IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12320 of 2022
and
W.M.P.Nos.11770 and 11771 of 2022

M/s.Creamline Dairy Products Limited,
Represented by its Authorised Signatory
Mr.T.Venkata Ramesh Babu ... Petitioner

Vs.

The State Tax Officer,
Adjudication, Intelligence-I,
Chennai – 6,
Office of the Joint Commissioner (ST),
Commercial Tax Buildings,
Chennai – 600 006. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the Impugned Order passed by the respondent in Order No.451/2021-2022 ADJ dated 28.03.2022 and quash the same as arbitrary, illegal and clear violation of the State Circular No.10/2019/Q1/17253/2019 dated 31.05.2019 issued by the Commissioner of Commercial Taxes, Chennai.

For Petitioner : Ms.L.Sweety
for Mr.S.Karunakar

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

The petitioner has filed this Writ Petition for issuance of a Certiorarified Mandamus, to call for the records relating to the Impugned Order passed by the respondent in Order No.451/2021-2022 ADJ dated 28.03.2022 and quash the same as arbitrary, illegal and clear violation of the State Circular No.10/2019/Q1/17253/2019 dated 31.05.2019 issued by the Commissioner of Commercial Taxes, Chennai.

2. The petitioner is before this Court against the Impugned Order of demand of tax and penalty bearing Order No.451/2021-2022/ADJ dated 28.03.2022 in Form GST MOV-09.

3. The Impugned Order precedes Notice and Detention Order in the respective forms prescribed under the Tamil Nadu Goods and Services Tax (TNGST) Rules, 2017.

4. The goods along with vehicle bearing Registration No.AP-16-TA-6336 were seized and detained at about 10.25 a.m at 15.03.2022 as is evident from the reading of the documents filed before this Court. The said vehicle and

the consignment of Cow Ghee was seized / detained from the petitioner's additional place of business at Sothupakkam Village, Red Hills, Chennai. The said premises is not a registered premises of the petitioner under the provisions of the respective GST enactments.

5. The petitioner has its main factory at Survey No.91, Orakkadu Village, Sholavaram, Ponneri Taluk, Tiruvallur District which is about 12 Kilometers from the additional place of business.

6. Learned counsel for the petitioner would submit that the Impugned Order dated 28.03.2022 imposing penalty under Section 129 of the respective GST enactments is arbitrary and is liable to be quashed. It is further submitted that the failure to obtain registration for the additional place of business at Sothupakkam Village, Redhills, Chennai was not with a view to evade tax.

7. It is submitted that the petitioner was constrained to store the manufactured Cow Ghee at the additional place of business although there is a violation on the part of the petitioner for not obtaining registration from the additional place of business.

8. Learned counsel for the petitioner submits that failure to obtain registration for the additional place of business at Sothupakkam Village, Redhills, Chennai was only the procedural violation / irregularity and does not warrant imposition of penalty equivalent to 200% of tax liability. Hence, prays for quashing the Impugned Order dated 28.03.2022 passed by the respondent.

9. Learned counsel for the petitioner further submits that the details of the additional place of business was furnished to the Department at the time of registration of the main place at Orakkadu Village, Sholavaram, Ponneri Taluk, Tiruvallur District.

10. Learned counsel for the petitioner has also drew attention to a Circular No.64/38/2018-GST, CBEC/20/16/03/2017-GST, dated 14.09.2018 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing Department of Revenue, Ministry of Finance, Government of India.

11. Specifically, the learned counsel for the petitioner drew attention to Paragraph 5 of the said Circular wherein, it has been clarified as under:-

> "5. Further, in case a consignment of goods is accompanied with an invoice or any other specified document

and also an e-way bill, proceedings under Section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

a) Spelling mistakes in the name of the consignor or the consignee but he GSTIN, wherever applicable, is correct.
b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;
d) Error in one or two digits of the document number mentioned in the e-way bill;
e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct.
f) Error in one or two digits / characters of the vehicle number."

12. Additionally, the learned counsel for the petitioner drew attention to a Circular No.10/2019, Q1/17253/2019 dated 31.05.2019 issued by the Additional Chief Secretary / Commissioner of Commercial Taxes wherein, it has been clarified as under:-

"9. **Circumstances where no penalty shall be levied by the Roving Squad**:

i. Where the amount involved in the offense is less than Rupees Five Thousand.
ii. Where a mistake or omission in documentation is easily rectifiable and has been committed without fraudulent intent of gross negligence or is not backed up with any sort of malicious intent to evade taxes.
iii. Where the issue relates to rate of tax, classification of

goods, place of supply disputes, valuation of goods etc. Instead of levying tax and penalty on the spot, these types of cases shall be referred to the assessment circle concerned for further action, without detaining the goods and conveyance. However, in respect of newly registered taxpayers where the roving squad officers are able to establish that the taxpayer had failed to file returns for two or more tax periods, this instruction would not apply and the vehicles of such taxpayers may be detained for further action, wherever appropriate."

13. Learned counsel for the petitioner has drew attention to a decision of this Court rendered in **M/s.Smart Roofing Private Limited** Vs. **The State Tax Officer (INT), Madurai** in W.P.(MD) No.5720 of 2022 dated 30.03.2022, 2022 (4) TMI 241 dealing with an identical situation.

14. Specifically, the learned counsel for the petitioner drew attention to Paragraph 6 from **M/s.Smart Roofing Private Limited's case** (cited supra). It reads as under:-

"6. No doubt, the authorities acting under the Act were justified in detaining the goods inasmuch as there is a wrong declaration in the E-way bill. However, the facts indicate that the consignor and the consignee are one and the same entity, namely, Head Office and the Branch Office. In this case, the petitioner has a new place of business, but had not altered the GST Registration. However, steps have been taken to ex post facto include the new place of business altering the GST

Registration. The Registration Certificate has also been amended."

15. On the other hand, the learned counsel for the petitioner has also drew attention to another decision of this Court rendered in **Algae Labs Private Limited** Vs. **State Tax Officer-I, Tirunelveli** in W.P.(MD) No.4958 of 2022 dated 04.04.2022, 2022 (4) TMI 466.

16. Defending the Impugned Order, learned Government Order for the respondent on the other hand would submit that the Impugned Order is well-reasoned and does not warrant any interference.

17. That apart, the learned Government Advocate for the respondent further submits that the additional place of business was not mentioned in the Registration Certificate obtained for the main place of business. That apart, it is submitted that E-way bill and the invoices were generated only after the detention was made on 15.03.2022 at about 10.25 a.m.

18. Learned Government Advocate for the respondent further submits that the Circulars which have been issued in the year 2018 and 2019 (referred to supra) have been subsequently modified wherein it has been now clarified

that E-way bill was mandatory before the goods are moved.

19. That apart, the learned Government Advocate for the respondent drew attention to Rule 10 of the Central Goods and Services Tax (CGST) Rules, 2017.

20. It is submitted that as per Rule 10 of CGST Rules, 2017, which is made applicable to assessment by the State Authorities, it is mandatory on the part of the suppliers to obtain registration for additional place of business.

21. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

22. The facts are not in dispute. The additional place of business of the petitioner in Sothupakkam Village, Redhills, Chennai was not the place which was registered by the petitioner as is contemplated under Rule 10 of CGST Rules, 2017. The said Rule reads as under:-

> "10. **Issue of registration certificate**.-
> (1) Subject to the provisions of sub-section (12) of section 25, where the application for grant of registration has been approved under rule 9, a certificate of registration in FORM GST REG-06 showing the principal place of business and additional place or places

of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number shall be assigned subject to the following characters, namely:-

(a) two characters for the State code;

(b) ten characters for the Permanent Account Number or the Tax Deduction and Collection Account Number;

(c) two characters for the entity code; and

(d) one checksum character.

(2) The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of thirty days from such date.

(3) Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration under sub-rule (1) or sub-rule (3) or sub-rule (5) of rule 9.

(4) Every certificate of registration shall be [duly signed or verified through electronic verification code] by the proper officer under the Act.

(5) Where the registration has been granted under sub-rule (5) of rule 9, the applicant shall be communicated the registration number, and the certificate of registration under sub-rule (1), duly signed or verified through electronic verification code, shall be made available to him on the common portal, within a period of three days after the expiry of the period specified in sub-rule (5) of rule 9."

23. The excuse of the petitioner that the additional place of business at Sothupakkam Village, Redhills, Chennai was not registered by the petitioner

and that the same was only the procedural irregularities can be accepted as there is only technical and venial breach of the provisions.

24. That apart, order of detention was made in Form GST MOV-06 dated 15.03.2022 at about 10.25 a.m and it was followed by a Notice issued under Section 129(3) of the respective enactments in Form GST MOV-07. The E-way bill which has been filed by the petitioner along with the typed set of papers indicates that it has been generated on the previous date i.e., on 14.03.2022 at about 6.28 p.m.

25. The E-way bill pertain to supply of Cow Ghee to the consignee namely Creamline Dairy Products Limited covered by Bill of Supply dated 14.03.2022.

26. The invoice refers to the vehicle bearing Registration No.AP-16-TA-6336. The same is reflected in the E-way bill that was generated on 14.03.2022. Thus, there appears to be a procedural irregularities committed by the petitioner inasmuch as the transaction covered by the goods seized / detained vide Detention Order dated 15.03.2022 in Form GST MOV-06 was pertaining to the same goods covered by the aforesaid invoice dated 14.03.2022 and the E-way

bill dated 14.03.2022.

27. Unless there was a variance between quantity in the invoice and the E-way bill and the actual seizure made, the question of imposing penalty under Section 129(3) of CGST Act, 2017 would be harsh under the given facts and circumstances of the case.

28. Under these Circumstances, the Court is of the view that the Writ Petition deserves to be allowed. It is accordingly allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

20.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The State Tax Officer,
Adjudication, Intelligence-I,
Chennai – 6,
Office of the Joint Commissioner (ST),

Commercial Tax Buildings,
Chennai – 600 006.

C.SARAVANAN, J.

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and
W.M.P.Nos.11770 and 11771 of 2022

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