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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.10.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.25931 of 2022
and WMP Nos.25014 and 25015 of 2022

A.Irudayaraju

... Petitioner

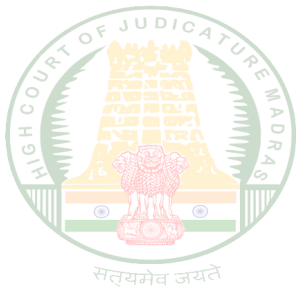
Vs

The State Tax Officer,
Adjudication Cell – I,
Salem (Intelligence),
Commercial Taxes Department,
Salem.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the respondent in ADJ No:4001/2022-23/Adjudication – I dated 11.08.2022 and 13.09.2022 and quash the same as being without its jurisdiction and authority of law and beyond the prescribed period of limitation and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.V.Prashanth Kiran
Government Advocate



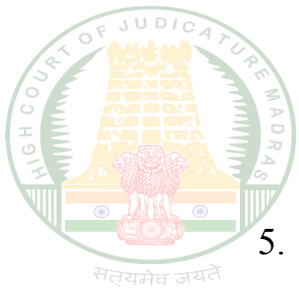
ORDER

WEB COPY Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate for the respondent.

2. The challenge is to an order of detention dated 11.08.2022 and an order of demand of tax and penalty dated 13.09.2022 passed in terms of the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'Act').

3. The petitioner had transported a second hand Tata Hitachi Excavator that had been intercepted on 01.08.2022 at 11.20 p.m. at Ammapet Bye Pass junction, Salem. The statement of the driver of the vehicle in Form GST MOV-01 was recorded on the same day. Simultaneous therewith, Form GST MOV-02, being an order of physical verification was issued, also dated 01.08.2022 along with report of physical verification in Form GST MOV-04.

4. According to the petitioner there was no permission sought and received in Form GST MOV-03 for the extension of the 3 day period for issuance of order in Form GST MOV-02. There was no order of detention that was passed in this case within the period as provided for under Section 129 and neither was a show cause notice issued within the period of 7 days as set out under Section 129(3) of the Act.



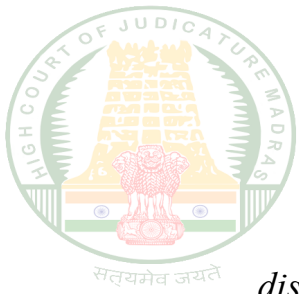
5. I have, in W.P.No.22646 of 2022 in the case of *D.K.Enterprises V.*

The Assistant/Deputy Commissioner and another, order dated 29.08.2022 set out the scheme of events and timelines stipulated under Section 129 of the Act commencing from interception of vehicle upto passing of final order of penalty. Since the statutory show cause notice is to be issued within a period of 7 days from date of interception, it becomes incumbent upon an authority to pass an order of detention prior thereto.

6. In this case, admittedly, neither order of detention nor show cause notice have been issued in time. The date of interception of vehicle is 01.08.2022 and the order of detention has been passed only on 11.08.2022. The show cause notice has been issued on 16.08.2022. The timelines as set out under Section 129 are completely vitiate the proceedings in full.

7. Learned Government Advocate draws my attention to the fact that the petitioner had earlier approached this Court in W.P.No.23816 of 2022 challenging show cause notice dated 16.08.2022. By order dated 06.09.2022 I had recorded the request of the learned counsel for the petitioner to withdraw the Writ Petition with liberty to file a reply to the show cause notice. The order reads as follows:

Learned counsel for the petitioner seeks permission to withdraw this Writ Petition with liberty to file a reply to show cause notice dated 16.08.2022. He has also made an endorsement to that effect.



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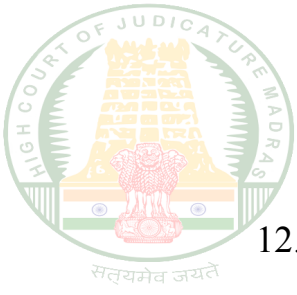
2. *In light of the endorsement made, this Writ Petition is dismissed as withdrawn granting liberty to the petitioner to file a reply to the show cause notice. Reply, if and when filed by the petitioner, shall be considered by the officer in accordance with law and proceedings disposed/closed, after hearing the petitioner, within a period of one (1) from date of receipt of reply. No costs. Connected Miscellaneous Petition is closed.*

8. Thus, according to the learned Government Advocate, since the petitioner was permitted to file a reply to the show cause notice, the question of delay had already been taken note of and condoned by this Court and hence, order dated 13.09.2022 impugned in this Writ Petition is perfectly in order.

9. There is no merit in this submission. In fact, neither of the parties had argued the position of delay before me in the earlier round of proceedings and the direction to the officer in order dated 06.09.2022 is to consider the reply of the petitioner '*in accordance with law*' and thereafter pass an order.

10. The petitioner in its reply filed on the same day has specifically made reference to the order in this case of *D.K.Enterprises* (supra) and has also referred to the statutory timeline under Section 129 of the Act. Thus, it was incumbent upon the authority to have taken note of the same. This has not been done.

11. For all the reasons as aforesaid, specifically since the admitted dates clearly reveal the lapses in adhering to the statutory and stipulated timelines, the case of the petitioner merits acceptance.



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12. The impugned orders are set aside. The vehicle in question shall be

released forthwith. This Writ Petition is allowed. No costs. Connected

Miscellaneous Petitions are closed.

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Index : Yes / No

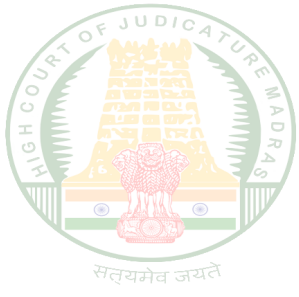
Speaking Order / Non Speaking Order

To

The State Tax Officer,
Adjudication Cell – I,
Salem (Intelligence),
Commercial Taxes Department,
Salem.

DR.ANITA SUMANTH,J.

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