



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.08.2022

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CORAM:

THE HON'BLE DR.JUSTICE ANITA SUMANTH

WP.Nos.18753, 20794 & 21690 of 2022 and
WMP.Nos.19869, 19870, 20687 & 20691 of 2022

WP.No.18753 of 2022

TCI Freight,
(A Div. of Transport Corporation of India Ltd.),
Represented by its Legal Officer/Authorized Signatory,
Regional Office at
No.92, 1st Floor, Gee Gee Crystal Building,
Dr.Radha Krishna Salai, Mylapore,
Chennai – 600 004.

...Petitioner

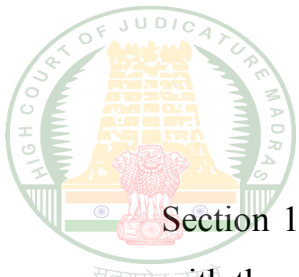
Vs.

1.The Assistant Commissioner (ST),
Adjudication, Intelligence-1,
No.1, Greams Road,
6th Commercial Taxes Annex Building,
Chennai – 600 006.

2.The Deputy State Tax Officer,
Roving Squad – III,
Manjabakkam Toll,
Chennai.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Mandamus, directing the first respondent herein to accept the bank guarantee equivalent to the disputed penalty amount in accordance with the provisions of



Section 129(1)(c) of the CGST Act, 2017 and provisionally release the goods along with the conveyance bearing TN 52 C 8696.

WP.No.20794 of 2022

M/s.Prime Gold International Limited,
Rep. by its Director – Achin Aggarwal,
Ulliveeranapally Village,
Thally Main Road, Hosur,
Denkanikotta Taluk,
Krishnagiri District – 635 114.

...Petitioner

Vs.

1.The State Tax Officer (Enft.),
Roving Squad,
Salem,
Salem District.

2.The State Tax Officer,
Adjudication -2,
Salem (Intelligence),
Salem, Salem District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, calling for the records on the file of the 1st Respondent in impugned proceedings vide Order of Detention in Form GST MOV-06 dated 12.07.2022 and the consequential impugned proceedings of the 2nd Respondent vide Order of Demand of Tax and Penalty (Form MOV-09) in GST MOV Order No.24/2022-23/Adjudication-2 order dated 19.07.2022 quash the same as illegal and in violation of the provisions of the TNGST Act, 2017.



WP.No.21690 of 2022

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M/s.Chennai SSSS Equipments Pvt. Ltd.,
Represented by its Director,
Anand Ambareesan,
Bhuvana Nursery Avenue,
No.135C, Block 2, Kavitha Towers,
Poonamallee High Road,
Vellapanchavadi,
Chennai – 600 077.

...Petitioner

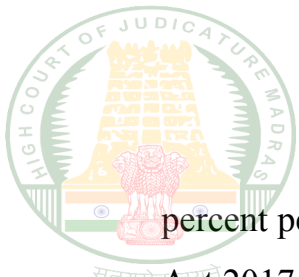
Vs.

1.State Tax Officer,
Adjudication Cell-2,
Salem (Intelligence).

2.State Tax Officer (Intelligence),
Roving Squad Team 3,
Salem.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent in ADJ No. 45/2022-2023/Adjudication-2 dated 5.8.2022 and the connected impugned proceedings in Form GST MOV-09 issued in GST MOV Order No. 45/2022-2023/Adjudication-2 dated 5.8.2022 and quash both the proceedings as issued without authority of law and contrary to the provisions of the CGST Act 2017 and TNGST Act 2017 and further direct the respondent to release the detained Tata Hitachi Ex 210-7693 (Excavator) without insisting the petitioners to remit the 200



percent penalty levied under clause (a) of Sub-section (1) of Section 129 of the CGST Act 2017 and TNGST Act 2017.

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For Petitioner : Mrs.Aparna Nandhakumar
(In WP.18753 of 2022)

For Petitioner : Mr.Rajasekar
(In WP.20794 of 2022)

For Petitioner : Mr.P.Rajkumar
(In WP.21690 of 2022)

For Respondents : Mr.C.Harsha Raj
(In WP.18753 of 2022) Additional Government Pleader

For Respondents : Mr.V.Prashanth Kiran
(In WP.20794 of 2022) Government Advocate

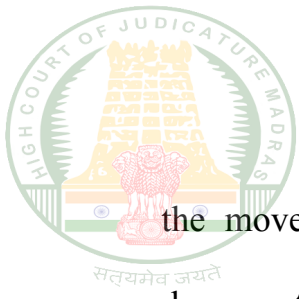
For Respondents : Mr.V.Prashanth Kiran
(In WP.21690 of 2022) Government Advocate

COMMON ORDER

These writ petitions give rise to a common question. The petitioners in WP.Nos.20794 and 21690 of 2022 are owners of consignments that had been transported by road. In light of the decision taken finally in these matters, we are not concerned with the merits of the matter or the explanation that has been furnished by the petitioner. Peripheral facts, as relevant to decide the issue that arises, are alone recorded below.

Facts in WP.No.20794 of 2022

2. The petitioner had been engaged to supply TMT bars from Hosur at the address of the consignee work site at Trichy. An e-way bill had been generated for



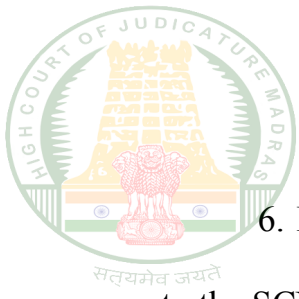
the movement of goods and the goods were being transported accompanied by documents. The State Tax Officer had intercepted the consignment on 11.07.2022 and detained the same.

3. Form GST Mov-2 was issued on the ground that the address for delivery, 84, Egai Town Paganur Road, Manikandam, Trichy-620012 did not have a corresponding GSTIN or trade name. Thereafter, an order of detention dated 12.07.2022 has been passed under Section 129(1) of the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'Act') read with Central Goods and Services Tax Act, 2017.

4. A proposal for levy of penalty followed, that the petitioner responded to, with an explanation. An order of demand of penalty in GST MOV-09 has come to be passed on 19.07.2022 as against which the present writ petition has been filed.

Facts in WP.No.21690 of 2020

5. The petitioner had transported an excavator from Chennai to the branch of its customer, at Salem. The consignment was intercepted by the State Tax Officer on the ground that the documents accompanying the consignment were deficient. A show cause notice was issued and explanation called for from the petitioner that culminated in the impugned order of penalty dated 05.08.2022.

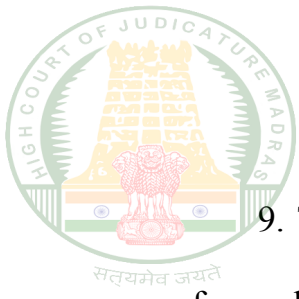


6. Both the petitioners as above, accede to the position that their explanations to the SCN touch upon the determination of various facts that would be best left to the appellate authority to decide. The provisions of Section 107 of the Act provides for an efficacious alternate remedy by way of an appeal to the appellate authority and hence the petitioners would agree that appeals would be filed challenging the impugned orders.

Facts in WP.No.18753 of 2022

7. The petitioner herein is the transporter of the consignee. The petitioner was engaged by an entity in Madras for transportation of carbon electrodes to the consignee in Assam. The services of a third party vehicle was engaged and the consignments transported. The said consignments were intercepted on 26.06.2022 by the State Tax Officer, who alleged discrepancies in the e-way bill and other documents.

8. The consignments have been detained at Manjabakkam check post on 27.06.2022. An order of detention has been passed on 27.06.2022 accompanied by a show cause notice calling for the petitioner's response. After consideration of the response, an order has come to be passed confirming the penalty on 06.07.2022. In the present case, the owner has responded neither to the show cause notice nor to the order levying penalty, both of which have been served upon it.



9. Thus, it falls upon the transporter to take appropriate action, at the least to safeguard the conveyance, in which the consignment had been transported. However, the transporter goes one step forward and argues that the provision of Section 129 of the Act, that deal with '*detention, seizure and release of goods and conveyances in transit*', and permit the release of detained goods upon compliance with the conditions set out therein, would be equally applicable to it.

10. I will first decide the above issue, that arises only in WP.No.18753 of 2022 before passing a final consolidated set of directions that would be applicable to all petitioners. The provisions of Section 129 read as follows:

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;

(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



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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;

(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:

11. The case of the petitioner is that the benefit granted to the owner of the goods to seek release of the detained goods on payment of penalty or furnishing of security, would be equally applicable to the case of a transporter as well. In this context, my attention is drawn to the provisions of Section 129(6) that deploys the phrase '*person transporting any goods or the owner of such goods*' and reads thus:

'129. Detention, Seizure and release of goods and conveyances in transit.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

***Provided** that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:*

***Provided** further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.*



Thus, learned counsel would argue that the statute permits not just the owner, but also the transporter, to seek release of the goods.

12. The stand of the revenue hinges upon the proviso to Section 129(6) which states that the 'conveyance' shall be released on payment by the transporter of penalty or a sum of Rs.1,00,000/- whichever is less.

13. Upon a consideration of Section 129, read with other relevant provisions of the Act, I would agree with the revenue. Section 129(1) specifically addresses *any person transporting any goods or storing any goods*. This aligns with the use of the phraseology, '*person transporting any goods or the owner of such goods*' that is used in sub-Section 6.

14. Thus, the entitlement to seek release under Section 129 is only qua the owner/agent/representative of the owner. This interpretation is supported by the language used in the first proviso that specifically uses the term '*transporter*' and states that such transporter may seek release of the conveyance on payment of penalty or of a sum of Rs.1,00,000/- whichever was less.

15. Thus, legislature has been conscious of the roles of the various persons involved in a transaction of carriage of goods such as the consignor/agents/representatives, the consignee/purchasers and transporter. The entitlement to seek release has also been carefully and consciously sculpted. While



the owner or any person transporting the goods has been granted the right to seek release, only a limited benefit has been made available to a transporter, and that too, qua the release of conveyance alone.

16. At this juncture, I clarify my understanding of the phrase '*person transporting the goods*' in Sections 129(1) and (6) to mean the owner or his agent who has contracted to supply the goods, and not the transporter who will provide the carriage for the same. Both sub-Sections (1) and (6) use the phrase '*goods or conveyance*' whereas the proviso extends the benefit of release, upon terms, to the transporter, but restricted to the conveyance alone. Thus, I conclude that the transporter may seek release of only the conveyance, upon satisfaction of the statutory conditions.

17. As far as the goods are concerned, if the owner/agent/representative does not come forward to claim the same after receipt of notices from the department and upon satisfaction of the conditions under Section 129, it is open to the revenue to take such steps as it may deem fit in that regard. This question is answered accordingly, and adverse to the transporter, petitioner in W.P.No.18753 of 2022.

18. All three petitioners would accede to the position that statutory appeals would be filed by them in terms of Section 107 of the Act. This brings us to the



question of release. Section 107 does not specifically grant any power of interim protection to the appellate authority.

19. However, in the case of *Income Tax Officer, Cannanore Vs. M.K.Mohammed Kunhi*, [(1969) 711 ITR 815], three Judges of the Hon'ble Supreme Court had occasion to consider the powers of the Income Tax Appellate Tribunal (ITAT/Tribunal) which, at that point in time had not been conferred expressly with the power to grant interim relief.

20. Considering the matter in full conspectus, the Bench concluded that ITAT is not a Court but it exercises judicial powers that have the widest amplitude. Thus, the conclusion was that the Tribunal must be held to have power to grant stay and such power was incidental and necessarily to its appellate jurisdiction. The ratio of the aforesaid order would be fully applicable to the present scenario as well.

21. Thus, the petitioners are permitted to file appeals accompanied by applications seeking release of the goods. Upon receipt of such appeals/petitions seeking interim release, the appellate authority shall hear the petitioners and pass orders in regard to the interim applications within a period of one week.

22. One question that arises is in the context of Section 107(6) that requires the appellant to make a pre-deposit of a sum of 25% of the penalty. Upon remittance of the 25%, sub-section 7 of Section 107 states that the recovery proceedings for the



balance amount of the penalty shall be deemed to be stayed. Can it thus be said that upon payment of the 25%, the seized goods become liable to be released automatically?

23. There is consensus on the position that this would not be the correct position and that the question of release, is one that will have to be decided by the appellate authority upon the strength of the case made out by the assessee including, but not limited to prima facie case, financial stringency and balance of convenience.

24. In WP.No.21690 of 2022, upon conclusion of arguments, learned counsel for the petitioner states that petitioner is willing to furnish a bank guarantee to the satisfaction of the authority under Section 129(1)(c). It is at liberty to do so, if so inclined.

25. These writ petitions are disposed in the above terms. No costs. Connected miscellaneous petitions are closed.

25.08.2022

Index: Yes
Speaking Order
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To

1. The Assistant Commissioner (ST),
Adjudication, Intelligence-1,
No.1, Grems Road,



6th Commercial Taxes Annex Building,
Chennai – 600 006.

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2.The Deputy State Tax Officer,
Roving Squad – III,
Manjabakkam Toll,
Chennai.

3.The State Tax Officer (Enft.),
Roving Squad,
Salem,
Salem District.

4.The State Tax Officer,
Adjudication -2,
Salem (Intelligence),
Salem, Salem District.

5.State Tax Officer,
Adjudication Cell-2,
Salem (Intelligence).

6.State Tax Officer (Intelligence),
Roving Squad Team 3,
Salem.



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WP.Nos.18753, 20794 & 21690



Dr.ANITA SUMANTH,J.

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