



W.P.No.34474 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **22.12.2022**

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.34474 of 2022

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W.M.P.Nos.33921 and 33924 of 2022

in

W.P.No.34474 of 2022

Shree Info System Solutions Pvt. Ltd.,
Represented by its Head of Accounts & Finance
Mr.Varatharajan PP
No.599, Gemini Parsn Apartments
EG-5, Ground Floor, Annasalai
Chennai – 600 006 .. Petitioner

Vs.

The Assistant Commissioner (ST)
Adjudication, Intelligence-1
Chennai – 600 006 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records leading to the issuance of Order No.656/2022-23/ADJ dated 16.12.2022 by the Respondent herein and quash the same and direct the respondents herein to release the detained goods as well as conveyance bearing No.TN 09 CU 3082 immediately.

For Petitioner : Mr.Adithya Reddy



For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)

ORDER

This common order will now dispose of the captioned main writ petition and captioned 'Writ Miscellaneous Petitions' ['WMPs'].

2. Mr.Adithya Reddy, learned counsel on record for writ petitioner and Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes), who has accepted notice on behalf of lone respondent, are before this Court. Owing to the narrow compass on which the captioned matter turns, with consent of learned counsel on both sides, main writ petition was taken up, heard out and for the self-same reason, a counter affidavit is really not necessary.

3. Short facts will suffice. Short facts shorn of elaboration are that the petitioner is a registered-dealer qua 'Tamil Nadu Goods and Services Tax Act, 2017' [hereinafter 'TN-G&ST Act' for the sake of brevity, convenience and clarity]; that the petitioner in the course of supplying web cameras was transporting the same from one branch office



W.P.No.34474 of 2022

in Chennai to another branch office in New Delhi; that in the course of such transport, the vehicle was intercepted and detained at 08:35pm on 13.12.2022 by the respondent; that the detention and seizure is under Section 129 of TN-G&ST Act; that the detention was on the ground that E-way bill was not generated for movement of the consignment; that post detention, a notice was issued, personal hearing was held and an 'order dated 16.12.2022 bearing reference Order No.656/2022-23/ADJ' [hereinafter 'impugned order' for the sake of brevity and convenience] was made; that the impugned order is under Section 129(3) of TN-G&ST Act; that assailing the impugned order, as being obviously erroneous with no factual disputations captioned writ petition has been filed.

4. As already alluded to supra, captioned writ petition turns on a very narrow compass and therefore it is really not necessary to delve into the factual matrix in detail. It will suffice to say that while the interception followed by detention/seizure was at 08:35pm on 13.12.2022, the impugned order proceeds on the basis that it is at 08:35am in the forenoon on 13.12.2022. This error in the case on hand is fatal to the impugned order, as the only ground on which the detention



W.P.No.34474 of 2022

and seizure has been made is that E-way bill had not been generated for movement of the goods whereas there is no dispute or disagreement that E-way bill had been generated at 12:39pm on 13.12.2022. The most relevant paragraph in the impugned order is paragraph 8 and the same reads as follows:

'8) Accordingly, a notice FORM MOV 06, 07 dated :13.12.2022 were issued to Tvl.Shree Info System Solutions Pvt. Ltd., (GSTN: 33AAQCS6907D1Z9). Representative from Tvl.Shree Info System Solutions Pvt. Ltd., appeared in person on 16.12.2022, filed a reply put forth their contention. In their reply, they have accepted that they had not generated E-way bill for the movement of goods from Annasalai till the conveyance was intercepted at 08.35AM on 13.12.2022 at Chindadripet and they have generated E-way bill at 12:39PM on 13.12.2022 which is an afterthought.'

5. A perusal of aforementioned paragraph 8 makes it clear that the impugned order deserves to be interfered with.

6. Therefore, this Court would now set aside the impugned order. This means that the matter reverts to the detention/seizure order under Section 129(1) of TN-G&ST Act. This Court would also now be directing the respondent to redo Section 129(3) legal drill after affording a fresh opportunity to the writ petitioner.



W.P.No.34474 of 2022

7. In this view of the matter, as Section 129(1) scenario gets revived, learned counsel for writ petitioner on instructions submits that the writ petitioner is ready to furnish Bank Guarantee for the entire amount payable qua Section 129(1)(a) i.e., penalty of 200% of the tax payable. This submission is recorded.

8. Learned counsel for writ petitioner, on instructions, submits that this Bank Guarantee will be furnished as expeditiously as possible and in any event by Monday i.e., by 26.12.2022. On such Bank Guarantee being furnished, as the statute itself provides that the conveyance and goods shall be released, the respondent shall release the conveyance and consignment forthwith on production of Bank Guarantee.

9. For the purpose of specificity and clarity, the operative portion of the order is set out infra:

- a) Impugned order being order dated 16.12.2022 bearing reference Order No.656/2022-23/ADJ under Section 129(3) is set aside;



W.P.No.34474 of 2022

b) The writ petitioner shall furnish Bank

WEB COPY Guarantee as per 129(1)(c) read with Section 129(1)(a) i.e.,
(penalty equivalent to 200% of the tax payable) latest by
Monday i.e., by 26.12.2022;

c) On writ petitioner furnishing Bank Guarantee in
the aforesaid manner, by operation of statute i.e., Section
129(1)(c) read with Section 129(1)(a) of TN-G&ST Act, the
conveyance and consignment shall be released forthwith;

d) The respondent shall now issue a fresh personal
hearing notice fixing the personal hearing on or before
28.12.2022, *de novo* do the 129(3) legal drill, pass orders
afresh and such order shall be passed within 7 days from
today;

e) Though obvious it is made clear that if the writ
petitioner is aggrieved by the *denovo* order, it is open to the
writ petitioner to pursue the remedies that are available to
the writ petitioner in law;

f) Though obvious, it is made clear that this Court
has not expressed any view or opinion on the merits of the
matter other than the limited expression that there is error



W.P.No.34474 of 2022

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apparent on the face of the record (no inferential process or investigation required to identify the illegality);

g) It is also made clear that this order is made in the unique facts / circumstances of this case besides undisputed position which is not subjected to contestation and therefore, this order will not serve as a precedent in all and every case of orders under Section 129(3) of TN-G&ST Act.

Captioned writ petition disposed of with the aforesaid directives. Consequently, captioned WMPs are disposed of as closed. There shall be no order as to costs.

22.12.2022

Index: yes/no

gpa

To

The Assistant Commissioner (ST)
Adjudication, Intelligence-1
Chennai – 600 006



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W.P.No.34474 of 2022

M.SUNDAR, J.,

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