



W.A.No.2630 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	02.12.2022
Pronounced On	09.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.2630 of 2022
and
C.M.P.Nos.21052, 21052, 21055 & 21056 of 2022

M/s.T.V.H.Express,
Represented by its Propiretrix,
M.Sakila Begam

... Appellant

vs.

The State Tax Officer,
Adjudication Wing, Intelligence,
Erode Division, Erode.

.. . Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
against the order of his Lordship in W.P.No.11546 of 2022 dated
05.05.2022 for the following among other.

For Appellant : Mr.P.Rajkumar

For Respondent : Mr.V.Prashanth Kian
Govt.Advocate.



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JUDGMENT

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2. By the impugned order, the learned Single Judge has dismissed the Writ Petition filed by the appellant/petitioner while giving liberty to the appellant/petitioner to work out remedy before the Appellate Authority. Relevant portion of the impugned order passed by the learned Single Judge of this Court reads as under:-

7. Accordingly, without going into the merits and factual aspects of the matter, this Court directs the petitioner to file appeal under the provisions of the TNGST Act, 2017, as against the impugned order dated 17.03.2022. On receipt of such appeal, the appellate authority is directed to dispose of the same, on merits and in accordance with law, within a period of one month from the date of filing of the appeal by the petitioner, after giving an opportunity of hearing to the petitioner and concerned persons, if any.

3. The above writ petition was filed by the appellant for the following relief:-



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Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in Order No.19/2021-2022, dated 17.03.2022 passed under Section 129(3) of the Tamil Nadu Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Act, 2017 and quash the same as passed without considering the objections dated 15.03.2022 filed by the petitioner and also passed contrary to Section 129(1)(b) of the Tamil Nadu Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017 and further direct the respondent to release the detained goods to the petitioner without imposing any condition of payment of penalty.

4. The brief facts of the case is that the appellant, a proprietrix concern is engaged in transportation of goods was a engaged by a customer to transport goods from Tiruppur to Hyderabad. The vehicle carrying the goods were intercepted and an inspection was conducted on 04.03.2022 wherein it was found that the vehicle was carrying Readmade Hosiery Garments without proper document such us invoices /delivery notice.

5. Under these circumstances, the vehicle bearing Registration No.TN39 CK 5569 carrying the goods was stationed at the office of the



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Joint Commissioner (ST) , Erode. On the same day, an order of detention was passed under Section 129(1) read with Section 68 (3) of the Act in FORM GST MOV-06 followed by a notice GST MOV-07 under Section 129(3) of the GST Act. It was stated that about 58 bundles of Hosiery goods were being transported without invoice copies. Therefore the value of the 58 bundles of Hosiery was determined at Rs.11,60,000/- . Therefore, a penalty of Rs.11,60,000/- was proposed.

6. The appellant also gave a reply to the same dated 15.03.2022. In the reply dated 15.03.2022, the appellant has accepted the mistake. However, requested the respondent to value 56 bundles of 58 bundles at Rs.4,500 to Rs.5,000/- per bundle, while accepting the value of two bundles at Rs.20,000/- as was proposed in the notice issued under Section 129(3) of the TNGST & CGST, 2017.

7. In the reply, the petitioner has also admitted the mistakes committed will not be repeated in future. Relevant portion of the reply dated 15.03.2021, reads as under:-

“I humble request your good-self to revise the value of the goods fixed by you considering the true value and competition in my carrier, I also promise you that such kind of things and errors

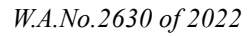


will never happen in near future. Kindly consider my request and do the needful to me at the earliest”.

8. Pursuant to the above order dated 17.03.2022 demanding penalty was passed by holding that the goods were detained for a total sum of Rs.11,60,000/- towards penalty under TNGST and CGST Act, 2017.

9. The learned counsel for the appellant submits that the impugned order passed by the learned Single Judge of this Court, asking the appellant/petitioner to file an appeal is contrary to the rights of the appellant/petitioner under Section 129(1) (b) of the respective GST Enactments. It is submitted that in terms of 129(1)(b) of the CGST Act, 2017, detained or seized goods could be released on payment of the applicable tax and penalty equal to fifty percent of the value of goods reduced by the tax amount paid thereon, where the owner of the goods does not come forward for payment of such tax and penalty.

10. It is submitted that only where the owner of the goods comes forward for payment of tax and penalty, the goods seized or detained can



be released on payment of applicable tax and penalty equal to two hundred per cent of tax payable on such goods, in terms of Section 129(1) (a). It is submitted that the appellant is not the owner of the goods and therefore penalty that could be imposed under Section 129(1)(b) could be confined only to fifty percent of the value of the goods. Section 129(1) of the respective GST Act, 2020 reads as under:-

(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,—

(2) (a) On payment of the applicable tax and penalty equal to one 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 tax and penalty;**

(3) (b) On payment of the applicable tax and penalty equal to the fifty per cent. 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 per cent. of



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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

11. It is therefore submitted that the Appellate remedy under Section 107(1) of the respective GST Enactments cannot be rendered illusory as the appellant has been mulcted with a penalty equal to hundred percent of the value of the goods determined which is arbitrary.

12. It is submitted that in case of detention of the goods under Section 129(1) of the respective GST Enactments the pre-deposit that is required under Section 107 of the Act is restricted to 25 per cent. Hence, prayed for modification of the order by restricting the pre-deposit to 50% of the value of the goods.

13. Per contra, the learned counsel for the respondent would submit that the order of the learned Single Judge is well reasoned and requires no interference. It is submitted that the appellant has an alternate efficacious remedy under Section 107 of the respective GST Enactment.



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14. That apart, it is submitted that the issue is now covered by a decision of the law settled by this Court in W.P.No.18753, 20794 & 21690 of 2022.

15. We have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the respondent .

16. The petitioner claims to be a transporter who was transporting goods for a dealer from the Tiruppur District in Tamil Nadu to a recipient in Hyderabad, Telangana. The consignment of Ready-Made Textile/ Hosiery Garments were being transported by the appellant for an unknown consignor and consignee whose name has been later given as Star Handlooms in the affidavit filed in support of the Writ petition. About 58 bundles of Textile/ Hosiery Garments were being transported by the appellant and that out of 58 bundles 33 did not accompany necessary documents including invoices. For the balance, it can be inferred there was only lorry receipts.

17. Under these circumstances, the lorry bearing registration number T.N. 39-Ck-5569 was detained by State Tax Officer



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(Intelligence), Roving Squad, Tiruppur on 4.3.2022 and that on the same day Form GST MOV-02[Order for Physical Verification/Inspection of the Conveyance, Goods and Documents] was issued to the driver in charge of the aforesaid vehicle and the aforesaid vehicle along with the consignments were detained.

18. As per the aforesaid Form GST MOV-02, the driver was unable to produce any document required under section 68 of the Respective GST Acts, 2017 and it was concluded that the supply of 60 bundles of Ready-Made Textile/ Hosiery Garments were without any documents required under Section 68 of the aforesaid Acts with an intention to evade tax due to the Government Exchequer. Therefore, in order to verify the genuineness of the goods quantity -wise, the appellant's vehicle was detained at the office of the Joint Commissioner (Taxes) , Intelligence, Erode.

19. Thereafter, on the same day, a Physical Verification Report in Form GST MOV-04 was generated. It is at this stage it was found that 58 bundles of Ready-Made Textile/ Hosiery Garments were being transported without invoices and other documents. It is in the above



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background the respondent State tax Officer, Intelligence, Adjudication Wing, Erode issued an order of detention under Section 129 (1) read with Section 68 (3) of the Tamil Nadu Goods and Service Tax Act, 2017 and under The Central Goods and Service Tax Act, 2017. Simultaneously, a notice in Form GST MOV-07 dated 4.3.2022 bearing reference GDR.No. 19/2021-2022 was issued to the appellant. Though in first Table to the above notice states that 58 bundles were being transported without invoices, in the subsequent table there is reference to only 33 bundles with their corresponding lorry receipt numbers. All the 33 bundles have been valued at Rs.20,000/per bundle. The notice also called upon the appellant to show cause as to why penalty under section 129 (1) (b) of the respective Goods and Service Tax Enactments should not be demanded an Rs. 11,60,000.

20. In other words, there is an indication that 33 bundles accompanied lorry receipts without invoices under section 68(2) and for the balance 25 there were neither any invoices nor any lorry receipts. In the reply dated 15.03.2022 of the appellant also there was no clear explanation as to whether the appellant was carrying the goods for the said Star Handlooms of Tiruppur District or it was being transported by



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the appellant for itself. The only response of the appellant in its reply dated 15.3.2022 was that only two of the bundles would be valued at Rs. 20,000 each and that rest of the bundles the value would be between Rs.4,500 to Rs.5000 and not Rs.20,000 per bundle.

21. The respondent State Tax Officer vide order dated 17.3.2022 has concluded that the owner has not come forward to reclaim the goods that were seized along with the petitioners conveyance. Therefore the appellant was liable to pay penalty.

22. Whether the value of the 33 out of 58 seized goods/bundles were valued between Rs. 4500 -5000 per bundle or R.20,000/- cannot be determined in a writ proceedings based on the submission of the appellant. The owner i.e. either the consignor or consignee have also not come forward to claim the Bundles. Therefore, the order passed by the respondent State Tax Officer cannot be interfered by this Court. It cannot be construed that the value of two of the bundles out of 58 bundles alone were Rs.20,000 and that rest of them were only between Rs. 4500 -5000. There cannot be determination of the value in a writ proceeding.



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23. In our view, the order of the learned single Judge declining to interfere with the order impugned before the record requires no interference. Whether the value was Rs.4500 - 5000 is something which the appellant will have to establish only before the appellate authority under section 107 of the respective GST enactments in an appellate proceedings. If the appellant wishes to pursue the appellate remedy, the appellant will have to pay deposit 25% of the amount determined by the respondent State Tax Officer, Intelligence. This Court is not really concerned with the disputed questions of fact. It is for the appellant to establish the same before the Appellate Authority and the amount that may be pre-deposited can be either appropriated or refunded back subject to the out come of the appeal in the proposed appeal against the aforesaid order.

24. We therefore find no merits in the present writ appeal seeking to interfere with the impugned order dated 05.05.2022 passed by the Learned single Judge in W.P.No 11546 of 2022 .

25. The learned single judge has rightly directed the appellant to file an appeal under the provisions of TNGST Act, 2017 as against the



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impugned order dated 17.03.2022. Since the time granted by the learned Single Judge vide impugned order dated 05.05.2022 in W.P.No.11546 of 2022 has already expired, we extend the time by another 15 days from the date of receipt of a copy of this order. If such an appeal is filed before the Appellate Authority, we direct the Appellate Authority to dispose the same within a period of one month after following the principle of natural justice.

26. With the above observation we dismiss the present writ appeal.

No costs. Consequently, connected miscellaneous petitions are closed.

[S.V.N., J.]

[C.S.N., J.]

09.01.2023

Intex : Yes/No
Internet : Yes/No
Speaking : Non-speaking Order
kkd



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S.VAIDYANATHAN, J.
and
C.SARAVANAN, J.

kkd

To

The State Tax Officer,
Adjudication Wing, Intelligence,
Erode Division, Erode.

Pre-delivery Judgment in
W.A.No.2630 of 2022

09.01.2023