ORDER

Mr.C.Harsharaj, learned Additional Government Pleader takes notice on behalf of the respondents.

2. The petitioner had transported consignment of goods vide tax invoice dated 18.04.2023, which was intercepted and detained by the first respondent.

3. An order of detention in Form GST MOV-06 dated 18.04.2023 was issued and therefore, the consignment that was in transit was detained even though it accompanied the E-Way Bill as is required under the provisions of the respective GST enactments and the Rules made thereunder. It appears that the respondents have detained the goods on the ground that the supplier, from whom the petitioner has purchased the goods, had wrongly passed on the Input Tax Credit and thereby entailing the petitioner to avail and utilize the same for discharging tax liability on the supplies made by the supplier.



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4. The specific case of the petitioner is that the movement of goods by the petitioner is in accordance with the provisions of the respective GST enactments and the Rules made thereunder.

5. If it is the case of the respondents that the supplier has wrongly passed on the input tax to the petitioner, it is for the Department to initiate appropriate proceedings to recover the same. At best, the petitioner can be mulct with maximum penalty equivalent to 200% of tax amount payable in terms of Section 129(1)(a) of the respective GST enactments and the Rules made thereunder.

6. The learned counsel for the petitioner submits that the petitioner has also filed a statutory appeal under Section 107 of the Central Goods Services Tax (CGST) Act, 2017 before the Appellate Authority and has paid 25% of the disputed penalty, whereas, the respondents have imposed penalty equivalent to 100% value of the goods that was detained.



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7. It is submitted that once there is a pre-deposit of the amount in terms of Section 107(6) of the CGST Act, the respondents ought to have released the goods. It is further submitted that the petitioner has paid a sum of Rs.17,42,350/-.

8. On the other hand, the learned counsel for the respondents would rely on the decision of the learned Single Judge of this Court in **TCI Frieght (A Division of Transport Corporation of India Limited), Represented by its Legal Officer/Authorized Signatory, Chennai Vs The Assistant Commissioner (ST), Adjudication, Intelligence-1, Chennai and another**, in W.P.Nos.18753, 20794 & 21690 of 2022 vide order dated 25.08.2022.

9. A specific reference is made to Paragraphs 20 & 21 from the said Order, wherein, it was observed as under:-

"20. Considering the matter in full conspectus, the Bench concluded that ITAT is not a Court but it exercises judicial powers that have the widest amplitude. Thus, the conclusion was that the Tribunal must be held to have power to grant stay and such power was incidental and necessarily to its appellate



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jurisdiction. The ratio of the aforesaid order would be fully applicable to the present scenario as well.

21. Thus, the petitioners are permitted to file appeals accompanied by applications seeking release of the goods. Upon receipt of such appeals/petitions seeking interim release, the appellate authority shall hear the petitioners and pass orders in regard to the interim applications within a period of one week."

10. It is submitted that the petitioner will have to file appropriate application before the Appellate Commissioner before whom the appeal is pending, as the first respondent, after detaining the goods and passing order in MOV-9 dated 24.04.2023 has become *functus officio*.

11. It is further submitted that as long as an appeal is said to be pending before the appellate authority, the respondents cannot release the goods and therefore, the petitioner will have to mandatorily approach the appellate authority, before whom the appeal is pending.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.



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WEB COPY 13. Once the order is stayed, the respondents can release the goods subject to such other safeguards that may be imposed by the appellate authorities under the respective Acts.

14. The very purpose of fixing the mandatory pre-deposit is to do away with the procedure of granting stay after hearing, which was delaying the disposal of the appeal earlier.

15. The provisions are inspired from amended Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 in 2014 as the cases were not getting disposed.

16. It is for this reason, mandatory pre-deposit was made so that the interest of the revenue can be safeguarded as the appeal would take longer time for final disposal. Although the Officer who detained the goods has become *functus officio*, once there is a mandatory pre-deposit, the order has no force and all further recovery proceedings will be subject to the final outcome of the appeal. Therefore, to balance the interest of the revenue and



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the petitioner, I am of the view that there can be a direction to the petitioner to deposit the maximum penalty of 200% of the tax to safeguard the interest of the revenue.

17. The petitioner is directed to pre-deposit 200% of the maximum penalty after adjusting the amount already deposited. In the alternative, the petitioner can be directed to furnish Bank Guarantee in terms of Section 129(c) of the respective GST enactments and the Rules made thereunder. I see no purpose in detaining the goods, if there is already a transaction of sale/supply to a buyer. On furnishing Bank Guarantee for the balance amount of penalty or payment of the same in cash, the goods shall be released forthwith.

18. This Writ Petition stands disposed of with the above observations.

No costs.

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Speaking Order/Non-Speaking Order

Index : Yes/No

Neutral Citation : Yes/No

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C.SARAVANAN, J

arb/jas

To

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