



W.P.(MD) No.16265 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.16265 of 2025
and
W.M.P.(MD) No.12353 of 2023**

M/s.Athiyan Exports,
rep. by its Proprietor M.Gokulsiddarth.

... Petitioner

Vs

1. State Tax Officer (Adjudication and Legal),
O/o. the Joint Commissioner (ST) (Intelligence),
Tirunelveli.

2. Deputy State Tax Officer (Roving Squad),
O/o. the Joint Commissioner (ST) (Intelligence),
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing reference No. OR.53/2025-26 in Form GST MOV-09 dated 09.05.2025 issued by the first respondent and quash the same and direct the respondent to refund the penalty amount of Rs.2,71,458/-.



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For petitioner : Mr. A.Mohamed Ismail

For respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This Writ Petition is disposed of at the time of admission, after hearing the learned counsel for the petitioner and Additional Government Pleader for the respondents.

2. The petitioner is before this Court against the impugned order in Form GST MOV-09, dated 09.05.2025 passed under Section 129(3) of the respective GST enactments.

3. By the impugned order, it has been held that the petitioner has voluntarily paid the payment of penalty of Rs.2,71,458/- vide DRC 03, dated 09.05.2025. Since the amount has been paid voluntarily, there is no question of dropping of penalty proceedings initiating against the petitioner, pursuant to the Show Cause Notice, dated 07.05.2025. Operative portion of the impugned order reads as under:



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Personal Hearing:

In order to provide reasonable opportunity and also without denying the natural justice, personal hearing opportunity was afforded to the taxpayer to file the reply along with supportive documents on 12.05.2025 at 11 a.m. Mr. Ranganathan, has appeared before the undersigned on 09.05.2025 and stated that the taxpayer has sent him for hearing today (09.05.2025) instead of 12.05.2025 for personal hearing, and produced the hard copy of their reply, but not given any Authorisation Letter. The taxpayer's details was inquired regarding the issues of the Show Cause Notice.

7. In response to the said notice, the Taxpayer has filed reply on 08.05.2025 through Portal, the taxpayer has reply the following reply

"In this Connection we would like to bring your kind notice that Circular No.10/2019 Q1/17253/2019 Dt: 31.05.2019 as amended by Circular No.Q1/17253/2019(Tamilnadu) Dated: 18.06.2019 has clarified wide para 10 that for minor lapses a minimum penalty of Rs.5000/- each shall be imposed when any one of the basic documents is available which is reproduced below for better appreciation of the guidelines"

In this case, it does not cover under minor breaches. Consignor has not generated E-invoice at the time of the movement of goods. It amounts to violation of the provision of CGST rule 48(5) (**Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.**) therefore Orders are passed as under

8. In view of the above your objection/reply filed is not accepted therefore the taxpayer is here by directed to pay the penalty as proposed in the notice as follows

1) CALCULATION OF APPLICABLE TAX

Sl. No.	Description of goods	HSN Code	Quantity	Total value (Rs.)	RATE OF TAX				TAX AMOUNT			
					Central Tax	State Tax	Integrated Tax	Cess	Central Tax	State Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9	10	11	12	13
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**2) CALCULATION OF APPLICATION PENALTY UNDER CLAUSE (a) OF
SUB-SECTION (1) OF SECTION 129**

Sl. No.	Description of goods	HSN Code	Quantity	Total value (Rs.)	RATE OF TAX				PENALTY AMOUNT			
					Central Tax	State Tax	Integrated Tax	Cess	Central Tax	State Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9	10	11	12	13
1	Cocohips- Washed 8 to 20 mm	53050040	As per invoice (66.751 MT)	2714579	-	-	5 %	-	-	-	271458	-

The Taxpayer has voluntarily made Payment of Penalty of Indian Rupees RS.2,71,458/- vide DRC 03 dated 09.03.2025 ARN No.AD330525044274A under Section 129 of the GST Act 2017.

Since the Taxpayer has voluntarily paid the Penalty Amount, the intercepted vehicle is released on 09.05.2025 at 04.55 PM in FORM GST MOV- 05 under TNGST ACT 2017.

4. The brief facts of the case of the petitioner is that the petitioner is an exporter of coir product and pursuant to the export order from the buyer abroad, they had proposed to export the product to Sapphire Premium (Shenzhen) Technology Co. Ltd., China.



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5. It is further case of the petitioner that the petitioner was required to generate E-Invoice before transporting the goods from the place of manufacturing for the product exported. However, without generating E-Invoice, the goods were transported on the strength of Commercial invoice, dated 02.05.2025. The value of the export consignment was approximately 34,920 USD for 72 M.T of Cocochips-Washed-8 to 20 mm. The consignments were transported without generating E-Invoice and E-Way Bills in the following three vehicles:

S.No.	Vehicle/Trans Doc.No & Dt
1.	TN-88-C-6067 & AE019 & 02.05.2025
2.	TN-88-C-2155 & AE019 & 02.05.2025
3.	TN-88-BD-9978 & AE019 & 02.05.2025

6. It is submitted that on the strength of the Commercial invoice in AE-019, dated 02.05.2025, two of the consignments reached the port, without being detected all the defects in the export procedure adopted by the petitioner, i.e., transportation of the goods without generating E-Way Bill and E-Invoice. However, the consignment covered by the transport vehicle in TN-88-C-2155 was intercepted by the respondents in terms of Section 129 of the respective GST enactments and therefore, notice was issued to the petitioner in Form GST MOV -



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07 dated 07.05.2025 in O.R.53/2025-26. Since the petitioner was in a hurry to have the consignment exported, the petitioner appears to have generated a supplementary invoice, namely, invoice in AE-021, dated 09.05.2025 after the seizure was made.

7. It is further submitted that since the petitioner paid the amount, the goods were released. Now, the petitioner is before this Court challenging the impugned order stating that although the petitioner has violated Section 129 of the respective GST enactments, the export incentives cannot be denied, as per the condition under Section 129 of the respective GST enactments. However, entire export incentives wiped off by the impugned order. Therefore, making export incentives illusory.

8. It is further submitted that the petitioner had no intention to evade the tax as the goods covered by original Commercial Invoice in AE-019 for 72 MT Cocochips-Washed-8 to 20 mm was intended to export to the buyer in China and that two consignments covered by two transport vehicles were exported and the third alone was intercepted. It is also to be exported subsequently, *vide* shipping



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bill No.1659113, dated 09.05.2025 for the balance of 10735.47 M.T to the buyer in China.

9. The learned Additional Government Pleader for the respondents, on the other hand, submits that the petitioner has, at best, an alternate remedy under Section 107 of the respective GST enactments.

10. That apart, it is submitted that there is an estoppel operating against the petitioner in terms of Section 129(5) of the respective GST enactments. Therefore, this Writ Petition is liable to be dismissed as the petitioner has accepted the penalty that was levied from the petitioner after seizure was effected on 09.05.2025.

11. The learned Additional Government Pleader for the respondents has also drawn attention to the decision of this Court rendered in following two cases:

1. ***Pulkit Metals Private Ltd., vs.The State Tax Officer-II (Intelligence) (Adjudication Cell) (Vellore), Villupuram. (W.P.No.26145 of 2022, dated 29.11.2024);***



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2. *M/s.Aqua Excel vs.The State Tax Officer (Adjudication), Tirunelveli and another (W.P.(MD) No.22557 of 2024, dated 03.10.2024).*

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

13. The facts are not disputed that the petitioner had violated the conditions prescribed under Section 129 of the respective GST enactments. Therefore, the petitioner was indeed liable to be proceeded under Section 129 of the respective GST enactments and however, the question is as to whether the penalty that is imposed is to be justified or lesser penalty is to be imposed.

14. This Court in W.P.(MD) No.26145 of 2022, in its order, dated 29.11.2024 in the case of ***Pulkit Metals Private Ltd.***, (cited supra), particularly, in para 5, the scope of Section 129 of the respective GST enactments was discussed and decided as follows:

“5. Section 129 of the respective GST enactments states that notwithstanding anything contained in the Act, where any



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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-

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



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15. Reading of the above provision indicates that lesser penalty can be imposed. Considering the fact that there is no dispute that the petitioner has indeed exported the goods, I am of the view that the export incentive cannot be denied for technical and venial breach of provisions of Section 129 of the respective GST enactments as held by the Hon'ble Supreme Court in ***Hindustan Steel Ltd vs. State of Orissa***, reported in (1969) 2 SCC 627.

16. Under these circumstances, although the petitioner has an alternate remedy, this Court is of the view that there is no point in relegating petitioner to work out its remedy by the Appellate Authority under Section 107 of the respective GST enactments, as export incentives are not to be denied, although there may be certain technical and venial breach by exporter.

17. Accordingly, this Writ Petition is allowed, by directing the respondents to appropriate Rs.25,000/- itself from the amount that was already paid by the petitioner and to allow the petitioner to adjust the balance amount against the



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future tax liability of the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes / No

apd

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Tirunelveli.

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C.SARAVANAN, J.

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