

Tvl.Thiruvannamalaiyar Transport vs The Deputy State Tax Officer on 13 December, 2022

Author: M.Sundar

Bench: M.Sundar

W.P.No.3

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.32960 of 2022
and WMP.No.32361 of 2022
in
W.P.No.32960 of 2022

Tvl.Thiruvannamalaiyar Transport
Rep. By its Proprietor Sr.V.Kesavan,
No.1/139, Main Road,
Seekarajapuram Village & Post,
Walaja Taluk,
Vellore District – 632 515.

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Vs.

1.The Deputy State Tax Officer,
Special Rowing Squad,
Vellore – 632 001.

2. State Tax Office – I (INT),
Adjudication Cell,
Vellore Division,
Vellore.

... Respon

[R2 is impleaded by WMP.No.33003 of 2022 in W.P.No.32960/2022
vide Court order dated 12/12/2022 by MSJ]

Writ Petition is filed under Article 226 of the Consti
India, seeking for a Writ of Certiorari, call for the records of th
respondent herein in his proceeding in GDN No.4554/2022-23 and quas
the proceeding dated 08/12/2022 passed therein and pass such furthe

<https://www.mhc.tn.gov.in/judis>

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other order or orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

[This prayer is amended by WMP. 33006/2022 in W.P.No.32960/2022 vide Court order dated 12.12.2022 by MSJ]

For Petitioner : Mr.B.Raveendran

For Respondents : Mr.T.N.C.Kaushik
Government Advocate [Taxes]

ORDER

This common order will now dispose of captioned main writ petition and captioned 'Writ Miscellaneous Petition' ['WMP'] thereat.

2. Mr.B.Raveendran, learned counsel for writ petitioner and Mr.T.N.C.Kaushik, learned Government Advocate (Taxes) on behalf of both the respondents are before this Court.

3. It is deemed appropriate to say that this order shall be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 09.12.2022 and 12.12.2022, which read as follows:

'Proceedings made on 09.12.2022 Captioned writ petition was in the Admission Board on 07.12.2022, it was re-notified for being taken up on 08.12.2022, it was listed in the Admission Board on 08.12.2022, Mr.B.Raveendran, learned counsel on record for writ petitioner started making submissions in the presence of Mr.T.N.C.Kaushik, <https://www.mhc.tn.gov.in/judis> learned Additional Government Pleader (Taxes) and the matter was kept in the Admission Board for further hearing today.

2. To be noted, captioned writ petition has been filed assailing 'proceedings dated 02.12.2022, bearing reference GDN No.4554/22-23/OR No.4554/22-23' [hereinafter 'impugned proceedings' for the sake of brevity, convenience and clarity] made by the respondent.

3. The impugned proceedings have been made under Section 129(3) of 'The Central Goods and Services Tax Act, 2017' [hereinafter 'C-G&ST Act' for the sake of brevity, convenience and clarity] read with 'The State/Union Territory Goods and Services Tax Act, 2017' [hereinafter 'State/Union Territory G & ST Act' for the sake of convenience and Clarity] besides Section 20 of 'Integrated Goods and Services Tax Act, 2017' [hereinafter 'Integrated G & T Act' for convenience].

4. Short facts are that a truck bearing Registration No.TN28-AQ-9203 which was carrying a consignment described as 'Angles' from Gummidipoondi to Ranipet was intercepted in the wee hours i.e., at about 04.00 am at Walaja toll. After interception,

the impugned proceedings came to be made detaining the truck with the consignment. The only ground on which the impugned proceedings have been made is that e-way bill had expired.

5. Adverting to 'Goods and Services Tax Rules, 2017' [hereinafter 'said Rules' for the sake of convenience] being substantive legislation under C-G & ST Act, learned counsel for writ petitioner pointed out that Rule 138 and more particularly, <https://www.mhc.tn.gov.in/judis> Rule 138(10), the second and third provisos thereat provide for extension of validity of period of e-way bill within 8 hours from the time of expiry. Learned counsel for writ petitioner submitted that the validity of the e-way bill qua aforementioned consignment elapsed at 23:59 hours on 01.12.2022 and at the time of interception, 8 hours therefrom had not elapsed (4 hours was left).

6. Learned counsel for writ petitioner submitted that on interception and detention, the portal was blocked and therefore, the extension of e-way bill could not be done though the writ petitioner had a good four hours from the time of detention.

7. Learned Revenue counsel brought to the notice of this Court an order dated 25.08.2022 made in W.P.Nos.18753 of 2022 and etc., batch and submitted that in cases of this nature, the owner of the consignment should come before the writ Court and not the transporter. On a perusal of the order, it comes to light that 25.08.2022 order made by a Hon'ble single Judge pertains to cases where the goods transported were not accompanied by documents, the documents accompanying the consignment were deficient and in another case there were alleged discrepancies in the e-way bill / documents and therefore this 25.08.2022 order made in TCI Freight Vs. The Assistant Commissioner and another is distinguishable on facts qua factual matrix of case on hand. In this regard, this Court deems it appropriate to remind itself of the celebrated Padma Sundara Rao case law [Padma Sundara Rao Vs. State of Tamil Nadu reported in (2002) 3 SCC 533], more particularly paragraph 9 thereat, which reads as follows:

'9. Courts should not place reliance on decisions without <https://www.mhc.tn.gov.in/judis> discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.' To be noted, Padma Sundara Rao case was rendered by Hon'ble Constitution Bench and therefore is not just a ratio but declaration of law by Hon'ble Supreme Court.

8. Today, learned Revenue counsel submits that the respondent is the proper Officer qua the aforesaid proceedings and it passed an order yesterday for payment of penalty of Rs.6,76,764/-.

9. In the normal circumstances, the sequitur would have been the writ petition would have become infructuous but the order came to be made when the writ petition was being actively heard by this Court. However, to be fair to the respondent it should be recorded that Section 129(3) prescribes a time line of seven days from the date of service of notice specifying the penalty payable.

Such notice was served on writ petitioner on 02.12.2022 and therefore, the order came to be made yesterday.

10. As a one off case, considering the peculiar facts and <https://www.mhc.tn.gov.in/judis> circumstances of the instant case and the trajectory the hearing has taken, making it clear that this order will not serve as a precedent, writ petitioner is permitted to move an amendment application inter-alia to assail 08.12.2022 order made by the respondent.

List on Monday in the Admission Board i.e., 12.12.2022.' 'Proceedings made on 12.12.2022 Read this in conjunction with and in continuation of earlier proceedings made on Friday i.e., on 09.12.2022 which reads as follows:

'Captioned writ petition was in the Admission Board on 07.12.2022, it was re-notified for being taken up on 08.12.2022, it was listed in the Admission Board on 08.12.2022, Mr.B.Raveendran, learned counsel on record for writ petitioner started making submissions in the presence of Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes) and the matter was kept in the Admission Board for further hearing today.

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List on Monday in the Admission Board i.e., 12.12.2022.

2. In the light of the aforementioned earlier proceedings, captioned Writ Miscellaneous Petitions are ordered as prayed for.

3. Registry to carry out necessary and consequential amendments in the main writ petition (W.P.No.32960 of 2022) by today and list W.P.No.32960 of 2022 and W.M.P.Nos.32360 & 32361 of 2022 in the Admission Board i.e., Motion List tomorrow. List on 13.12.2022.' <https://www.mhc.tn.gov.in/judis>

4. The aforementioned proceedings are tell-tale. The proceedings also capture the trajectory the matter has taken thus far.

5. Aforementioned proceedings shall be read as an integral part and parcel of this order and therefore short forms and abbreviations used in the earlier proceedings shall continue to be used in the instant order also.

6. As facts have already been captured in 09.12.2022 proceedings, it is not necessary to dilate on the same again.

7. It emerges from submissions that only two points arise for consideration and they are:

a) break down of the truck carrying consignment, repair and consequent delay;

b) portal being blocked without access to renew E-way bill though four more hours to do so was available at the time of interception of truck.

8. To be noted, post amendment 'order dated 08.12.2022 bearing reference GDN No.4554/22-23 made by the second respondent' [hereinafter 'present impugned order' for the sake of convenience and clarity] is also under challenge.

<https://www.mhc.tn.gov.in/judis>

9. Present impugned order proceeds on the basis that both the above said points do not find favour with the second respondent. As regards the first point, it is stated that driver of the truck carrying the consignment did not mention about breakdown and repair. As regards the second point, though

there is no mention about portal being blocked, it has been mentioned that no steps have been taken for extending the E-

way bill.

10. A careful perusal of the facts and circumstances of the case, leaves this Court with no doubt that there would have been no revenue loss to the respondent / State if the truck had reached the destination without being intercepted.

11. Attention of this Court is drawn to a 'circular dated 31.05.2019 being Circular No.10/2019,Q1/17253/2019' [hereinafter 'said circular' for the sake of brevity, convenience and clarity] which pertains to enforcement of G & ST and what has been described as 'a new approach' to be followed with effect from 01.06.2019.

12. Paragraph 10 of the said circular is relevant for case on hand and the same reads as follows:

'10.CIRCUMSTANCES WHERE PENALTY UPTO Rs.5000/- PER ACT SHALL BE LEVIED:

<https://www.mhc.tn.gov.in/judis> Where the movement of goods is accompanied by any one of the basic documents such as invoice or bill of supply or delivery challan or E-way bill as prescribed in Rule 55 A and 138 A of the TNGST Rules 2018, and in such cases where at least one of the basic documents, manifestly showing sufferance of tax in the particular transaction is available, a penalty of upto Rs.5000/- per act shall be levied so as to deter the recurrence of offence. The following are examples in this context:

Example 1: Vehicles meant for a vehicle distributor are delivered at the stock yard/ godown/ branch; the transporter possesses the necessary tax invoice, but the E-way bill was generated for principal place of business/different place of business.

In this case the CGST /SGST /IGST (if interstate supply) would have been suffered at the hands of manufacturer or distributor. Mere delivery of the goods at a place other than those mentioned in the documents would not render the transaction as an evasion or abetment of evasion. Being a B 2 B transaction, trail of transaction would now be available in GSTR1 for the department.

Example 2: A conveyance carrying the goods from a factory of fertilizers is delivering the same at various locations as directed by the department of Agriculture. The goods are accompanied by invoice or invoice with delivery challan and E- way bill. The E-way bill has expired due to delay in making delivery at various locations. The expiry of E-way bill does not create any scope for evasion. In cases as in the examples, penalty of upto Rs.5000/- per Act shall be levied.' <https://www.mhc.tn.gov.in/judis>

13. In the instant case, from the narrative thus far, it comes closest to Example 2. It is reiterated and clearly articulated in Example 2 that the expiry of E-way bill does not create any scope for evasion.

Absent evasion, there can be no revenue loss. It has been made clear that in cases of such nature penalty upto Rs.5,000/- per act shall be levied.

This may have to be read with Section 125 of C-G & ST Act, which is residuary in nature qua penalties which do not find a place in the adumbration of (xxi) categories in sub-section (1) of Section 122.

14. In the light of the narrative, discussion and dispositive reasoning thus far, on a demurrer, assuming there was no breakdown and assuming the portal was active, the maximum penalty would be Rs.5,000/- qua paragraph 10 of said Circular and therefore as a sequitur, the following order is passed:

(i) The present impugned order dated 08.12.2022 bearing reference GDN No.4554/2022-23 made by the second respondent is set aside;

(ii) The impugned proceedings dated 02.12.2022 is set aside albeit with a directive that the writ petitioner shall pay a penalty of Rs.5,000/- (Rupees Five Thousand <https://www.mhc.tn.gov.in/judis> only) as per paragraph 10 of said Circular dated 31.05.2019 latest by tomorrow;

(iii) On payment of penalty in the aforesaid manner latest by tomorrow, the second respondent shall release the truck bearing Registration No.TN28-AQ-9203 forthwith with the consignment.

15. It is made clear that this order has been made owing to the peculiar trajectory the writ petition took in the Admission Board and therefore, this order shall not serve as a precedent in all matters of interception, detention and penalty. In other words, such matters will have to be dealt with on a case to case basis on the facts and circumstances and merits of respective cases (including alternate remedy point).

Captioned writ petition and WMP disposed of with the above directives. There shall be no order as to costs.

13.12.2022 Index: yes/no gpa Upload forthwith <https://www.mhc.tn.gov.in/judis> To

1.The Deputy State Tax Officer, Special Rowing Squad, Vellore – 632 001.

2. State Tax Office – I (INT), Adjudication Cell, Vellore Division, Vellore.

<https://www.mhc.tn.gov.in/judis> M.SUNDAR, J., gpa 13.12.2022 <https://www.mhc.tn.gov.in/judis>