

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1287 of 2019

and

W.M.P.(MD)No.1098 of 2019

Tvl.R K Motors,
Represented by its Partner: Dinesh Kumar Agarwal,
194, Thiruthangal Road,
Sivakasi – 626 123. ... Petitioner

/Vs./

State Tax Officer,
Sattur Road Roving Squad,
Virudhunagar. ... Respondent

Prayer: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent herein in his Order of Detention issued in Form GST NOV-06 dated 28/12/2018 and his consequent order passed in Order No.OR.8/SRRS/2018-19 dated 11/01/2019 quash the same as illegal invalid and without authority of law and direct the respondent to release the 40Nos. of Bajaj Pulsar 150 DTS-I Bikes along with the Lorry bearing Registration No.AP 29 V 6508 detained by the respondent herein vide his proceedings dated 28.12.2018 immediately.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.Aayiram K.Selvakumar

Additional Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the respondent.

2. Mr.A.Valivittan, DCTO (Sattur Road) Roving Squad, O/o.The Assistant Commissioner (ST) (Enforcement), Virudhunagar is present and assisted this Court today.

3. By consent of both parties, this writ petition is taken up for disposal at the stage of admission itself.

4. The writ petitioner is an authorised dealer for Bajaj Auto Limited. They are dealing in two wheelers. They have registered themselves as an assessee under the Goods and Service Tax Act, 2017 with the respondent. While so, the writ petitioner had placed orders with their principal for delivery of 40 numbers of two wheelers [Pulsar Bike]. The invoice dated 23.12.2018 is enclosed at Page No.1 of the typed set of papers. E-way bill is also enclosed. The goods were shipped from Pune to be delivered at Branch Office of the writ petitioner at Virudhunagar. The goods were moved from Pune on 23.12.2018. It appears that the vehicle transporting two

wheelers instead of halting at Virudhunagar, had moved towards Sivakasi. When the vehicle was enroute to Sivakasi and 7 km away from Virudhunagar, it was intercepted by the respondent roving squad. The respondent seized the vehicle and called upon the driver of the vehicle to cooperate. It appears that the driver of the vehicle did not extend proper cooperation. In these circumstances, the impugned order of the detention came to be passed. The respondent had also passed release order putting the writ petitioner on terms. A sum of Rs.18,96,000/- had been levied as a penalty. The vehicle has also been seized and detained. Unless the writ petitioner remitted the said penalty amount, it has been made clear that the goods as well as the vehicle would not be released. It has been further made clear that the goods would be liable for confiscation and further proceedings under Section 130 of the Tamil Nadu Goods and Services Tax Act, 2017 would be taken. Hence, this writ petition has been filed questioning the detention order dated 28.12.2018 and the order dated 11.01.2019 passed under Section 129(3) of the Tamil Nadu Goods and Services Tax Act, 2017.

5. The respondent official would submit that the vehicle ought to have halted at Virudhunagar and the goods carried in the vehicle should have been offloaded in the branch office of the writ petitioner at Virudhunagar. But, the vehicle did not stop at Virudhunagar,

instead, it moved towards Sivakasi. Only when the vehicle had travelled a distance of 7 km away from Virudhunagar, the respondent roving squad intercepted the vehicle. The respondent official would point out that the driver of the conveyance / vehicle was enquired and he had categorically stated that the vehicle moved towards Sivakasi only on the instructions of an official representing the writ petitioner.

6. No doubt the vehicle ought to have stopped at Virudhunagar and the goods ought to have been offloaded at Virudhunagar itself. But then, the question is whether a drastic order passed by the respondent herein was really warranted in the facts and circumstances of the case.

7. It is not in dispute that the writ petitioner is an authorised dealer of Bajaj Auto Limited. It is also not in dispute that the goods are covered by appropriate documents. The tax payable has also been paid by the writ petitioner's principal. Thus, it is not a case of any evasion of tax. It is not in dispute that the writ petitioner is carrying on the business of dealing in two wheelers for the past several years. The driver, who drove the vehicle in question is not a Tamilian. His name is Badrinath Bhandari. He hails from Maharashtra.

8. The learned counsel appearing for the writ petitioner states that the said driver knows neither English nor Tamil. He knows only Marathi and Hindi.

9. The specific stand taken by the writ petitioner is that the driver without knowing the correct route had taken a wrong turn and headed towards Sivakasi.

10. It is also not in dispute that the bill is addressed only to the writ petitioner's principal office at Sivakasi; delivery alone is to be made at Virudhunagar. I am of the view that even if by mistake, a wrong instruction had been given to the driver of the vehicle to head towards Sivakasi. Still it would not really matter. The only question that the respondent ought to have posed is whether there is any attempt at evasion. It is not as if the goods had already been offloaded. The vehicle was intercepted when it was in transit. The respondent ought to have directed the driver of the vehicle to move back towards Virudhunagar. Instead adopting such a procedure, the respondent had chosen to be harsh and vindictive. When the writ petitioner is a registered dealer, when the tax in respect of the goods have already been remitted and when the transportation of goods is duly covered by proper documentation, the respondent ought to have taken a sympathetic and indulgent view of the lapse committed by

the driver of the vehicle. The detention order dated 28.12.2018 and the order dated 11.01.2019 suffer from vice of gross unreasonableness and disproportionality. When a power is conferred on a statutory authority, it should be exercised in a reasonable manner.

11. The learned counsel appearing for the writ petitioner draws my attention to the circular dated 14.09.2018 issued by the Government of India, calling upon the officials to condone the minor lapses and not to proceed under Section 129 of the Tamil Nadu Goods and Services Tax Act, 2017. The said circular contemplates levy of only a minor fine of Rs.500/-.

12. As rightly pointed out by the learned counsel appearing for the writ petitioner, the goods in question are two wheelers. They cannot be sold without proper registration with the Motor Vehicle Authorities. That would require proper documentation. Therefore, in a case of this nature, the writ petitioner could not have evaded his statutory obligations in any manner. This aspect of the matter ought to have been taken note by the respondent.

13. The learned counsel appearing for the writ petitioner submits that the writ petitioner would pay a sum of Rs.5,000/- as fine to the respondent.

14. The above submission of the learned counsel appearing for the writ petitioner is recorded. By directing the writ petitioner to pay a sum of Rs.5,000/- [Rupees Five Thousand only] towards fine to the respondent, the orders impugned in this writ petition stands quashed. The respondent shall forthwith release the vehicle as well as the goods in question. Accordingly, this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.01.2019

Internet : Yes/No
Index : Yes/No

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Note: Issue Order Copy on 25.01.2019.

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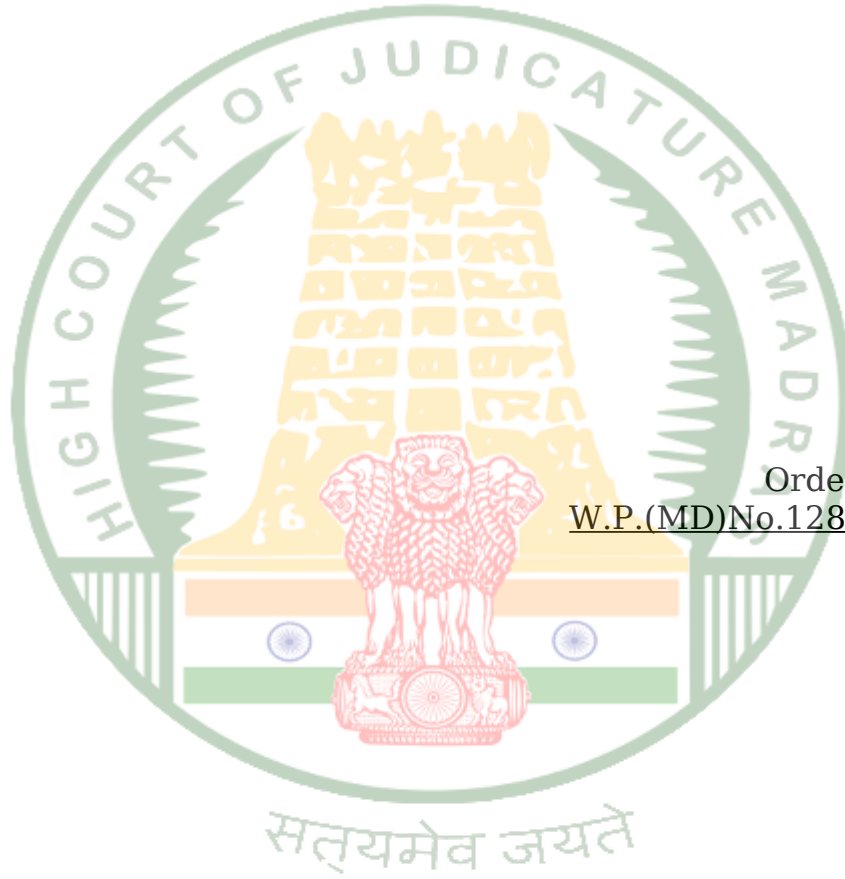
State Tax Officer,
Sattur Road Roving Squad,
Virudhunagar.

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G.R.SWAMINATHAN, J.

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Order made in
W.P.(MD)No.1287 of 2019

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