

W.P.No.4217 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.4217 of 2023

and

W.M.P. No.4256 of 2023

M/s.Kramski Stamping and Molding Indis Private Ltd.,
Rep. by its Managing Director
Srinivas Mani.

...

Petitioner

vs

The State Tax Officer (Int.)
Adjudication Cell,
Vellore Division,
Vellore.

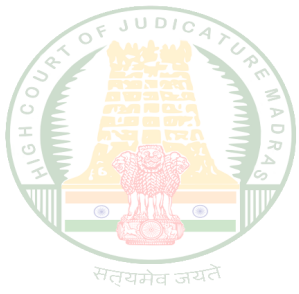
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Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records on the files of the respondent in GDN No.3306/22-23, dated 06.02.2023 and quash the same and further direct the respondent to release the vehicle and consignment detained on 01.02.2023.

For Petitioner : Mr.R. Senniappan

For Respondent : Mr.V. Prasanth Kiran,
Government Advocate



ORDER

WEB COPY By consent of both the parties, this writ petition is taken up for final disposal in the admission stage itself.

2. Mr.V. Prasanth Kiran, learned Government Advocate accepts notice for the respondent.

3. This writ petition has been filed challenging the order dated 06.02.2023 passed by the respondent under Section 129 of the Goods and Services Tax Act, 2017 under which the petitioner has been called upon to pay a penalty of Rs.47,79,721/-, within a period of seven days from the date of receipt of the impugned order, failing which, the respondent has informed the petitioner that action under Section 130 of the GST Act, 2017 shall be initiated against them.

4. The petitioner's vehicle along with its goods was intercepted by the respondent on 01.02.2023. The respondent has inspected the goods in movement under the provisions of sub-section 3 of Section 68 of the Central Goods and Services Tax Act, 2017, read with sub-section (3) of



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Section 68 of the State / Union territory Goods and Services Tax Act and

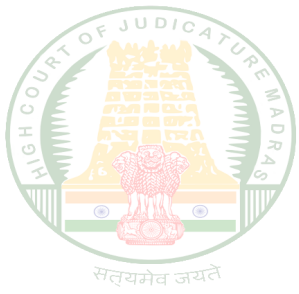
found the following discrepancies :-

*"Goods moved from Eraiyankadu Village,
Anaicut Block to Uttarpradesh without E-invoice".*

5. Based on the above inspection report, the goods and conveyance used by the petitioner for the movement of the goods were detained under sub section (1) of Section 129 of the Central Goods and Services Tax Act, 2017 read with sub-section (3) of Section 68 of the State / Union Territory Goods and Services Tax Act by issuing the order of detention in Form GST MOV-06 and the same was served on the person in-charge of the conveyance on 01.02.2023.

6. A reply was also sent by the petitioner to the show cause notice received from the respondent. In the reply, they have stated as follows :-

7. In response to the said notice, the consignor Tvl. Kramski Stamping and Molding India Private Ltd., Vellore has submitted a reply letter dated 02.02.2023 stated that "Tvl Kramski Stamping and Molding India Private Ltd. are a Multinational Company, involved in the manufacture of parts namely Electronic connectors (Flat connector, Plug Housing, Housing cap) for supply to Domestic Tarrif Area and Export. We generate all invoices, E-invoices and E-way bills only. We sell Phosphor Bronze Scrap to M/s.Sanu Copper Alloy Semis Pvt. Ltd., Meerut, Uttar Pradesh. Since, we cannot generate the E-invoice for scrap sale due to a technical glitch in our tally prime system, we raise through Excel, but generate E-way bill through online portal. Also the taxpayer enclosed registration certificate and tax paid details for the period April 2022 to December 2022 and requested to release the vehicle".

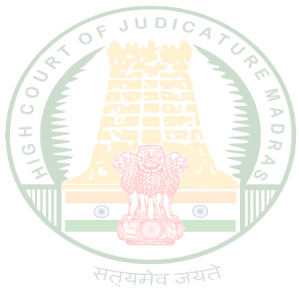


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7. The reply dated 02.02.2023 was considered by the respondent and after giving due consideration to Circular No.17/22-G.S.T., dated 01.08.2022, specifying mandatory E-invoicing from 1st October 2022 for businesses whose aggregate turnover exceeds Rs.10crores in any financial year 2017-18 to 2021-22, for business to business (B2B) supply of goods or services, or both and also for exports, the respondent came to the conclusion that the printed copy of the E-invoice submitted by the petitioner is a manipulated one and therefore, they have rejected the reply dated 02.02.2023 submitted by the petitioner.

8. Under the impugned order, the petitioner has been directed to pay a penalty of Rs.47,79,721/-, forthwith not later than seven days from the date of receipt of the order, failing which, action under Section 130 of the G.S.T. Act, 2017 has been contemplated against the petitioner. Aggrieved by the impugned order, the petitioner has filed this writ petition seeking for release of the detained goods and conveyance.

9. Heard Mr.R. Senniappan, learned counsel for the petitioner and Mr.V. Prasanth Kiran, learned Government Advocate for the respondent.



WEB COPY 10. Admittedly, there is a statutory appellate remedy available to the petitioner under Section 107 of the G.S.T. Act, 2017, if aggrieved by the impugned order. Instead of filing the statutory appeal, the petitioner has filed this writ petition.

11. However, the learned counsel for the petitioner would submit that the petitioner was constrained to file this writ petition only due to the fact that the petitioner's vehicle and their goods are under detention and any further detention will cause heavy loss to the petitioner.

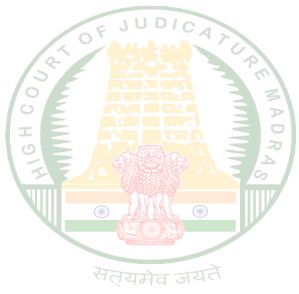
12. The learned counsel for the petitioner also submits that the petitioner is willing to deposit the entire penalty amount as stipulated under the impugned order without prejudice to the rights and contentions of the petitioner, provided the goods and conveyance are released to him provisionally.

13. As seen from the impugned order, reasons have been given for rejecting the petitioner's contention in its reply dated 02.02.2023 sent by them to the show cause notice issued by the respondent. When reasons have been given, that too when the respondent has referred to a Circular,



which according to them makes it mandatory for submission of E-invoice from 1st October 2022, when the aggregate turnover of the businesses exceeds Rs.10 crores in any financial year from 2017-18 to 2021-2022, this Court cannot entertain this writ petition as principles of natural justice have not been violated by the respondent as only after giving them time to submit a reply and that too after the petitioner has submitted its reply, which is also considered by the respondent, the impugned order has been passed.

14. The only limited relief that can be granted to the petitioner is to permit them to file a statutory appeal, if aggrieved by the impugned order before the statutory Appellate Authority as per the provisions of Section 107 of G.S.T. Act, 2017 and a direction is issued to the statutory Appellate Authority as and when an appeal is filed by the petitioner to consider the petitioner's application seeking for provisional release under Section 129(1) of the G.S.T Act, 2017, after giving due consideration to the fact that the petitioner is willing to deposit the penalty amount as stipulated under the impugned order under protest for getting provisional release of the goods and the conveyance and take a decision, within a short time to prevent any further deterioration of the goods and conveyance.



WEB COPY 15. No prejudice would be caused to the respondent, if such a direction is issued.

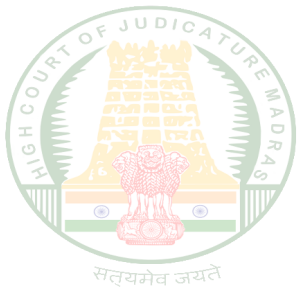
16. As per the proviso to Section 129(6) of the G.S.T. Act, 2017, the proper Officer, viz., the respondent herein is also empowered to release the vehicle to the petitioner on payment of a penalty of Rs.1,00,000/-.

17. The learned counsel for the petitioner would submit that a direction may also be issued to the proper Officer (respondent herein) to consider the petitioner's application as and when it is filed seeking for provisional release of the conveyance on payment of the penalty amount of Rs.1,00,000/- as per the provisions of Section 129(6) of the G.S.T. Act, 2017 and take a decision, within a short time.

18. No prejudice would be caused to the respondent, if such a direction is also issued.

19. For the foregoing reasons, this writ petition is disposed of by issuing the following directions :-

a) The petitioner is directed to file a statutory



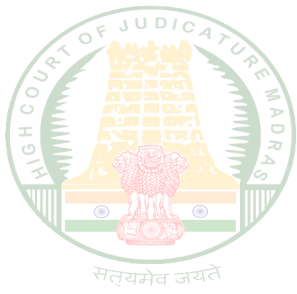
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appeal, if aggrieved by the impugned order before the statutory Appellate Authority under Section 107 of the G.S.T. Act, 2007, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the said statutory appeal within the stipulated time, the statutory Appellate Authority shall decide the appeal on merits and in accordance with law.

b) The petitioner is also permitted to file an application under Section 129(1) of the G.S.T. Act, 2017 before the statutory Appellate Authority seeking for provisional release of the goods and conveyance which have been detained.

c) On filing of the aforesaid application, the statutory Appellate Authority shall pass final orders on the said application seeking for provisional release, within a period of one week from the date of receipt of the said application from the petitioner, after giving due consideration to the fact that the petitioner is willing to furnish a security to the penalty amount without prejudice to its rights and contentions in the main appeal.

d) The proper officer viz., the respondent



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herein is also directed to entertain the application, if any filed by the petitioner under proviso to Section 129(6) of the G.S.T. Act, 2017 as and when the same is filed by the petitioner seeking for provisional release of the detained vehicle and decide the said application and pass final orders accordingly, within a period of one week from the date of receipt of the said application.

20) With the aforesaid directions, this writ petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

13.02.2023

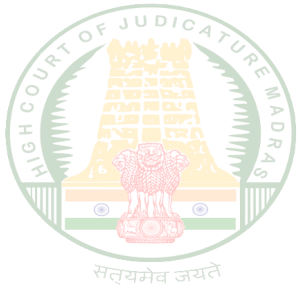
Note : i) Issue order copy on 14.02.2023

ii) Registry is directed to return back the original impugned order to the learned counsel for the petitioner to enable the petitioner to file a statutory appeal.

Index: Yes/No

Neutral Citation: Yes/No

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ABDUL QUDDHOSE, J.

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To
The State Tax Officer (Int.)
Adjudication Cell,
Vellore Division,
Vellore.

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