



W.P.(MD)No.17461 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.17461 of 2023

and

W.M.P.(MD)No.14632 of 2023

Kompress India Private Limited,
Godrej Coliseum, B-Wing,
Ground Floor, Behind Everad Nagar,
Mumbai-400 022,
represented by its authorized Signatory,
Rajesh C.Gandhi

... Petitioner

vs.

1.Union of India,
through its Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110 001.

2.State of Tamil Nadu,
through the Secretary,
Ministry of Finance,
Fort St.George,
Chennai-600 009.

3.State Tax Officer (INT),
Roving Squad 1, Dindigul,
Tamil Nadu.

... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of respondent no.3 relating to the impugned order bearing no.1617/2023-24/RS, Dindigul (Int), dated 03.07.2023 and to quash the impugned order bearing no.1617/2023-24/RS, Dindigul (Int), dated 03.07.2023, passed by the respondent no.3 and to consequently, to direct the respondent no.3 to set aside penalty by invoking provisions of Section 126 of the CGST Act and release the goods.

For Petitioner : Mr.Bharat Raichandani

For R1 : Mr.K.Govindarajan
Deputy Solicitor General of India

For R2 & 3 : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order, dated 03.07.2023 passed by the 3rd respondent and consequently, to direct the 3rd respondent to set aside penalty by invoking provisions of Section 126 of the CGST Act and release the goods.

2. The brief facts of the case are that the petitioner is a private limited company engaged in manufacturing and trading of Compactor and is registered under GST vide Registration 27AAACK174IKIZL. The petitioner had supplied Compactor to

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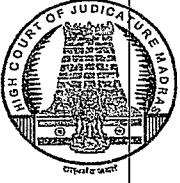


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HDFC Limited having GST No.32AAACH0997EIZU. The goods were shipped at HDFC Ltd Storage Space, Raidance Tower, Aryalloor, Thirumala, Thiruvandandhapuram, under proper tax Invoice No. GST-0172/2023-24, dated 29.06.2023. The goods were transported from the petitioner premises from Navi Mumbai through Vehicle No.TN 92F0972 with E-way Bill No. 271611528188 dated 29.06.2023. On 03.07.2023 at 2.25 pm, the vehicle was intercepted by the 3rd respondent at Kodai Road. The driver produced the invoice as well as the E-way bill for verification, but the 3rd respondent ordered physical verification of conveyance and goods in Form Mov-02 for further verification. After verification, a detention order under section 129(1) of the GST Act in Form GST MOV-06, dated 03.07.2023, was issued for the reason "the address found on the 'Bill To' and 'Shipped To' address was found unregistered". Challenging the same, the present writ petition is filed.

3. The respondents have filed counter stating that the 3rd respondent before passing final order tried to contact the supplier at Mumbai and recipient at Thiruvannadapuram through the driver of the conveyance. The driver told that both supplier and recipient blame each other for the fault committed, both are not ready to shoulder the responsibility and both not ready to pay the penalty of Rs.4,30,366/-, hence left with no other way the notice and order were issued to the driver who was not well educated, no one tried to contact the 3rd respondent, since the petitioner has

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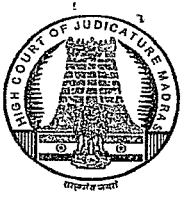
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not responded the respondents had passed the order and hence the petitioner cannot complain there is violation of principles of Natural Justice. Under Rule 11 if the place of delivery of the recipient was not registered, then the same is liable to be taxed. Under section 2(85) the place of business includes a warehouse, godown or any other place of stores. The petitioner submitted that they have not violated Rules 138 to 138E, which relates to e-waybill and Rule 46 which relates to Tax Invoice. Even though there is no violation under the other provisions, but the petitioner has violated Rule 11, hence Section 129 was invoked. Moreover, the violation is not a minor violation, if this type of transaction is allowed then the taxpayer will take this as example and will take liberty to send goods anywhere in India without proper registration. There will be confusion in maintaining the accounts and thereby it will pave way to revenue leakage to the government. Hence the respondents prayed to dismiss the writ petition.

4. Heard Mr.Bharat Raichandani, the Learned Counsel appearing for the petitioner, Mr.K.Govindarajan, Learned Deputy Solicitor General of India appearing for the 1st respondent and Mr.R.Suresh Kumar, Learned Additional Government Pleader appearing for the 2nd and 3rd respondents and perused the records.

5. After hearing the rival submissions this Court has given its anxious

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consideration. It is seen that the respondents have issued the notice on 03.07.2023 and carried the inspection on 03.07.2023 (on the same day) and also passed the impugned order on 03.07.2023 (on the same day). As per the provisions prescribed, the respondents ought to grant time for seven days for reply and thereafter, the respondents should pass orders. Since the inspection, notice and the orders were passed on the same day, there is a clear violation of principles of natural justice. Therefore, the contention of the respondents that the petitioner and the recipient blamed each other and other contentions of the respondents are rejected.

6. Having held so, that there is violation of principles of Natural Justice, generally the case ought to be remitted back. But the Learned Counsel appearing for the petitioner pointed out that the impugned order is passed without jurisdiction. Since the supplier is bound to register under GST, the petitioner being the supplier has registered, he has disclosed the GST number, submitted Invoice, E-way Bill as well as the vehicle, etc. It is not stated in Section 25 of the GST Act that the buyer should be registered and to declare the place of the registration, etc. However, the respondents relied on the Rule 11 of Rules, 2017.

7. Section 22 states that every **supplier** shall be liable to be registered under this Act in the State or Union territory. Section 25(2) states that single registration

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shall be granted if it is within the State with an exemption, which is extracted hereunder:

“(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.”

Under Rule 11 of the GST Rules, 2017 it states that “any person” having multiple places of business requiring registration shall be granted separate registration and has prescribed certain conditions, the relevant portion of the rule is extracted hereunder:

“[Rule 11. Separate registration for multiple places of business within a State or a Union territory . -

(1) Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under sub-section (2) of section 25 shall be granted separate registration in respect of each such place of business subject to the following conditions, namely: -

(a) such person has more than one place of business as defined in clause (85) of section 2 ;

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(b) such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business;

(c) all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply , as the case maybe, for such supply."

The respondents are interpreting the word "any person" and submitted that the HDFC has not registered the said premises, hence action has been initiated. The contention of the respondents cannot be accepted since the concept of levying GST itself as on supplier and not on the buyer. If it is taken that the buyer ought to be registered then the entire Indian population ought to be registered under GST, which would not be the intention of the legislation. Even if the respondents' contention ought to be accepted then the respondents ought to take action against the HDFC and not the petitioner.

8. The Government of India has issued a Circular No. 64/38/2018-GST - CBEC/20/16/03/2017-GST dated 14.09.2018 wherein procedure is prescribed for taking action under section 129 and the circular is extracted hereunder:

"Subject: Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of

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such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018 – regarding

Kind attention is invited to Circular No. 41/15/2018-GST dated 13th April, 2018 as amended by Circular No. 49/23/2018-GST dated 21st June, 2018 vide which the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances was specified.

2. Various representations have been received regarding imposition of penalty in case of minor discrepancies in the details mentioned in the e-way bill although there are no major lapses in the invoices accompanying the goods in movement. The matter has been examined. In order to clarify this issue and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') hereby clarifies the said issue hereunder.

3. Section 68 of the CGST Act read with rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding ? 50,000/- should carry a copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section

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130 of the CGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part B of FORM GST EWB-01 amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto fifty kilometres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.

4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section 129 of the CGST Act may be initiated.

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 the GSTIN, wherever applicable, is correct;
- b) Error in the pin-code but the address of the consignor and the consignee

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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;

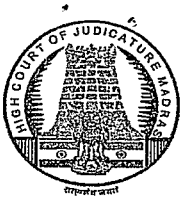
e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

6. In case of the above situations, penalty to the tune of ? 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC- 07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.

7. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

*(Upender Gupta)
Commissioner (GST)''*



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9. The aforesaid circular was issued giving direction to the authorities to adhere to the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances. In the said circular it has been clearly stated that if invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification is available then action may not be initiated. In the present case the same is available and hence the present impugned proceeding is violative of the said circular. Further it is settled principle that Circular is binding on the authorities.

10. Viewing from any angle the action of the respondents is not within the purview of law. Therefore, this Court is of the considered opinion that the respondents have clearly misconstrued the Act and passed the impugned order, hence it is liable to be quashed and the impugned order is quashed.

11. At the time of admission, this Court directed the petitioner to deposit Rs.1,00,000/- (Rupees One Lakh only). The learned Deputy Solicitor General of India appearing for the 1st respondent submitted that it is difficult to return the amount. Therefore, the said amount shall be adjusted in the future GST payment.



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12. With the above said observation, the writ petition is allowed. No costs.

Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

21/08/2024

Sub Assistant Registrar
(CS-I / ~~II~~ / ~~III~~ / IV)

Handwritten signature

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To

1. The Secretary,
Union of India,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110 001.
2. The Secretary,
State of Tamil Nadu,
Ministry of Finance,
Fort St. George,
Chennai-600 009.
3. State Tax Officer (INT),
Roving Squad 1, Dindigul,
Tamil Nadu.

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+1 CC to M/s.T.S.RAMAKRISHNAN, Advocate (SR-36909[F] dated 02/08/2023)
+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-36927[F] dated 02/08/2023)

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RD(24/06/2024) 13P / 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.

MADRAS HIGH COURT
MADRAS BENCH

S.P. No. 36909/24

Carbon Copy Application

Made 02/08/2023


Application Returned ~~02~~

Application Represented ~~02~~

Copy Made ready 03/07/24

Copy delivered 05/07/24

J13
05/07/24


05/07/24
Section Officer
C.C.C. Section