BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.3748 of 2025
AND
W.M.P.(MD)No.2688 of 2025

M/s.Century Apparels Private Ltd.,
Rep. by its Director,
Mr.Reuben Swamidoss,
36, Landans Road, Kilpauk,
Chennai – 600 010. ... Petitioner

Vs.

Deputy State Tax Officer(Intelligence),
Roving Squad II,
Madurai. ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the impugned order of the respondent passed in Form GST MOV-09 in O.R.No.767/2024-2025 MADURAI RS-II dated 01.09.2024 and quash the same and issue any other writ.

For Petitioner : Mr.N.Murali

For Respondent : Mr.R.Suresh Kumar,
Additional Government Pleader.

* * *

ORDER

Heard both sides.

2.The writ petitioner is a company engaged in manufacturing of garments. The head office is located in Chennai and the manufacturing unit is in Tirupur. On 01.09.2024, the petition-mentioned goods were moved from Tirupur to Tuticorin for export to Ireland. The vehicle transporting the goods was detained at Valayankulam Toll Plaza and inspected. The driver of the vehicle informed the Inspector-official that the goods are being transported from Tirupur. However in the e-way bill, it was mentioned that the goods were being transported from Chennai. On that ground, penalty to the tune of 200% of the tax value has been levied under Section 129(1)(a) of the CGST Act. The writ petitioner paid the same under protest. Thereafter, the goods were released. Challenging the penalty order, this writ petition has been filed.

3.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4.Per contra, the learned Additional Government Pleader appearing for the respondent submitted that in view of Section 129(5) of the TNGST Act, 2017, the proceedings should be taken as having concluded on account of the payment of penalty by the petitioner. He contended that the petitioner has to agitate the issue only before the appellate authority. In this regard, he relied on the decision reported in ***2023 SCC OnLine Mad 3376 (Thiruchy Royal Steels, Rep. By its Proprietor, Mr.Jahir Hussain Mohamed Riyaz Vs. Deputy State Tax Officer and Another)***. He pointed out that the decision of the learned single Judge was confirmed by the Hon'ble Division Bench in the decision reported in ***2023 SCC OnLine Mad 8193 (Tiruchy Royal Steels Vs. Deputy State Tax Officer, Salem)***.

5.I carefully considered the rival contentions and went through the materials on record.

6.The impugned order levying penalty rests on the following reason:-

> *"Goods moved to Tirupur to Tuticorin but the consignor had raised e-way bill for Chennai to Tuticorin. Hence, it is found that goods moved*

without e-way bill. The consignor mentioned the DC number, instead of e-invoice Number in e-way bill. Hence, penalty levied under Section 129(1)(a) of TNGST Act, 2017."

Section 129(1) of TNGST Act 2017 reads as follows:

> **Section 129. Detention, seizure and release of goods and conveyances in transit.-**
>
> (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,-
>
> [(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 penalty;

Section 129(1) provides for levy of penalty if goods have been transported in violation of the statutory provisions.

7.It is not in dispute that the consignment was accompanied by an export invoice, e-invoice and an e-way bill. The respondents had proceeded on the premise that the goods have been transported without an e-way bill. This finding is factually incorrect. The goods were very much accompanied by an e-way bill. The only discrepancy was that the place of despatch was mentioned as Chennai instead of Tirupur. The explanation given by the writ petitioner is that it is a typographical error committed by the staff. When such a defence has been specifically taken by the registered person, it was incumbent on the part of the detention officer to deal with the said defence. The detention officer could not have proceeded on the premise that there was no e-way bill accompanying the goods in transit.

8.Section 126 of the Act reads as follows :

"***Section 126. General disciplines related to penalty.-***

(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation.-For the purpose of this sub-section,-

(a) a breach shall be considered a "minor breach" if the amount of tax involved is less than five thousand rupees;
(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record."

De minimis non curat lex is a well known legal maxim. Law does not concern itself with trifles. This part of Section 126 embodies the above maxim. It is quite possible that typographical errors might creep in during documentation process. If no benefit will accrue to the assessee by such errors, it is only just and proper that such errors are allowed to be rectified and the assessee is spared of the consequences. This has also been captured in Circular No.10/2019 dated 31.05.2019 issued by the Commissioner of Commercial Taxes, Chennai in the following terms :

"9.Circumstances where no penalty shall be levied by the roving squad :

....

ii. Where a mistake or omission in documentation is easily rectifiable and has been committed without fraudulent intent or gross negligence or is not backed up with any sort of malicious intent to evade taxes."

To a pointed question by this court, the respondent has not been able to demonstrate the possible benefit which the registered person could have gained by mentioning the place as Chennai instead of Tiruppur. On these twin grounds, namely, non-consideration of the petitioner's defence and the minor nature of the breach, the impugned order is quashed.

9.Section 129(5) of the Act reads as follows:-

"On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded."

The above Section cannot be pressed into service. The payment of penalty was under protest. It was without prejudice to the petitioner's defence. The learned counsel appearing for the petitioner draws my attention to the decision of the Hon'ble Supreme Court reported in ***(2025) 144 GSTR 693 (ASP Traders Vs. State of Uttar Pradesh & Others).*** In the aforesaid decision, it was held that when payment is made under protest, it indicates that the assessee intended to contest the matter and that therefore, the proper officer was bound to pass a speaking order under section 129(3), to enable the appellant to exercise of their statutory right of appeal. This judgment of the Hon'ble Supreme Court answers the contention of the respondent that payment of the penalty by itself would lead to termination of the proceedings. It is not so. Even after such payment under protest, the order can be challenged.

10.Section 129(4) reads that no order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard. In the present case, GST MOV-07 was issued on 01.09.2024 directing the petitioner to show cause within 7 days why penalty should not be imposed on them. The impugned order of demand of penalty in Form GST MOV-09 was also passed contemporaneously i.e., on the same day. In the impugned order, the eighth column reads as follows:

> *"The objections filed by him were perused and found acceptable/not acceptable for the following reasons:"*

The said column has been left blank by the respondent. This is a serious breach of the principles of natural justice provided for in Section 129(4) of the Act. The impugned order is liable to be quashed also for non-adherence to the procedure laid down in Section 129 of the Act.

11.Section 129(1) can be pressed into service only when any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act. It is not the case of the respondent that the petitioner has evaded or attempted to evade tax. No mens rea has been alleged either in the show cause notice or the impugned order. While being so, mens rea has been alleged in the counter affidavit for the first time. It is well settled that the order of the authority must speak for itself and while it can be given a different spin in the counter affidavit, additional grounds cannot be added.

12.Looked at from any angle, the impugned order cannot be sustained and it is quashed. The amount paid by the writ petitioner shall be refunded forthwith and without any delay but without any interest.

13.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

22.10.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU/SKM

To:

The Deputy State Tax Officer(Intelligence),
Roving Squad II,
Madurai.

G.R.SWAMINATHAN,J.

PMU/SKM

W.P.(MD)No.3748 of 2025

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