



WEB COPY



W.P.No.19801 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.19801 of 2024

and

W.M.P. Nos.21685, 21687 & 21691 of 2024

Tvl. Spark Bio Gas Private Limited,
Rep. by its Authorized Signatory,
Mr. Vishwanathan Satish.

... Petitioner

Versus

1.The State Tax Officer (FAC),
Adjudication and Legal Cell, Vellore Division,
Government Building, 4 Bharathiyar Street,
Fort Round, Vellore – 632 001.

2.State Tax Officer,
Roving Squad – IV, Thiruvannamalai,
Vellore – 632 001.

3.Joint Commissioner (CT), Vellore Division,
Government Building, 4 Bharathiyar Street,
Fort Round, Vellore – 632 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the records relating to the impugned order GDN No.1549/2024-25 dated 27.05.2024 passed by the first respondent and to quash the same.

For Petitioner : Ms. R. Sahana,



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for M/s. Lakshmi Kumaran and Sridharan Attorneys.

For Respondents : Mr. T.N.C. Kaushik,
Additional Government Pleader (Tax)

ORDER

An order dated 27.05.2024 is challenged on the ground of breach of principles of natural justice.

2. The petitioner is a wholly owned subsidiary of M/s. Mahasakthi Bio Enercon Private Limited ('MBE'), which specializes in production and bottling of bio-CNG. The holding company of the petitioner was awarded a concession by the Greater Chennai Corporation for the construction of six bio-gas plants. In relation thereto, an entity called CEID Consultants and Engineering Private Limited (*CEID*) had agreed to supply goods. Such goods were procured by CEID Engineering Private Limited from Power Hydrotech Private Limited (*Power Hydrotech*). The invoice was issued on “*Bill To Ship To*” basis by Power Hydrotech to CEID and the consignee (ship to party) was the petitioner. The goods were intercepted while being transported from Gujarat to Chennai.

3. Learned counsel for the petitioner referred to the tax invoice and



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pointed out that the particulars of the petitioner are specified in such tax invoice as the consignee to whom the goods were required to be delivered.

By referring to the notices in Form GST MOV-1 and MOV-2, learned counsel points out that the said communications contain the names of the seller and buyer but not that of the petitioner. Learned counsel also points out that a reply was submitted by the buyer on 25.05.2024. She points out that the impugned order was issued to the petitioner in these facts and circumstances without any prior opportunity to the petitioner. By referring to Section 129 of applicable GST statutes, learned counsel contends that penalty cannot be imposed on the consignee of the goods. As regards the tax invoice, she submits that the invoice for sale of goods by CEID to the petitioner would be issued upon delivery of goods to the petitioner.

4. Mr. T.N.C. Kaushik, learned Additional Government Pleader, who appears on behalf of the respondent, refers to Section 31 of applicable GST statutes and contends that the invoice was required to be issued when the goods were transported from the seller to buyer. Since the goods were transported directly from Gujarat to Chennai, he submits that the invoice raised by CEID to the petitioner should also have accompanied the goods.



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5. The tax invoice is on record. This document clearly shows that the invoice was raised on “*Bill To Ship To*” basis. The particulars of the consignee, i.e., the petitioner, are set out therein. The notices issued at the time of detention in Form GST MOV-01 and MOV-02 do not contain the name of the petitioner. It appears that these notices were served on the driver of the vehicle and the notices contained the names of the supplier and purchaser. By contrast, the impugned order has been issued to the petitioner without any prior opportunity to the petitioner to respond thereto or contest the matter. This clearly constitutes breach of principles of natural justice. For such reason, the impugned order is not sustainable.

6. The petitioner also contends that it is imperative that the goods be released expeditiously since they are of critical importance to the contract executed by the petitioner. Section 129(1)(c) of applicable GST enactments provides for the release of goods upon providing security for the value of the penalty imposed. Subject to the execution of a bank guarantee or other security to the satisfaction of the respondents, the goods shall be released.

7. For reasons aforesaid, impugned order dated 27.05.2024 is set



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aside by leaving it open to the respondents to initiate fresh proceedings in accordance with law. It is open to the petitioner to execute a bank guarantee in terms of Section 129(1)(c) of applicable GST enactments to the satisfaction of the first respondent. Within 48 hours from the provision of such security to the satisfaction of the first respondent, the goods shall be provisionally released. Such bank guarantee shall be kept alive for one month after the conclusion of fresh proceedings and the respondents are restrained from invoking the same until conclusion of such proceedings.

8. The Writ Petition is disposed of on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

31.07.2024

Index : No
Speaking Order : Yes
Neutral Case Citation: No
klt

To

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SENTHILKUMAR RAMAMOORTHY,J.

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