IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.05.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.B. BALAJI

W.P.No.15338 of 2023
and W.M.P.Nos.14861 & 14863 of 2023

Thiruchy Royal Steels,
A Proprietorship Concern
Represented by its Proprietor
Mr.Jahir Hussain Mohamed Riyaz,
No.18, Heber Road,
Beemanagar,
Tiruchirappalli – 620 001. ... Petitioner

Vs.

1.The Deputy State Tax Officer,
Roving Squad – 3,
Salem,
Tamil Nadu.

2.The State Tax Officer,
Adjudication – 2,
Salem (Intelligence)
Salem, Tamil Nadu. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records from the file of second respondent in the impugned proceedings in ADJ

No.04/2023-24/Adjudication-2 dated 08.05.2023 and Form GST MOV-09- Order of Demand of Tax and Penalty in GST MOV Order No.04/2023-24/Adjudication-2 dated 08.05.2023 and quash the same as illegal, arbitrary and void ab initio.

For Petitioner : Mr.B. Sivaraman

For Respondents : Mr.V. Prasanth Kiran,
Government Advocate (Tax)

ORDER

With the consent of both the parties, the Writ Petition is taken up for final disposal at the admission stage itself.

2. The above Writ Petition has been filed challenging the impugned proceedings in ADJ No.04/2023-24/Adjudication-2 dated 08.05.2023 and Form GST MOV-09- Order of Demand of Tax and Penalty in GST MOV Order No.04/2023-24/Adjudication-2 dated 08.05.2023, on the file of the second respondent and to quash the same, as illegal, arbitrary and void ab initio, by issuance of Writ of Certiorari.

3. The case of the writ petitioner is that he is a registered dealer under the Goods and Service Tax Act, 2017 (hereinafter referred to as 'the GST Act'). In the course of business, he had entered into a transaction with a Company in Salem (Consignor) for supply of goods directly to be delivered as per the directions of the customer, namely, SRM Steels at Chennai, to a registered dealer, as per the provisions of the GST Act 2017. The said registered dealer is stated to be one ARM Steel House, having their business at Thindivanam, Tamil Nadu. It is the case of the writ petitioner that the address, as well as GSTIN/UIN details are clearly mentioned in all the tax invoices and e-way bills and the transaction was arranged as a 'Bill to' – 'Ship to'. However, the first respondent intercepted the goods vehicle on 26.04.2023 at Salem, as per the statement recorded from the driver of the vehicle. The physical verification was conducted on the same day and there was no mismatch with regard to the quantity of the goods carried in the vehicle despite the driver furnishing the Sales E-Invoices, E-Way Bills. The first respondent issued an order of detention under Section 129(1) of the GST Act, on the ground of mismatch of delivery address. Thereafter, the first respondent issued a notice under Section 129(3) of the GST Act and levied a total penalty of Rs.3,51,000/-, called for objections from the writ petitioner and on 08.05.2023, an opportunity of personal hearing was also afforded to the writ petitioner. Admittedly, the writ petitioner filed his detailed objection on 02.05.2023 and after considering all relevant materials available, the impugned order came to be passed by the second respondent, which is under challenge in the present Writ Petition.

4. Heard Mr.B. Sivaraman, learned counsel for the petitioner and Mr.V. Prasanth Kiran, learned Government Advocate (Tax), appearing for the respondents.

5. The learned Government Advocate appearing for the respondents brought the attention of this Court to the order passed by this Court in ***WP.No.4217 of 2023 dated 13.02.2023.*** In almost similar set of facts, this Court directed the writ petitioner therein, to avail all the alternate remedies available under Section 107 of the GST Act. This Court also took a note of the procedure and remedy available to the writ petitioner, to seek provisional relief of vehicle invoking Section 129(1) of the GST Act.

6. The learned counsel for the petitioner placed reliance on the judgment of this Court ***dated 04.11.2022 passed in WP.No.29281 of 2022***. According to the learned counsel for the petitioner, the facts in the said Writ Petition were almost identical to the facts of the present case and this Court had quashed the impugned order and released the detained consignment forthwith.

7. This Court has carefully gone into both the orders referred to by the learned counsels, one in WP.No.4217 of 2023 and the other in WP.No.29281 of 2022. The facts in WP.No.4217 of 2023, squarely applies to the facts of the present case. In fact, the second respondent has adverted to all the objections raised by the writ petitioner and answered the same as these are the disputed questions of facts, which cannot be gone into in the Writ Petition under Article 226 of the Constitution of India, especially when the alternate remedy is available under Section 107 of the GST Act.

8. In the light of the above observation, the Writ Petition stands disposed of by issuing the following directions:-

a) The petitioner is given liberty to file a statutory appeal, within a period of ten (10) days from the date of receipt of a copy of this order and on receipt of the said statutory appeal within 10 days, the Statutory Appellate Authority shall decide the appeal on merits and in accordance with law and shall not put a limitation in filing the appeal against the Writ Petition.

b) The petitioner is also given liberty to move an application under Section 129(1) of the GST Act, seeking for provisional release of the goods and the vehicle, which have been detained.

c) When such application is moved, the Appropriate Authority shall take up the interim application forthwith and pass orders within a period of one week thereafter. The Statutory Appellate Authority may also consider releasing of goods and vehicle on putting the petitioner on terms, as the petitioner has already expressed his willingness to furnish even a bank guarantee for the entire penalty amount to them, without prejudice to the rights in the main appeal. The Appellate Authority shall dispose of the appeal, within a period of four (4) weeks.

d) It is made clear that the order passed on the application made by the petitioner under Section 129(6) of the GST Act, shall be taken up on an emergent basis and shall be disposed of without any delay, expeditiously. No costs. Connected miscellaneous petitions are closed.

11.05.2023

Speaking order/Non-speaking order
Index:Yes/No
Internet: Yes/No
Neutral Citation: Yes/No

Sni/Kal

Note: Issue Order Copy on 12.05.2023

P.B. BALAJI,J.

Sni

To

1.The Deputy State Tax Officer,
Roving Squad – 3,
Salem,
Tamil Nadu.

2.The State Tax Officer,
Adjudication – 2,
Salem (Intelligence)
Salem, Tamil Nadu.

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