



W.P.(MD) No.22557 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD) No.22557 of 2024

and

W.M.P.(MD).Nos.19092 to 19094 of 2024

M/s.Aqua Excel,
Rep. by its Managing Partner - K. Ganesan.

...

Petitioner

-VS-

1.The State Tax Officer (Adjudication),
Office of Commercial Tax Officer,
Tirunelveli.

2.The Deputy State Tax Officer,
(Roving Squad)
Tuticorin.

...

Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records on the files of the impugned proceedings of the 1st Respondent vide Form GST MOV-09, dated 23.08.2024, and consequential order u/s.129(3) bearing Ref No.ZD330824213392M along with in Form GST DRC-07, dated



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WEB C 23.08.2024, quash the same and further direct the 2nd Respondent to allow release of the goods in Conveyance Number TN59CJ8618 which were detained vide Form GST MOV-06, dated 07.08.2024.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.R.Suresh Kumar,
Addl. Govt. Pleader.

ORDER

This Writ Petition has been filed, challenging the detention order under Section 129 (3) of the Central Goods and Services Tax Act, 2017, dated 23.08.2024, on the premise that the goods were meant for export and thus qualified for Zero Rate Sale and thus any levy of tax or penalty is without jurisdiction.

2. It is submitted that the petitioner received orders from M/s.Laxana PLC, Colombo, Sri Lanka, for a sum of Rs.24,16,604/- for export of certain goods. The transaction was an export transaction. The petitioner moved the goods from its place from Coimbatore to Tuticorin for the purpose of export. The goods were exported under the cover of Export Invoice No.613, dated 31.07.2024, and E-Way Bill No.5116 8729 3293, dated 05.08.2024. During the transit, the consignment was intercepted by the second respondent



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and the goods were physically verified vide FORM GST MOV-02, dated 06.08.2024. Pursuant to the above verification, an order of detention vide FORM GST MOV-06, dated 07.08.2024, was issued on the premise that the petitioner failed to generate E-Invoice in respect of the said transaction. A show cause notice was issued vide FORM GST MOV-07, dated 07.08.2024, in terms of Section 129 (3) of the Act, proposing to impose a penalty of 200% of the tax, that is stated to be liable. The petitioner submitted his reply on 20.08.2024, wherein it is submitted that non-generation of E-Invoice at the time of interception of goods was due to technical error and, as a matter of fact, E-Invoice was actually generated the following day and the same was also produced. It is submitted that the goods are meant for export, which would qualify as Zero Rate Sale and, thus, there is no question of any evasion or suppression. The above lapse, if any, in non-generation or belated generation of the E-Invoice is only a procedural lapse and thus, imposition of penalty at 200% under Section 129 (1) (a) of the Act is clearly without jurisdiction.

3. Reliance is also placed on the Circular No. 10/2019Q1/17253/2019, dated 31.05.2019, wherein it was clarified that penalty may not be warranted in cases of mere omission of mistake or in cases of documentation, which are rectifiable, if the movement of goods is otherwise covered by valid documents, showing the sufferance of tax of a particular



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transaction. The petitioner also placed reliance upon Foreign Trade Policy, 2023, which provides that export consignment shall not be withheld or delayed and seizure of goods shall not be made except in cases of exceptional irregularities. However, the impugned order has been passed by the first respondent in FORM GST MOV-09, dated 23.08.2024, and the consequential order under Section 129 (3) (1), dated 23.08.2024.

4. Learned counsel for the petitioner also places reliance upon a judgment of the Allahabad High Court in *Nancy Trading Company v. State of U.P. and Others*, 2024 (7) TMI 1303, wherein, under identical circumstances, where certain goods, which are not accompanied by any invoice, it was held that non-generation of e-invoice was only a technical error. It was submitted that even at the time when the goods were detained, the goods were under the cover of manual invoice and e-way bill and the data/particulars contained in the e-invoice was already contained in the e-way bill and the manual invoice, thus, the question of evasion of tax does not arise.

5. It is appropriate to extract the relevant portions of the order of the Allahabad High Court hereunder :



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"6. It is admitted that while transiting the goods in question all documents as required under Rule 138 A of the Rules were accompanying with the goods. Only a technical error has been committed by the petitioner for not generating E Tax Invoice before movement of goods in question. It is not in dispute that Waybill was generated. It is not the case of the Revenue that there was any discrepancy with regard to quality and quantity of the goods as mentioned in Tax Invoice, E Waybill as well as G.Rs accompanying the goods. The error committed by the petitioner for not generating E Tax Invoice before movement of goods is a human error. It is also not in dispute that prior to 1st August,2022, the dealers who were having annual turnover of more than Rs.20 crores was required to issue E Waybill. The said limit has now been reduced with effect from 1st August,2022 to Rs.10 crores, hence there was bona fide mistake on the part of the petitioner for not generating E Tax Invoice but in absence of any specific finding with regard to mens rea for evasion of tax, the proceeding under Section 129 (3) of the Act should not have been initiated. On the pointed query to the learned standing counsel as to whether any finding was recorded by the authorities at any stage with regard to mens rea for evasion of tax has been recorded, the answer was very fairly in negative.

7. In view of the above, in absence of any finding with regard to mens rea the proceeding under Section 129 (3) of the Act cannot be initiated. The impugned order dated 26.12.2022 passed by the respondent no.4 as well as the order dated 26.5.2023 passed by respondent no.3 are hereby quashed. The writ petition is allowed."



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6. On the contrary, it is submitted by the learned counsel for the respondents, by placing reliance upon a judgment of this Court in *Kramski Stamping and Molding Indis Private Ltd. v. State Tax Officer*, 2023 SCC OnLine Mad 747, that the petitioner ought to file only statutory appeal. The relevant portion of the said judgment is extracted below :

"19. For the foregoing reasons, this writ petition is disposed of by issuing the following directions :-

a) *The petitioner is directed to file a statutory appeal, if aggrieved by the impugned order before the statutory Appellate Authority under Section 107 of the G.S.T. Act, 2007, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the said statutory appeal within the stipulated time, the statutory Appellate Authority shall decide the appeal on merits and in accordance with law.*

b) *The petitioner is also permitted to file an application under Section 129(1) of the G.S.T. Act, 2017 before the statutory Appellate Authority seeking for provisional release of the goods and conveyance which have been detained.*

c) *On filing of the aforesaid application, the statutory Appellate Authority shall pass final orders on the said application seeking for provisional release, within a period of one*



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week from the date of receipt of the said application from the petitioner, after giving due consideration to the fact that the petitioner is willing to furnish a security to the penalty amount without prejudice to its rights and contentions in the main appeal.

d) The proper officer viz., the respondent herein is also directed to entertain the application, if any filed by the petitioner under proviso to Section 129(6) of the G.S.T. Act, 2017 as and when the same is filed by the petitioner seeking for provisional release of the detained vehicle and decide the said application and pass final orders accordingly, within a period of one week from the date of receipt of the said application."

7. A perusal of the above order would appear to suggest that, that was a case where the printed copy of the E-Invoice was found to be manipulated and, therefore, there were apparent lack of bona fides and it is, in that circumstance, it is submitted by the learned counsel for the petitioner that this Court directed filing of an appeal. In the present case, the situation is closer to what was considered by the Allahabad High Court.

8. Having heard both sides, in view of the peculiar facts of the case, viz., the goods relate to export which is treated as zero rate under



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Section 16 of IGST Act, this Court is of the view that the petitioner shall submit a report a copy of the GSTR-1 before the appropriate respondent, inasmuch as GSTR-1 would reveal if the subject transaction is disclosed as a zero rate sale, an export transaction once disclosed in Form GSTR-1, integrated taxes ought to be paid or must be exported under Board or Letter of Undertaking in accordance with Section 54 of the Act.

9.In view there of, if the petitioner is able to demonstrate that the transaction is included in the GSTR-1 Return, the goods shall be released provisionally. However, insofar as the impugned proceedings dated 23.08.2024, it is always open to the petitioner to question the impugned proceedings by way of an appeal before the appropriate appellate authority under Section 107 of the Central Goods and Services Tax Act, 2017, subject to complying with all other conditions including payment of pre-deposit if any such appeal is filed, the same shall be disposed within a period of four weeks, from the date of filing of the appeal.



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WEB COPY 10. Accordingly, this writ petition stands disposed of. No costs.

Consequently the connected miscellaneous petitions are closed.

03.10.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Note to Office :

Issue Order Copy by 07.10.2024

To:

1.The State Tax Officer (Adjudication),
Office of Commercial Tax Officer,
Tirunelveli.

2.The Deputy State Tax Officer,
(Roving Squad)
Tuticorin.



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MOHAMMED SHAFFIQ, J.

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