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W.P.Nos.19976 & 19977 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN**

**W.P.Nos.19976 & 19977 of 2021
and W.M.P.Nos.21231 & 21233 of 2021**

M/s.Chetna Steel Tubes Private Limited
32, Sembudoss Street, Chennai 600 001 ... Petitioner in both W.Ps.

Vs.

1.Goods and Service Tax Network (GSTN)
through its Chairman, East Wing 4th Floor
World Mark-1, Aerocity, New Delhi-110 037.

2.Central Board of Indirect Taxes & Customs
Through its Chairman, Ministry of Finance
Department of Revenue, North Block
New Delhi - 110 001.

3.Assistant Commissioner of GST (Zone-1)
Broadway Circle, Chennai North, Tamil Nadu. ... Respondents
in both W.Ps.

Prayer in W.P.No.19976 of 2021: Writ Petition under Article 226 praying for the issuance of a Writ of Certiorari calling for the records of the 1st respondent in the petitioners Electronic liability ledger and quash the same as illegal and arbitrary in so far as Debit entries DC3304210381310 Dt.28.4.2021 and DC3304210392615 dt.29.4.2021 are concerned.

Prayer in W.P.No.19977 of 2021: Writ Petition under Article 226 praying for the issuance of a Writ of Certiorari calling for the records of the 1st respondent in circular No.41/15/2018-GST dt.13.4.2018 quash the same in so far as it directs



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the proper officer to create a liability for the tax paid under section 129 as illegal and arbitrary.

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In Both W.Ps.

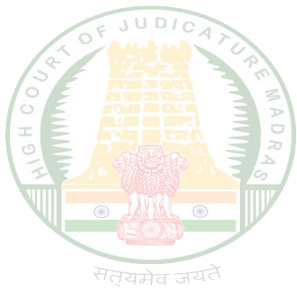
For Petitioner : Mr.R.Vijayakumar
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

COMMON ORDER

(Order of the Court was made by **C. SARAVANAN, J.**)

The petitioner challenges the impugned circular dated 13.04.2018 bearing reference No.41/15/2018 GST. The petitioner is aggrieved by Para 2(h) of the circular, which reads as follows:

*" 2(h) Where the owner of the goods or any person authorized by him comes forward to make the payment of tax and penalty as applicable under clause (a) of sub-section (1) of Section 129 of the CGST Act, or where the owner of the goods does not come forward to make the payment of tax and penalty as applicable under clause (b) of sub-section (1) of the said section, the proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules, release the goods and conveyance by an order in FORM GST MOV-5. **Further, the order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the***



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concerned person in accordance with the provisions of Section 49 of the CGST Act."

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2. The case of the petitioner is that, the petitioner cannot mulct with tax liability twice, once at the stage of detention and other at the stage of payment of tax in the regular returns in GSTR-3B. Therefore, there is no question of creation of an automatic tax liability and hence the petitioner has also challenged the impugned demand notice dated 28.04.2021 and 29.04.2021 in W.P.No.19977 of 2021.

3. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

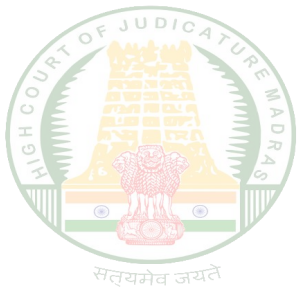
4. Section 129 of the GST enactment, as it stood during the period in dispute and post 01.01.2022 reads differently. They are produced below.

Section 129 - Prior to 01.01.2022

Section 129 - Detention, seizure and release of goods and conveyances in transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,??

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted



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goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

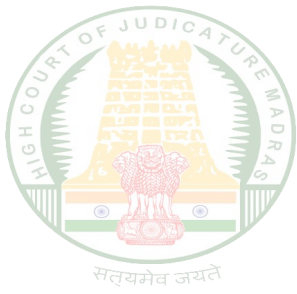
(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer."

Section 129 - Post 01.01.2022

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of



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transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

1[(a) on payment of the applicable tax and penalty equal to one two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;]

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

*2[****]*

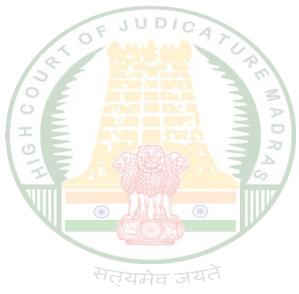
(3) The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detention or seizure, specifying the tax and penalty payable and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).]

(4) 4[No tax, interest or penalty] shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

5[(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of tax and penalty under sub-section (1) within seven days

1“fourteen days” of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130: fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner



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and within such time as may be prescribed, to recover the penalty payable under sub-section (3)

Provided that the conveyance shall be released on payment by the transporter of penalty under subsection (3) or one lakh rupees, whichever is less

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven fifteen days may be reduced by the proper officer.

This is the current version of The Central Goods and Services Act 2017 (CGST Act 2017) and includes amendments introduced in

1. Substituted (w. e. f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 117(i) of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021.

“(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and. in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;”

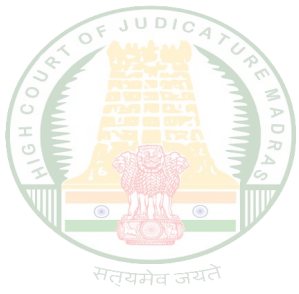
2. Omitted (w. e. f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 117(ii) of The Finance Act, 2021 (No. 13 of 2021) dated 28th march, 2021 for

“(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.”

3. Substituted (w. e. f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 117 (ii) of the Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021.

“(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).”

4. Substituted (w. e. f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 117(iv) of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021 for “No tax, interest or penalty.”



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5. Substituted (w. e. f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 117(v) of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021 for

“(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.”

5. As far as the period prior to 01.01.2022 is concerned, it is clear that the petitioner whose goods are detained under Section 129 of the respective GST enactments has to bear the applicable tax and penalty. Post 01.01.2022, the law has been amended, whereby only penalty is imposable at 200% of the tax.

6. The apprehension of the petitioner that the tax is being levied twice by virtue of the impugned circular and is contrary to Section 129 of the respective GST enactments cannot be countenanced. The purpose of Section 129 as it stood during the material period was to recover tax on such goods in transit, where removal of such goods fell short of any of the statutory compliance required for removal of goods.

7. Therefore, tax was to be collected to the extent of tax that was payable in the returns at the stage of detention of such detained goods. Tax is to be debited from an assessee's electronic credit account maintained under the



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respective GST Act.

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8. If a supplier's goods were detained and subjected to tax and penalty under Section 129 of the GST Act as it stood prior to amendment, such supplier is entitled to claim refund of the excess tax, if any, paid in the returns filed in GSTR-3B. Therefore, the apprehension expressed in the writ petitions misplaced and unwarranted. Hence, these writ petitions are liable to be dismissed. Accordingly, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (C.S.N.,J.)
08.08.2024

Index : Yes/No
Internet : Yes/No

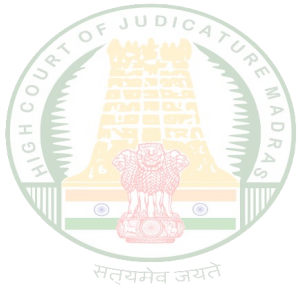
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