

[2022] 140 taxmann.com 620 (Andhra Pradesh)/[2022] 64 GSTL 57 (Andhra Pradesh)/[2022] 93 GST 128 (Andhra Pradesh)[09-02-2022]

GST : Where goods and vehicle in transit were detained on ground of excess quantity of goods, weighment of such goods were done behind back of assessee; re-weighment was directed to be done in presence of petitioner

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[2022] 140 taxmann.com 620 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Lalitha Traders

v.

Deputy Assistant Commissioner (ST)\*

AHSANUDDIN AMANULLAH AND RAVI NATH TILHARI, JJ.

WRIT PETITION NO.944 OF 2022

FEBRUARY 9, 2022

**Detention of goods and vehicle in transit - Misdeclaration with regard to Weight of goods - Petitioner had challenged detention of vehicle and goods viz. MS Iron in transit by pleading that same were duly accompanied by invoice and E-Way Bill on which GST was paid - Since authorities had taken aforesaid action on ground of recovery of excess quantity of goods, weighment of which was done behind back of petitioner, re-weighment of goods was directed to done in presence of petitioner - Result of such re-weighment would entail further consequences as per law [Section [129](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 and Article [226](#) of Constitution of India] [Paras 8 to 10] [In favour of assessee]**

**G. Narendra Chetty**, Adv. for the Petitioner. **Y.N. Vivekananda**, Government Pleader for the Respondent.

## JUDGMENT

**Ahsanuddin Amanullah, J.** - Heard Mr. G. Narendra Chetty, learned counsel for the petitioner and Mr. Y. N. Vivekananda, learned Government Pleader, Commercial Tax, for the respondents.

2. The petitioner has moved the Court for the following relief :

"..... to issue an appropriate Writ, Order or Direction, more particularly in the nature of MANDAMUS holding that the action of the First Respondent in stopping and detaining the goods of the Petitioner (8695 Kgs of MS Iron) along with Vehicle no. AP 02 T 3445, since 30-12-2021, even though they are duly covered and accompanied by Tax Invoice and E-Way Bill, without giving any reasons and without mentioning any provision of law and not releasing the goods so far as arbitrary, capricious, without authority or jurisdiction, abuse and misuse of official position and illegal and consequently direct the First Respondent to release the said goods along with the vehicle forthwith and pass such other order or orders as may be deemed fit and proper in the circumstances of the case and in the interests of justice."

3. The contention of the petitioner is that the vehicle and the scrap materials loaded on it were illegally detained and kept in the custody of the authorities despite having all the legal documents for such transportation.

4. Learned counsel for the petitioner submitted that on 30-12-2021 e-way bill was generated at 09:22 p.m. with regard to the vehicle and the materials and on way it was stopped by the authorities at 11:33 p.m. and

detained despite them showing the tax invoice as well as the e-way bill to the authorities. Further, it was submitted that thereafter no notice was served on the authorized representative of the petitioner and still the authorities have proceeded against the vehicle and the materials loaded on it without authority of law. It was submitted that the son of the proprietor of the petitioner firm had even visited the authorities on 1-1-2022 and 2-1-2022 but due to the rude behaviour by the authorities, he had to return.

5. Learned counsel for the respondents, on the basis of the counter-affidavit filed by him, submitted that incorrect statements have been advanced inasmuch as there was no occasion for the authorities to misbehave with the son of the proprietor of the petitioner firm as everything was on record. It was submitted that the factual position is that despite the petitioner having e-way bill and tax invoice, the same were in relation to only 8695 Kgs of the iron and steel scrap, whereas upon actual verification, by getting the same weighed, it came to 1025 Kgs in excess of what was disclosed in the tax invoice and e-way bill. Thus, it was submitted that, since there is excess quantity, the petitioner is liable to be proceeded against under the provisions of the Andhra Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the 'APGST Act'). It was submitted that finally show-cause notice in the form of GST MOV-10 have been issued and served on the petitioner through the mode of service as contemplated under the statute, proposing to move for confiscation invoking power under section 130(1) of the APGST Act.

6. Learned counsel for the petitioner submitted that since the report with regard to weighing of the vehicle and the materials thereon has been obtained behind its back, no liability can be fastened on the basis of the same.

7. Learned counsel for the respondents submitted that, in any view of the matter, since even basic facts are in dispute, this Court may not interfere in the matter and the petitioner should be relegated to the statutory authority/forum where these matters can be well thrashed out.

8. Having regard to the facts and circumstances of the case and submissions of learned counsel for the parties, the Court being conscious of the fact that the vehicle and the materials thereon *i.e.*, iron and steel scrap not being perishable and still in the custody of the departmental authorities, ends of justice would be served if, in the presence of the authorized representative of the petitioner, a fresh weighing of the same is undertaken.

9. Accordingly, let the authorized representative of the petitioner appear before the respondent no. 1 on 11-2-2022 *i.e.*, day after tomorrow at 11:00 a.m. Upon him doing so, the vehicle and the materials thereon shall be got weighed in accordance with law. Copy of the same would also be handed over to the representative of the petitioner. Depending upon what comes out of the said exercise, consequences in law shall follow. The writ petition is, accordingly, disposed of. No order as to costs.

10. It is made clear that this order has been passed in the special facts and circumstances of the case and the Court has not expressed any opinion on the merits of the matter.

11. Miscellaneous petitions, if any pending, also stand disposed of.

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\*In favour of assessee.