IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26145 of 2022

Pulkit Metals Private Limited
Represented by its Director,
S.Navratan Gour,
RS No.95/2, 3 & 4,
Eripakkam Village, Nettapakkam Commune,
Pondicherry – 605 106. ... Petitioner

Vs.

The State Tax Officer – II, (Intelligence),
(Adjudication Cell), (Vellore),
Commercial Taxes Building,
Integrated Collectorate Master Plan Complex,
Villupuram – 605 602. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in G.D.No.536/2021-22/O.R.No.536/2021-22 dated 22.01.2022, quash the same.

For Petitioner : Mr.R.Kumar

For Respondent : Mr.C.Harsharaj
Additional Government Pleader

ORDER

The petitioner is before this Court against the impugned order passed under Section 129(3) of the TNGST Act, 2017, whereby, penalty equivalent to 200% of the value of the seized consignment has been imposed.

2. The petitioner appears to have imported goods from Singapore and had generated a e-way bill on 18.01.2022 at about 5.47 p.m. The said e-way bill was valid upto 5.47 p.m of the next day. The imported consignment was to be transported to the petitioner's own factory viz., Pondicherry in a conveyance bearing registration No.TN 88 B 5249. The said vehicle was however intercepted by the State Tax Officer, RS, Villupuram on 20.01.2022 at about 9.45 a.m. Statement was recorded from the Driver/person in charge of the vehicle on 20.01.2022. Subsequently, after the goods were seized the petitioner also paid the amount on 21.01.2022 and had the detained goods cleared. After paying the amount on 21.01.2022, the petitioner has come forward with this Writ Petition almost after a lapse of 9 months by filing this

Writ Petition on 26.09.2002. The Writ Petition is inspired from the decision of the Hon'ble Supreme Court in the case of ***Assistant Commissioner (St) and others*** Vs. ***M/s.Satyam Shivam Papers Lvt. Limited & Another***, wherein, the Hon'ble Supreme Court has observed as under:-

> *"44.In our opinion, there has been a blatant abuse of power by the 2nd respondent in collecting from the petitioner tax and penalty both under the CGST and SGST and compelling the petitioner to pay Rs.69,000/- by such conduct.*
>
> *45.We deprecate the conduct of 2nd respondent in not even adverting to the response given by the petitioner to the Form GST MOV-07 in Form GST MOV-09 and his deliberate intention to treat the validity of expiry on the eway bill as amounting to evasion of tax without any evidence of such evasion of tax by the petitioner."*

The Hon'ble Supreme Court upheld the views of the High Court for the State of Telangana, Hyderabad in W.P.No.9688 of 2020.

3. The writ petition is opposed by the learned Additional Government Pleader for the respondent stating that the issue has attained finality in view of Section 129(5) of the TNGST Act, 2017 and therefore it is not open for the petitioner to file a Writ Petition.

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

5. Section 129 of the respective GST enactments states that notwithstanding anything contained in the 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-

129. Detention, seizure and release of goods and conveyances in transit		
(a) On payment of penalty equal to two 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	(a) .... (b) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees,	(a) .... (b) .... (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.

129. Detention, seizure and release of goods and conveyances in transit		
penalty;	whichever is less, where the owner of the goods does not come forward for payment of such penalty;	

6. In this case, the petitioner has opted for the option A instead of requesting the respondent on option C.

7. As per Section 129(5) on payment of amount referred to in Sub-Section 1, all proceedings in respect of the notice specified in Sub-Section 3 shall be deemed to be concluded. As per Sub-Section 3, the proper Officer detaining or seizing the goods or conveyance shall issue a notice within a period of 7 days from the detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of 7 days from the date of service of such notice, for payment of penalty under Clause (a) or Clause (b) of Sub-Section 1.

8. In this case, as mentioned above penalty has been imposed under Clause A to Sub-Section 1. Therefore, it has to be construed that the issue

has attained finality. However, it is noticed that the consignment in the e-way bill for the petitioner itself which had imported the goods from Singapore through Chennai port and had filed Bill of Entry under Section 49 of the Customs Act, 1962.

9. Thus, there are mitigating circumstances for not imposing the penalty as well. The records, particularly, the statement of the driver was not available at the time of seizure.

10. Therefore, to balance the interest of the parties, Court is inclined to permit the petitioner to file a Statutory Appeal under Section 107 of the TNGST Act, 2017 within a period of 30 days from the date of receipt of a copy of this order. On such appeal being filed by the petitioner, the appeal shall be taken up on merits and disposed of on its turn without reference to limitation. It is open for the petitioner to obtain necessary documents from the Department regarding the statement obtained from the driver from whom the possession and the imported consignment was detained.

11. This Writ Petition stands disposed of with the above observations. No costs.

29.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

The State Tax Officer – II, (Intelligence),
(Adjudication Cell), (Vellore),
Commercial Taxes Building,
Integrated Collectorate Master Plan Complex,
Villupuram – 605 602.

C.SARAVANAN, J.

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