

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.09.2022

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THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) Nos.19395 to 19399 of 2022

and

W.M.P.(MD)Nos.14157 & 14159, 14158 & 14161, 14163 & 14167, 14160 & 14162 and 14164 & 14166 of 2022

M/s.Macmet Engineering Limited,
Rep. By its Authorized Signatory,
Shri Sathish Kumar,
Door No.1/363-15, No.7, 1st Floor,
Pon Palani Villa, Veerapandiapattinam,
Thiruchendur,
Tuticorin District – 628 216.
Head Office at
10B, O.C. Ganguly Sarani,
Kolkata – 700 020.

.. Petitioner in all the W.Ps.

Versus

1.The Commissioner of Commercial Taxes,
Chepauk,
Chennai – 600 005.

2.The State Tax Officer (Intelligence),
Adjudication II (FAC),
Office of Joint Commissioner of Commercial Taxes,
Commercial Tax Complex,
Dr.Thangaraj Salai,
K.K.Nagar, Madurai – 625 020.

.. Respondents in all the W.Ps.

Prayer in all the W.Ps.:- Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order Nos.ADJ-II-14/2022-23/Madurai



W.P.(MD)Nos.19395 to 19399 of 2022

(Int.), ADJ-II-16/2022-23/Madurai (Int.), ADJ-II-17/2022-23/Madurai (Int.), ADJ-II-15/2022-23/Madurai (Int.) and ADJ-II-18/2022-23/Madurai (Int.), dated 11.08.2022, passed by the second respondent, quash the same and to direct the second respondent to release the vehicles bearing Registration Nos.NL-01-AF-4716, NL-01-AA-6401, OD-15-L-5292, NL-01-AF-4876 and NL-01-AF-4716 along with consignments, respectively, within a time frame to be fixed by this Court.

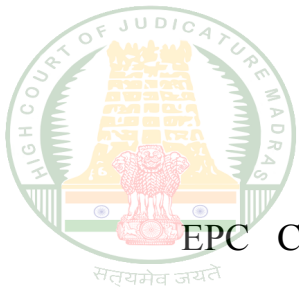
For Petitioner : Mr.S.Jaikumar
(in all the W.Ps.)

For Respondents : Mr.C.Satheesh
(in all the W.Ps.) Government Advocate

COMMON ORDER

The parties and the issue involved in all these writ petitions are one and the same and therefore, they are heard together and disposed of this by this common order.

2.The contention of the learned counsel for the petitioner is that the petitioner is engaged in the supply of bulk materials transporting/handling systems. The petitioner provides solutions for bulk materials transportation, like coal, limestone, cement, potash, flyash and sinter, using overland belt conveyors, pipe conveyors and in-plant conveyors. The petitioner is having registered office at Kolkata, West Bengal, and they are registered under the provisions of G.S.T. ITD Cementation India Private Limited was awarded an



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EPC Contract, dated 13.02.2018, by the Tamil Nadu Generation and Distribution Corporation Ltd. [TANGEDCO], for establishment of captive coal jetty with unloading facility and pipe conveyor system for their thermal project at Udangudi, Thoothukudi District. Subsequent to the same, ITD Cementation India Limited entered into a back to back EPC contract with the petitioner for supply of jetty and pipe conveyor system together with allied electrical, instrumentation and control works.

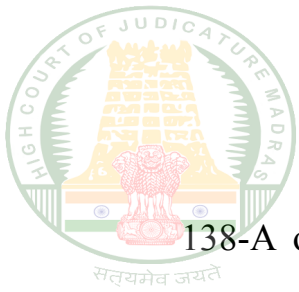
3.The petitioner Company was issued with the letter of indent by ITD Cementation India Limited. The petitioner opened a site office within the radius of 1.5 Kms. from the work site of TANGEDCO and obtained GST Registration No.33AABCO7599L1ZT, for the purpose of stock transferring of certain machineries, equipments and other materials required for execution of the contract from the premises of the petitioner at West Bengal. The site office of the petitioner is not involved in any supply of goods or services till date and thereby, filing Nil returns. Consequent to the letter of indent, the petitioner placed purchase order with M/s.Phoneix Conveyor Belt India Private Limited, West Bengal, for supply of steel cord pipe conveyor belts and splicing kits to be supplied to ITDC. As per the purchase order, the supplies to be made to the petitioner [billed in the name of the petitioner] and the goods to be dispatched to ITD Cementation India Ltd., C/o.TANGEDCO, at Udangudi. ITDC had



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added the work site of TANGEDCO as additional place of their business in the GST registration certificate. The officials of the TANGEDCO approved for the supply of 9550 meters of pipe conveyor belts to be transported from the premises of Phoenix Conveyor Belt India Private Limited, West Bengal, to the work site in 34 reels and 34 reels of pipe conveyor belt were transported as 34 consignments. 14 consignments delivered and received at the work site of TANGEDCO, the additional premises of ITD Cementation India Limited. Since the transaction involved supply of materials by M/s.Phoenix Conveyor Belt India Private Limited to the petitioner and from the petitioner to ITDC, the transaction was structured under 'Bill To – Ship To' concept. When the goods were moving to the work site, the same was accompanied by invoice and e-way bill raised by M/s.Phoenix Conveyor Belt India Private Limited. The petitioner would also raise their invoice on ITD Cementation India Limited when the goods are in transit and the same would complete the transaction of supply from M/s.Phoenix Conveyor Belt India Private Limited to the petitioner and from the petitioner to ITD Cementation India Limited.

4.On 26.07.2022, the supplier, M/s.Phoenix Conveyor Belt India Private Limited raised five invoices on the petitioner for a slot of consignments to be dispatched. Each consignment was accompanied by invoice, consignment note and packing list, and e-way bill raised by M/s.Phoenix Conveyor Belt India Private Ltd., for delivery from West Bengal to Tamil Nadu. As per Rule



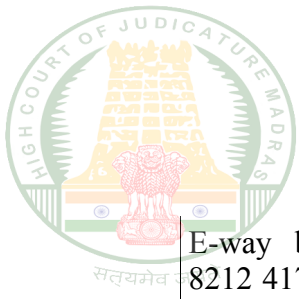
138-A of the CGST Rules, 2017, the person in-charge of conveyance shall carry the invoice or bill of supply or delivery challan and a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to Radio Frequency Identification Device embedded on to the conveyance as notified by the Commissioner. The details of invoice number, 'Bill to' address and ship to address are as follows:-

W.P.(MD)No.19395/2022:-

Document Reference	Bill to Address	Ship to Address	Other details
Invoice No. 2220000509, dated 26.07.2022	M/s.Macmet Engineering Ltd., Macmet House, 10B, O.C.Ganguly Sarani, Kolkatta – 700 020.	Macmet Engineering Ltd., C/o.TANGEDCO, 1 st Floor, Ponpalani Villa, Kurinji Nagar.	LOI of ITD, dated 28.02.2019, mentioned in the invoice. The purchase order reference number of petitioner also mentioned in the invoice.
E-way bill No. 8512 4192 4431, dated 26.07.2022	M/s.Macmet Engineering Ltd., West Bengal.	Door No.1/363-15, No.17, 1 st Ward, Kurinjinagar, Veerapandiapattinam, Tiruchendur.	Place of delivery is shown as Veerapandiapattinam, Tiruchendur.

W.P.(MD)No.19396/2022:-

Document Reference	Bill to Address	Ship to Address	Other details
Invoice No. 2220000502, dated 25.07.2022	M/s.Macmet Engineering Ltd., Macmet House, 10B, O.C.Ganguly Sarani, Kolkatta – 700 020.	Macmet Engineering Ltd., C/o.TANGEDCO, 1 st Floor, Ponpalani Villa, Kurinji Nagar.	LOI of ITD, dated 28.02.2019, mentioned in the invoice. The purchase order reference number of petitioner also mentioned in the invoice.



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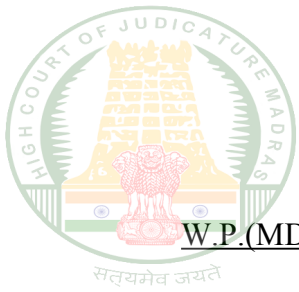
E-way bill No. 8212 4172 5778, dated 25.07.2022	M/s.Macmet Engineering Ltd., West Bengal.	Door No.1/363-15, No.17, 1 st Ward, Kurinjinagar, Veerapandiappattinam, Tiruchendur.	Place of delivery is shown as Veerapandiappattinam, Tiruchendur.
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W.P.(MD)No.19397/2022:-

Document Reference	Bill to Address	Ship to Address	Other details
Invoice No. 2220000497, dated 24.07.2022	M/s.Macmet Engineering Ltd., Macmet House, 10B, O.C.Ganguly Sarani, Kolkatta – 700 020.	Macmet Engineering Ltd., C/o.TANGEDCO, 1 st Floor, Ponpalani Villa, Kurinji Nagar.	LOI of ITD, dated 28.02.2019, mentioned in the invoice. The purchase order reference number of petitioner also mentioned in the invoice.
E-way bill No. 8612 4162 9500, dated 24.07.2022	M/s.Macmet Engineering Ltd., West Bengal.	Door No.1/363-15, No.17, 1 st Ward, Kurinjinagar, Veerapandiappattinam, Tiruchendur.	Place of delivery is shown as Veerapandiappattinam, Tiruchendur.

W.P.(MD)No.19398/2022:-

Document Reference	Bill to Address	Ship to Address	Other details
Invoice No. 2220000503, dated 25.07.2022	M/s.Macmet Engineering Ltd., Macmet House, 10B, O.C.Ganguly Sarani, Kolkatta – 700 020.	Macmet Engineering Ltd., C/o.TANGEDCO, 1 st Floor, Ponpalani Villa, Kurinji Nagar.	LOI of ITD, dated 28.02.2019, mentioned in the invoice. The purchase order reference number of petitioner also mentioned in the invoice.
E-way bill No. 8812 4172 8535, dated 25.07.2022	M/s.Macmet Engineering Ltd., West Bengal.	Door No.1/363-15, No.17, 1 st Ward, Kurinjinagar, Veerapandiappattinam, Tiruchendur.	Place of delivery is shown as Veerapandiappattinam, Tiruchendur.

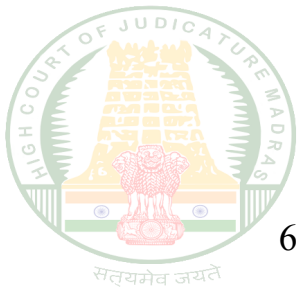


W.P.(MD)No.19399/2022:-

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Document Reference	Bill to Address	Ship to Address	Other details
Invoice No. 2220000501, dated 25.07.2022	M/s.Macmet Engineering Ltd., Macmet House, 10B, O.C.Ganguly Sarani, Kolkatta – 700 020.	Macmet Engineering Ltd., C/o.TANGEDCO, 1 st Floor, Ponpalani Villa, Kurinji Nagar.	LOI of ITD, dated 28.02.2019, mentioned in the invoice. The purchase order reference number of petitioner also mentioned in the invoice.
E-way bill No. 8912 4172 2316, dated 25.07.2022	M/s.Macmet Engineering Ltd., West Bengal.	Door No.1/363-15, No.17, 1 st Ward, Kurinjinagar, Veerapandiapattinam, Tiruchendur.	Place of delivery is shown as Veerapandiapattinam, Tiruchendur.

5.Five vehicles were intercepted by the State Tax Officer (Int.) Roving Squad (Addl.), Madurai, on 02.08.2022 at 03.45 pm. at Madurai – Tirunelveli Bye-pass, near Thirumangalam, Madurai. The second respondent detained the vehicle under Section 68(3) of the CGST Act read with Section 129(1) of the CGST Act and Section 20 of the IGST Act read with Section 68(3) of the CGST Act. Following the same, show cause notice dated 04.08.2022 in Form MOV 07 issued on the allegation that the vehicles carried consignments under 'Bill to – Ship to' concept, but the drivers were not in possession of invoices to support transport to 'Bill to' address in Tamil Nadu. The notice also proposed to impose penalty under Section 129(1)(b) of the CGST Act.



6.The petitioner submitted reply to the show cause notice giving the background facts and also clarified that the goods were moving from West Bengal to TANGEDCO site and are sold to ITD Cementation India Limited. They admit that there has been error on the part of their supplier M/s.Phoenix Conveyor Belt India Private Limited, in mentioning the Ship to address, instead of mentioning the name and address of the buyer as ITD Cementation India Limited, C/o.TANGEDCO, the same was entered as Macmet Engineering Limited, Ponpalani Villa, Veerapandiapattinam, Tiruchendur [the petitioner herein]. The petitioner submitted that they had raised supply invoice on ITD Cementation India Limited prior to date of interception and details of same are available in GSTN Portal, which can be accessed by the Officer. The hard copy of the invoice raised by them on ITD Cementation India Limited was also submitted by the petitioner to the second respondent along with other documents, such as, copies of Letter of Indent with the ITD Cementation India Limited and the petitioner's purchase order, C-Invoice and e-way bill raised by M/s.Phoenix Conveyor Belt India Private Limited with supporting documents, which would complete the entire documentation for 'Bill to, Ship to' concept supplies.

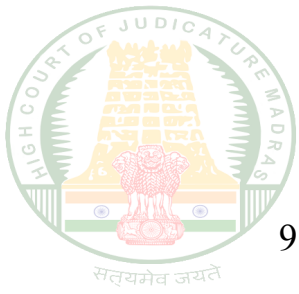
7.The petitioner's authorized representative Sathish Kumar appeared before the second respondent and submitted reply stating that the petitioner



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Company having its Corporate Office at Kolkata, was awarded an order on sub-contract from M/s.ITD Cementation India Limited, Project Office, C/o.TANGEDCO, Kaliamozhi Village and Post, Tiruchendur Taluk, Thoothukudi District, for the works of jetty and pipe conveyor system together will allied electrical, instrumentation and control works on EPC back to back basis with the main contract. The main contract is between TANGEDCO and ITD Cementation India Limited. ITD Cementation India Limited had given work of establishment of captive coal jetty with unloading facilities and pipe conveyor system to the petitioner vide LOI Ref.No.LOI-00165/45418DM/ITDCem/2019, dated 28.12.2019, which was later amended on 19.11.2019.

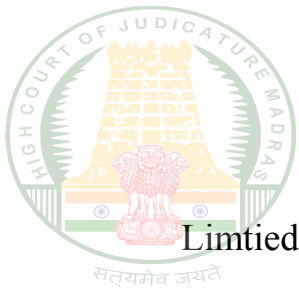
8.Based upon the work allotted to them, the petitioner had given purchase order to procure materials to be used for the work of TANGEDCO to Phoenix Conveyor Belt India Private Limited, by their purchase order dated 23.08.2021, with a direction to deliver the materials at the site of TANGEDCO, Udangudi, Tirunelveli. The materials detained by the second respondent in respect of the materials supplied by Phoenix Conveyor Belt India Private Limited based upon the petitioner's purchase order, wherein materials were moved from the State of West Bengal to the State of Tamil Nadu based on the invoices raised by Phoenix Conveyor Belt India Private Limited and e-way bills generated based on the said invoices.



9.Further, referring to Rule 138-A of the CGST Rules, the petitioner submitted that the invoice or bill of supply or delivery challan, as the case may be, and a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance as notified by the Commissioner to be carried on by the person in-charge of conveyance of goods.

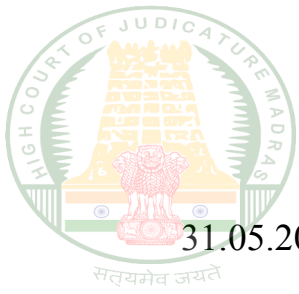
10.In this case, the conveyance of the materials was initiated by virtue of the invoice issued by Phoenix Conveyor Belt India Private Limited and accordingly, e-way bill was also generated by them. The vehicles detained by the second respondent carried the documents and e-way bill generated by Phoenix Conveyor Belt India Private Limited, where the Ship To address was correctly mentioned by them. Only mistake happened is in respect of mentioning the name of Consignee in the e-way bill, which shall be on account of ITD Cementation India Limited, instead of the petitioner Company. However, Ship To address was correctly mentioned in the invoices.

11.The learned counsel further submits that the ultimate user of the materials sent by Phoenix Conveyor Belt India Private Limited to the TANGEDCO site is as per the terms of contract with ITD Cementation India Limited. Further, as per the terms of the contract, the Macmet Engineering



Limtied, Kolkata [petitioner's head office], shall raise invoices upon ITD Cementation India Limited, charging IGST with place of supply as Tamil Nadu and ITD Cementation India Ltd., Tamil Nadu, shall raise invoice upon TANGEDCO, Tamil Nadu. Thus, in any case, the Government of Tamil Nadu shall get the revenue by this transaction and there is no revenue loss to the State of Tamil Nadu. The petitioner had also produced a copy of the invoices issued by the petitioner upon ITD Cementation India Limited for the above said vehicles. Further, the same were uploaded in the GST Portal. Since the mistake has been committed by M/s.Phoenix Conveyor Belt India Private Limited, there is no violation of tax either by M/s.Phoenix Conveyor Belt India Private Limited or by the petitioner. Hence, the same is to be treated as minor breaches as per the provisions of Section 126(1) of the CGST Act, 2017.

12.The second respondent placed reliance and given undue importance to the Press Release dated 23.04.2018, which is only a clarificatory in nature. Further, on the materials produced, clarifying the doubts of the second respondent, it is clear that there is no evasion of payment of G.S.T. Hence, no proceedings shall be initiated against the petitioner. Further, the roving squad is not competent to decide classification/valuation of the goods and to raise tax demand and thereafter, to impose penalty, which is in clear violation of the guidelines issued by the Commissioner in Circular No.10/2019, dated



31.05.2019, wherein it is stated that orders or decisions passed by the Roving

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Squad or Adjudicating Cell, along with the relevant records to be handed over to the Review Cell, within two days of passing such orders or decisions. Further, the learned counsel submitted that the petitioner Company is a reputed Company, having 300 crores turnover. It is not a fly-by-night Company. The petitioner produced Letter of Indent [LoI] issued by the ITD Cementation India Ltd., wherein the supply, price details and liabilities are all been clearly mentioned. The purchase order of the petitioner issued to Phoenix Conveyor Belt India (P) Ltd., had been produced, wherein it is clearly stated that ITD Cementation India Limited, is the place where the goods to be shipped. Further, joint Inspection Report of pipe conveyor belt for Udangudi Coal Jetty Project, issued by the TANGEDCO, M/s.ITD Cementation India Limited and the petitioner Company had been annexed. Phoenix Conveyor Belt India (P) Limited, in the tax invoice, has mentioned the receiver as Macmet Engineering Ltd., Kolkata [petitioner's head office], and in the consignee (shipped to) name column, it has been wrongly mentioned as 'Macment Engineering Ltd., [the petitioner herein] C/o.TANGEDCO, 1/363-15, No.07, 1st Ward, Kurinjinagar, Veerapandiapattinam, Tiruchendur, whereas, the name of the consignee to be mentioned as ITD Cementation India Limited, Tiruchendur Taluk, Thoothukudi District, however, the place of shipment is clearly mentioned as TANGEDCO. This is the only mistake committed and all other particulars are



proper. Taking a comprehensive view, looking at all the documents, it could be seen that it is a back to back agreement. In all aspects, there is no question of value addition or tax evasion.

13.In support of his contentions, the learned counsel for the petitioner relied upon the following judgments:-

- (i) **Jeyyam Global Foods Pvt. Ltd. Vs. Union of India [2019 (21) G.S.T.L. 465 (Mad.)]**
- (ii) **N.V.K.Mohammed Sulthan Rawther and Sons vs. Union of India [2019 (20) G.S.T.L. (Ker.)]**
- (iii) **K.P.Suganth Limited vs. State of Chattisgarh [2020 (38) G.S.T.L. 317 (Chhattisgarh)].**

14.The learned Government Advocate appearing for the respondents submits that while performing vehicle check up duty by the Roving Squad Officials at Madurai – Tirunelveli Bye-pass, near Thirumangalam, Madurai, on 02.08.2022, at 03.45 pm., the goods namely, ST Pipe Belt (HSN 40101190), transporting from Nadia, West Bengal to Veerapandiapattinam, Tiruchendur, Tamil Nadu, the Vehicles bearing Registration Nos.NL-01-AF-4716, NL-01-AA-6401, OD-15-L-5292, NL-01-AF-4876 and NL-01-AF-4716, were intercepted. The driver of the vehicles furnished invoices issued by



M/s.Phoenix Conveyor Belt India (P) Limited. On perusal of the documents produced by the drivers, it is seen that in the receiver of goods column, the petitioner's Kolkata office address has been mentioned and in the details of consignee column, the petitioner's office address namely, Macmet Engineering Ltd., C/o.TANGEDCO, Veerapandipattinam, Tiruchendur, has been mentioned. In the tax invoice, there is no reference about ITD Cementation India Ltd.

15.Further, on perusal of the documents produced by the drivers-cum-persons in charge of goods, it was found that the documents carried were only to support 'Bill to' address. The drivers failed to produce the invoice to support the 'Ship to' address, which is contravention to Section 68 of the TNGST Act, 2017. Further, in CBIC Press Release, dated 23.04.2018, issues relates to 'Bill to' 'Ship to' for e-way bill under CGST Rules, 2017 in Serial No.

2. It is mentioned that in this complete scenario, two supplies are involved and accordingly, two tax invoices are required to be issued. Invoice – 1 would be issued by 'B' to 'A'. Invoice -2 would be issued by 'A' to 'C', where 'A' is Consignee [Bill to], B is Consignor (Dispatched from) and 'C' is recipient (Ship to). As per Rule 138-A(1) of the TNGST Rules, the person in charge of a conveyance shall carry, - (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill in physical form or the e-



way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

16.As per Section 31(1) of the TNGST Act, 2017, a registered person supplying taxable goods shall, before or at the time of, - (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or (b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed. But, in the movement of goods, above facts were not followed. Finding violation of the provisions of the TNGST Act, the movement of the goods was detained. Form GST MOV 06 was served on the persons in charge of the conveyance on 02.08.2022 and personal hearing was given to the petitioner. The petitioner's authorized representative was heard, documents produced by them were perused and thereafter, finding that the transaction is 'Bill to' 'Ship to' concept, wherein, M/s.Phoenix Conveyor Belt India Private Limited effected 'Sale to' [sold to] Macmet Engineering Ltd., Kolkata [petitioner's head office] and 'shipped to' Macment Engineering Ltd., Tamil Nadu [the petitioner herein]. It is a triangular transaction, in which, three tax payers take part. As far as the first invoice is concerned, there is no dispute. When the second invoice was



asked to be furnished by the Roving Squad Officials, it was not furnished.

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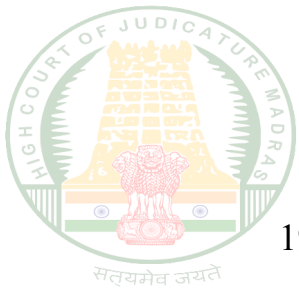
Later, the petitioner's Head Office raised second invoice to ITD Cementation India Ltd., which is not at all connected with the above triangular transaction and it was furnished only during the time of personal hearing. This tax invoice is not acceptable. The taxpayer has violated the basic principles 'Bill to' 'Ship to' concept. Due to that, the taxation chain is cut-off. Subsequently, the tax flow is curbed. This cannot be considered as a clerical mistake or a minor breach. Further, huge turnover is involved and the tax payer tried to camouflage the tax by way of improper method of transaction, leading to revenue leakage to the Government Exchequer. Hence, the freight charge at the rate of 2% and gross profit at the rate of 10% taken into account and penalty imposed against the petitioner. If the petitioner is aggrieved by the same, he ought to have filed an appeal instead, he filed this Writ Petition.

17.The learned Government Advocate further submits that the petitioner has placed purchase order to M/s.Phoenix Conveyor Belt India (P) Ltd., West Bengal, and supply is to be made to the petitioner and despatched to ITD Cementation India Limited. The purchase order referred earlier is dated 23.08.2021. But, in the instant case, from the documents, it is seen that the belated purchase order is dated 06.07.2022. From the invoice and e-way bills produced before the Roving Squad Officials, it is seen that the supply is to be



made to the petitioner's head office and despatched [Shipped to] again to the petitioner herein at Udangudi. Though the petitioner stated that TANGEDCO is registered as additional place of business by ITD Cementation India Ltd., on inspection, it was found that TANGEDCO approved the supply of 9950 meters of pipe conveyor belts to be transported from the premises of M/s.Phoenix Belt Conveyor India Private Limited, West Bengal, to the work site in 34 reels.

18.Further, the joint inspection was conducted by TANGEDCO, ITD Cementation India Ltd., and the petitioner between 20.06.2022 and 28.06.2022. As per the invoice, the purchase order is dated 06.07.2022. Further, as per Rule 138(A) of the CGST Rules, 2017, the person in charge of conveyance shall carry the invoice or bill of supply or delivery challan, as the case may be, and a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be noticed by the Commissioner. As per the Press Release, dated 23.04.2018, it was clarified that if e-way bill raised by the first supplier namely, M/s.Phoenix Belt Conveyor India Private Limited, the 'Bill To' address shall be that of the first buyer namely, the petitioner herein, the Ship To address shall be that of the end buyer. The invoice reference in the e-way bill shall be that of the first supplier namely, M/s.Phoenix Belt Conveyor India Private Limited.



19.The petitioner having accepted the error and gave explanation that the error occurred by mistake, which is not acceptable. The goods received from M/s.Phoenix Belt Conveyor India Private Limited cannot be transferred to ITD Cementation India Limited as such. Further, it has to be taken as purchase and value addition to be made and thereafter only, sale can be effected to ITD Cementation India Limited and transferred to ITD Cementation India Limited. When such sale is made, it does not come under 'Bill to', 'Ship to' concept. The basic principles of triangular transactions are violated. Due to that, the taxation chain will be cut-off and there will be a huge revenue leakage to the Government Exchequer.

20.The learned Government Advocate further submits that the petitioner had produced invoice particulars to ITD Cementation India Limited, which is not at all connected with the triangular transaction during the personal hearing. Since ITD Cementation India Limited is no way connected with the triangular transaction, the invoice is, therefore, not acceptable and the tax payer violated the basic principles of 'Bill to' 'Ship to' concept, hence, they are liable to penalty and the penalty has been rightly imposed.

21.The learned Government Advocate further submits that the judgments relied upon by the learned counsel for the petitioner, are not



relevant to the facts of the present cases. If aggrieved, the petitioner to pay 25% of the penalty and file an appeal before the concerned authority. To avoid the payment of pre-deposit, projecting as principles of natural justice have been violated and the impugned orders are without jurisdiction, the petitioner approached this Court, which is not proper. Hence, the learned Government Advocate prayed for dismissal of the writ petitions.

22.Considering the submissions and on perusal of the materials, it is not in dispute that the petitioner is a sub-contractor to M/s.ITD Cementation India Ltd., for the supply of jetty and pipe conveyor system together with allied electrical instrumentation and control works on EPC back to back basis between TANGEDCO and ITD Cementation India Limited. ITD Cementation India Limited had given letter of indent to the petitioner on 28.02.2019. The petitioner had issued purchase order to procure materials from M/s.Phoenix Conveyor Belt India Private Limited for the purchase of pipe conveyor belts and its accessories to be used for the work at TANGEDCO. TANGEDCO is in the process of establishing of 2 x 660 MW Super Critical Thermal Power Project at Udangudi, Thoothukudi District. For establishment of captive coal jetty with unloading facility and pipe conveyor system, the petitioner was given a sub-contract. Thereafter, the petitioner placed purchase order with M/s.Phoenix Conveyor Belt India Private Limited. The pipe conveyor belts



have been transported in 34 vehicles, out of which, 14 vehicles have already reached the destination namely, ITD Cementation India Limited site at TANGEDCO, Tiruchendur.

23.Five vehicles have been intercepted by the Roving Squad Officials and it was found that the transporter carried 'Bill to' address and failed to produce invoice in support of 'Ship to' address. In these cases, the materials have been transported on the basis of 'Bill to', 'Ship to' concept, for which, two supplies are involved. Accordingly, two tax invoices are to be issued. Invoice – 1 would be issued by 'B' to 'A'. Invoice -2 would be issued by 'A' to 'C', where 'A' is Consignee, B is Consignor and 'C' is recipient. 'A' is the petitioner, who has ordered goods to M/s.Phoenix Conveyor Belt India Private Ltd., to send goods directly to ITD Cementation India Limited. 'B' is the person, who has sent the goods directly to 'C' on behalf of 'A'. 'C' is the recipient of goods. Pursuant to the letter of indent issued by ITD Cementation India Limited , the petitioner ordered the goods with M/s.Phoenix Conveyor Belt India Private Ltd. GST registration has been made by all concerned. After issuance of purchase order, the joint inspection team of M/s.Phoenix Conveyor Belt India Private Ltd, ITD Cementation India Limited, TANGEDCO, and the petitioner inspected the materials and found that the same are in order, approved the same. Thereafter, M/s.Phoenix Conveyor Belt



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India Private Limited raised tax invoices to the petitioner's Head Office at Kolkata. In the tax invoices, the details of consignee [shipped to address] to be mentioned as ITD Cementation India Limited, whereas the petitioner's name was mentioned. But, the place of delivery has been clearly mentioned as TANGEDCO, Udangudi, Tiruchendur. All other details, namely, GSTIN Number, Challan Number, Date and other particulars are properly recorded. The same are not in dispute, except the name of the consignee, namely, ITD Cementation India Limited is missing.

24. In the tax invoices raised by the petitioner, the details of consignee namely, ITD Cementation India Limited, C/o.TANGEDCO, Udangudi, Thiruchendur Taluk, Thoothukudi District and GSTIN are all clearly mentioned. The tax invoices of the petitioner have been properly recorded. It is the supplier, namely, M/s.Phoenix Conveyor Belt India Private Limited, missed the name of ITD Cementation India Limited. In view of the same, All India Road Transport Agency name was not recorded in the transport invoices. But, the consignment notice has been rightly recorded, which finds place in the bills. The e-way bill is dated 26.07.2022, in which, the other details such as, e-way bill number, GSTIN number of the supplier and recipient, place of despatch, place of delivery, document number and code are all properly recorded.



WEB COPY 25. The second respondent Roving Squad intercepted the vehicles and found that the invoice raised by M/s. Phoenix Conveyor Belt India Private Limited, the name of recipient namely, ITD Cementation India Limited found missing. That is the only mistake committed. Thereafter, show cause notice issued. The petitioner's authorized representative appeared and clarified the doubts raised. The contract is EPC back to back basis. The main contractor is TANGEDCO. In the invoices and e-way bills generated by M/s. Phoenix Conveyor Belt India Private Limited, 'Ship to' address is correctly mentioned. The only mistake is that the name of the consignee namely, ITD Cementation India Limited, is found missing, instead, it is mentioned the name of the petitioner Company at Tamil Nadu. 'Ship to' address is correctly mentioned in the invoices. Charging IGST for supply of goods, the Commercial Tax Department shall augment revenue to the Government and there is no revenue loss for the State of Tamil Nadu. Further, the petitioner had produced copy of the invoices issued by them upon ITD Cementation India Limited for the aforesaid vehicles. In the invoices, uploading of particulars in the G.S.T. Portal and all other particulars are found. There is no evasion of tax neither by M/s. Phoenix Conveyor Belt India Private Limited nor by the petitioner. The mistake can be rectified and there is no evasion of payment of G.S.T.



WEB COPY 26. The impugned order proceeds that at the time of inspection, triangular transaction, the principle of 'Billed to', 'Shipped to' concept was not available, though the documents produced later during personal hearing. The impugned order proceeds further finding that the documents to be defective and needs further verifications and the e-way bills not rendered for the goods in movement. From the impugned order, it is seen that the second respondent finding these discrepancies, had detained the vehicles and passed the same.

27. From the impugned order, it is seen that for calculation of applicable penalty, valuation has been done, thereafter, the freight charge at the rate of 2% and gross profit at the rate of 10% taken into account and penalty imposed against the petitioner. As per the Circular of the Commissioner, the Intelligence/Roving Squad detained the vehicles and thereafter, all the records to be handed over to the Jurisdictional Officer or to the Review Cell and thereafter, it is for the Jurisdictional Officer to pass orders on the point of classification and valuation. In these cases, it not the goods are without any invoices and documents. Invoices and documents were available except the discrepancy, which is a rectifiable one. Further, it is not in dispute that the pipe conveyor belt is a customized article, which is used exclusively for the project of TANGEDCO at Udangudi. This being so, there is no possibility of



diversion of the material and thereby, evasion of duty would arise.

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28. According to the learned counsel for the petitioner, the petitioner Company is not a fly-by-night Company and it is having substantial turnover of Rs.300 Crores and was awarded an order on sub-contract from M/s.ITD Cementation India Limited, Project Office, C/o.TANGEDCO, Kaliamozhi Village and Post, Tiruchendur Taluk, Thoothukudi District. Further, out of 34 vehicles, apart from 5 vehicles, which have been detained by the second respondent, 14 vehicles have already reached the TANGEDCO site and 15 vehicles are in transit and the mistake in the Invoice/Bill has occurred and the same can be clarified/rectified. The jurisdictional Tax Officer would be the right person to decide the mistake and to be found whether there is loss of revenue or evasion of duty. In view of the error committed by the second respondent, the learned counsel prays that the detention orders passed by the second respondent are liable to be quashed. The petitioner may be directed to execute a bond for the demand/penalty.

29. Further, in similar circumstances, this Court in the case of **Jeyyam Global Foods Pvt. Ltd. Vs. Union of India [2019 (21) GSTL 465 (Mad.)]**, had held that if there is *bona fide* dispute, it is only the jurisdictional assessing officer to decide the issue and it is not by the Roving Squad Officers.



WEB COPY30. In **N.V.K.Mohamed Sulthan Rawther and sons vs. Union of India [2019 (20) G.S.T.L. 708 (Ker.)**, it is reiterated that the assessing authorities to adjudicate with regard to classification. In the case of **Shri Venkateshvara Logistics Fleet Owners and Transport Contractors vs. Asstt. Commr. Of C.T. & C. Ex. Cus. & S.T., Vijayapur** reported in **2020 (41) G.S.T.L. 145 (Kar)**, though it pertains to perishable goods, the principle is that, when goods accompanied by a lawful invoice and details, the goods not to be detained.

31.Further, with regard to availing alternate remedy, the learned counsel for the petitioner placed reliance upon the decision of the Chhattisgarh High Court in the case of **K.P.Sugandh Ltd. Vs. State of Chhattisgarh** reported in **2020 (38) G.S.T.L. 317 (Chhattisgarh)**.

32.Thus, looking from any angle and considering the nature of contract business, the only mistake committed by M/s.Phoenix Conveyor Belt India Private Limited is that, in the invoice, instead of ITD Cementation India Limited, the petitioner's name is mentioned, except the said mistake, all other particulars properly recorded and 14 vehicles already reached the destination, five vehicles are in detention and 15 vehicles are in transit. It is seen that the



petitioner already uploaded the particulars in the G.S.T. Portal even before the detention. The petitioner to produce all the documents to the jurisdictional assessing officer, give his explanation and it is for the assessing officer to see whether the triangular transaction 'Bill to', 'Ship to' is complete and thereafter, process the same.

33.In view of the above, this Court quashes the impugned detention orders alone and directs the second respondent to forward all the documents to the concerned jurisdictional assessing officer, who shall take up the issue and decide the same after giving opportunity to the petitioner. To safeguard the revenue, the petitioner to execute a bond for the demand and penalty raised. The jurisdictional assessing officer to decide the case on its own merits and pass appropriate orders.

34.With the above observations, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No

01.09.2022

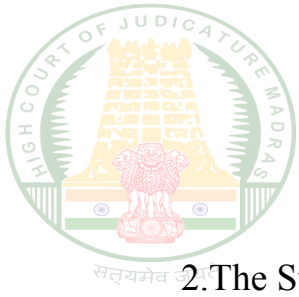
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Note:- Issue order copy on 02.09.2022

To

1.The Commissioner of Commercial Taxes,
Chepauk,

Chennai – 600 005.



W.P.(MD)Nos.19395 to 19399 of 2022

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2.The State Tax Officer (Intelligence),
Adjudication II (FAC),
Office of Joint Commissioner of Commercial Taxes,
Commercial Tax Complex,
Dr.Thangaraj Salai,
K.K.Nagar, Madurai – 625 020.



W.P.(MD)Nos.19395 to 19399 of 2022

M.NIRMAL KUMAR, J.

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Common order made in
W.P.(MD)Nos.19395 to 19399 of 2022

01.09.2022