

W.P.No.22646 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.08.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.22646 of 2022

M/s.D.K.Enterprises
No.28, Raghunayakulu Street
Park Town, Chennai – 600 003
Rep. by its Proprietrix
Ms.Aarshita Jain

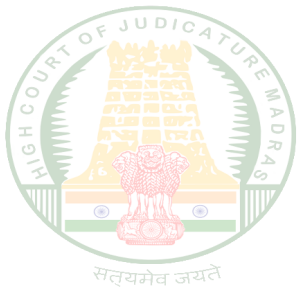
.... Petitioner

Vs.

1. The Assistant /Deputy Commissioner (ST)
Adjudication, Intelligence – I,
Commercial Tax Office, Greaves Road,
Chennai – 600 006.
2. The Deputy State Tax Officer,
Roving Squad Static, Intelligence – I,
Commercial Tax Office, Greaves Road,
Chennai – 600 006.

.... Respondents

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of Mandamus directing the respondents herein to release the goods, viz, (Polystardone XL-10) which was cleared from Chennai Seaport Customs and the same now seized/detained vide Form GST MOV – 01, 02 & 04 – Ref.No.83/2022-23



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RS Team – VII dated 13.08.2022, by the 2nd respondent herein, together with the Conveyance/Lorry bearing Registration No.TN 28 AP 9239 forthwith.

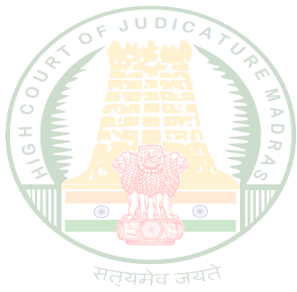
For Petitioner : Mr.S.Baskaran
For Respondents : Mr. C.Harsha Raj
Additional Government Pleader

ORDER

The petitioner has sought a mandamus directing the respondents to release the goods, being a consignment of Polystardone XL-10 (consignment/consignment in question), stated to be a life-saving drug, cleared from Chennai Seaport Customs and seized/detained on 13.08.2022 at 2.15 a.m. by the Roving Squad of the Commercial Taxes Department together with the Conveyance/Lorry bearing Registration No.TN 28 AP 9239, forthwith.

2. The prayer of the petitioner for release of consignment might not be required in this case, as upon a detailed hearing of Mr.Baskaran, learned counsel for the petitioner and Mr.C.Harsha Raj, learned Additional Government Pleader for the respondents, I am of the categoric view that there has been no detention that has even been ordered.

3. Let us see the facts in issue:



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i) The consignment in question was intercepted on 13.08.2022 at 2.15 a.m. and immediately upon interception, statement of the driver in Form GST MOV-01 was issued on the same day.

ii) Simultaneous there with, Form GST MOV-02, being an order of physical verification/inspection of the conveyance, goods and documents, was also issued.

iii) The reason for interception was the presumption of the officer that the goods were proposed to be unloaded at an unregistered place. No reasons or details in respect of this assumption are assigned.

iv) In any event, since in this order, I am solely concerned with the integrity of the procedure followed by the respondents in matters of detention, serious lapses coming to my attention in the course of the hearing, the facts in relation to the alleged discrepancies in conveyance are not relevant and are not alluded to, except as required.

v) On 13.08.2022, Form GST MOV – 04, being physical verification report was also issued.

vi) Thereafter, there has been no notice issued by the respondents in terms of Section 129 (3) of the Goods and Services Tax Act, 2017 (in short 'Act') requiring a



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show cause notice to be issued within 7 days from date of detention/seizure and hence this Writ Petition.

vii) In the meantime, on 17.08.2022, the petitioner has made a representation requesting that the conveyance be permitted to proceed on its way and setting out an explanation for the alleged discrepancy that has been noted by the officer.

viii) According to the petitioner, the time frames that have been set out under the Act, particularly Section 129(1) proviso and 129(3) have not been adhered to in the present case.

ix) No order of detention has been passed without which the consignment ought not to have been retained by the authorities, upon interception. This is in contravention of the proviso to Section 129(1), that reads as follows:

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 penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of



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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 penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, 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:

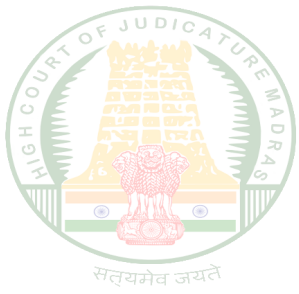
Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

*(2) [*****]*

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the 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).

....

x) That apart, Section 129(3) requires a notice to be issued within 7 days, stipulating the penalty payable for the alleged discrepancy and in this case, no notice



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was issued till 24.08.2022, when notice ostensibly dated 22.08.2022, has been sent, produced in the course of hearing.

xi) The learned Additional Government Pleader has produced an order of detention and show cause notice, under Section 129(3), both dated 22.08.2022.

xii) In light of the above, the petitioner argues that there has been no proper procedure followed, in any event, none, in line with the statutory prescription and the actions of the respondents have been irregular and contrary to the Statute and Regulations.

4. Learned Additional Government Pleader circulates a copy of Circular No.41/15/2018 – GST dated 13.04.2018 in CBEC-20/16/-3/2017-GST, issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing and draws my attention to the following procedure to be followed, as per the Circular. He would emphasize on the point that there is no statutory prescription for any of the Forms that are referred to in Section 129. The entirety of the procedure followed, and the Forms issued post interception, are only as per the mandate of the Circular issued by the Commissioner under Section 168 of the Act.



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5. Though cumbersome, the entirety of the instructions in Circular dated 13.04.2018 are extracted below, as being instructive in other cases of this nature:

2. In this regard, various references have been received regarding the procedure to be followed in case of interception of conveyances for inspection of goods in movement and detention, seizure and release and confiscation of such goods and conveyances. In order to ensure uniformity in the implementation of the provisions of the CGST Act across all the field formations, the Board, in exercise of the powers conferred under section 168 (1) of the CGST Act, hereby issues the following instructions:

(a) The jurisdictional Commissioner or an officer authorised by him for this purpose shall, by an order, designate an officer/officers as the proper officer/officers to conduct interception and inspection of conveyances and goods in the jurisdictional area specified in such order.

(b) The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. An e-way bill number may be available with the person in charge of the conveyance or in the form of a printout, sms or it may be written on an invoice. All these forms of having an e-way bill are valid. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to <http://mis.ewaybillgst.gov.in> or the Mobile App or through SMS by sending EWBVER to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).



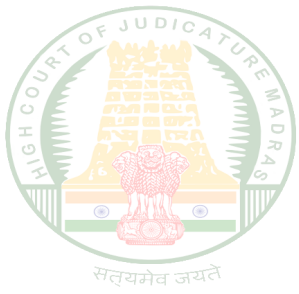
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(c) For the purposes of verification of the e-way bill, interception and inspection of the conveyance and/or goods, the proper officer under rule 138B of the CGST Rules shall be the officer who has been assigned the functions under sub-section (3) of section 68 of the CGST Act vide Circular No. 3/3/2017 – GST, dated 05.07.2017.

(d) Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in FORM GST MOV01. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty four hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.

(e) Within a period of three working days from the date of issue of the order in FORM GST MOV-02, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in FORM GST MOV-03 from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance

(f) On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST MOV-04 and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common



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portal, the final report of the inspection in Part B of FORM GST EWB-03 within three days of such physical verification/inspection.

(g) *Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in FORM GST MOV-05 and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention in FORM GST MOV-06 and a notice in FORM GST MOV-07 in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable. The said notice shall be served on the person in charge of the conveyance.*

(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-05. 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 concerned person in accordance with the provisions of section 49 of the CGST Act.*

(i) *Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security*



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under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in FORM GST MOV-05, after obtaining a bond in FORM GST MOV-08 along with a security in the form of bank guarantee equal to the amount payable under clause (a) or clause (b) of sub-section (1) of section 129 of the CGST Act. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings.

(j) Where any objections are filed against the proposed amount of tax and penalty payable, the proper officer shall consider such objections and thereafter, pass a speaking order in FORM GST MOV-09, quantifying the tax and penalty payable. On payment of such tax and penalty, the goods and conveyance shall be released forthwith by an order in FORM GST MOV-05. The order in FORM GST MOV09 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the Page 4 of 32 electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

(k) In case the proposed tax and penalty are not paid within seven days from the date of the issue of the order of detention in FORM GST MOV-06, action under section 130 of the CGST Act shall be initiated by serving a notice in FORM GST MOV10, proposing confiscation of the goods and conveyance and imposition of penalty.

(l) Where the proper officer is of the opinion that such movement of goods is being effected to evade payment of tax, he may directly invoke section 130 of the CGST Act by issuing a notice proposing to confiscate the goods and conveyance in FORM GST MOV-10. In the

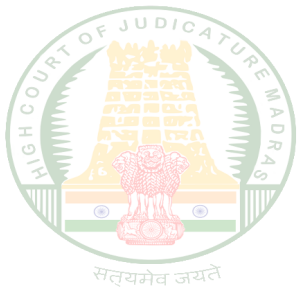


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said notice, the quantum of tax and penalty leviable under section 130 of the CGST Act read with section 122 of the CGST Act, and the fine in lieu of confiscation leviable under sub-section (2) of section 130 of the CGST Act shall be specified. Where the conveyance is used for the carriage of goods or passengers for hire, the owner of the conveyance shall also be issued a notice under the third proviso to sub-section (2) of section 130 of the CGST Act, proposing to impose a fine equal to the tax payable on the goods being transported in lieu of confiscation of the conveyance.

(m) No order for confiscation of goods or conveyance, or for imposition of penalty, shall be issued without giving the person an opportunity of being heard.

(n) An order of confiscation of goods shall be passed in FORM GST MOV-11, after taking into consideration the objections filed by the person in charge of the goods (owner or his representative), and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such goods shall stand transferred to the Central Government. In the said order, a suitable time not exceeding three months shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and get the goods released. The order in FORM GST MOV-11 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act. Once an order of confiscation of goods is passed in FORM GST MOV-11, the order in FORM GST MOV-09 passed earlier with respect to the said goods shall be withdrawn.



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(o) An order of confiscation of conveyance shall be passed in FORM GST MOV-11, after taking into consideration the objections filed by the person in charge of the conveyance and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such conveyance shall stand transferred to the Central Government. In the order passed above, a suitable time not exceeding three months shall be offered to make the payment of penalty and fines imposed in lieu of confiscation and get the conveyance released. The order in FORM GST MOV-11 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

(p) The order referred to in clauses (n) and (o) above may be passed as a common order in the said FORM GST MOV-11.

(q) In case neither the owner of the goods nor any person other than the owner of the goods comes forward to make the payment of tax, penalty and fine imposed and get the goods or conveyance released within the time specified in FORM GST MOV11, the proper officer shall auction the goods and/or conveyance by a public auction and remit the sale proceeds to the account of the Central Government.

(r) Suitable modifications in the time allowed for the service of notice or order for auction or disposal shall be done in case of perishable and/or hazardous goods.

(s) Whenever an order or proceedings under the CGST Act is passed by the proper officer, a corresponding order or proceedings shall be passed by him under the respective State or Union Territory GST Act and if applicable, under the Goods and Services Tax



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(Compensations to States) Act, 2017. Further, sub-sections (3) and (4) of section 79 of the CGST Act/respective State GST Acts may be referred to in case of recovery of arrears of central tax/State tax/Union territory tax.

(t) The procedure narrated above shall be applicable mutatis mutandis for an order or proceeding under the IGST Act, 2017.

(u) Demand of any tax, penalty, fine or other charges shall be added in the electronic liability ledger of the person concerned. Where no electronic liability ledger is available in case of an unregistered person, a temporary ID shall be created by the proper officer on the common portal and the liability shall be created therein. He shall also credit the payments made towards such demands of tax, penalty or fine and other charges by debiting the electronic cash ledger of the concerned person.

(v) A summary of every order in FORM GST MOV-09 and FORM GST MOV-11 shall be uploaded electronically in FORM GST-DRC-07 on the common portal.

3. The format of FORMS GST MOV-01 to GST MOV-11 are annexed to this Circular.

4. It is requested that suitable standing orders and trade notices may be issued to publicise the contents of this Circular.

5. Difficulties, if any, in implementation of the above instructions may be brought to the notice of the Board at an early date. Hindi version will follow.

6. Applying the procedure set forth in the Circular to the sequence of events

arising from the case on hand, I note the following:



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<i>Form</i>	<i>Description</i>	<i>Statutory/ time line as per circular</i>	<i>Date of aforesaid event in this case</i>
<i>GST MOV-01</i>	<i>Statement of owner/driver/person in-charge of the goods and conveyance</i>	<i>Immediate, upon interception</i>	<i>13.08.2022</i>
<i>GST MOV-02</i>	<i>Order for physical verification/inspection of the conveyance, goods and documents</i>	<i>Immediate upon interception</i>	<i>13.08.2022</i>
<i>GST EWB-03 Part A</i>	<i>Prepare a report</i>	<i>within 24 hours</i>	<i>None in the present case</i>
<i>GST MOV-03</i>	<i>Seeking extension of time</i>	<i>beyond 3 working days for conclusion of interception</i>	<i>None in the present case</i>
<i>GST MOV – 04</i>	<i>Report of physical verification</i>	<i>Immediately on completion of physical verification</i>	<i>13.08.2022</i>
<i>GST EWB-03 Part B</i>	<i>Final report of inspection</i>	<i>Within 3 days of physical verification /inspection</i>	<i>None in the present case</i>

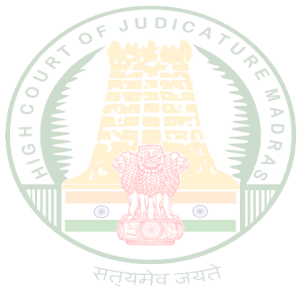


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<i>GST MOV-05</i>	<i>Release, after inspection when no discrepancies found</i>	<i>Immediate, after verification</i>	<i>Does not arise in this case</i>
<i>GST MOV-06</i>	<i>Order of detention under Section 129 of the Act after completion of inspection</i>	<i>Within 7 days from date of inspection</i>	<i>22.08.2022 Dispatched on 24.08.2022</i>
<i>Show cause notice under Section 129(3)</i>	<i>Proposal for the levy of penalty</i>	<i>Within 7 days from the order of detention, which has not been passed in this case</i>	<i>Notice dated 22.08.2022 Dispatched on 24.08.2022</i>

7. The rest of the provisions are not relevant to this matter. There are serious flaws in the procedure followed as neither order of detention nor SCN have been issued within time. A combined appreciation of the proviso under Section 129(1) and 129(3) makes it apparent that the order of detention is intended to be issued **prior** to the issuance of the SCN, which, in terms of Section 129(3), must be issued within 7 days from the date of detention/seizure.

8. That apart, there are other lapses in the procedure as well, such as i) the officer not having obtained written permission in Form GST MOV-03 from his

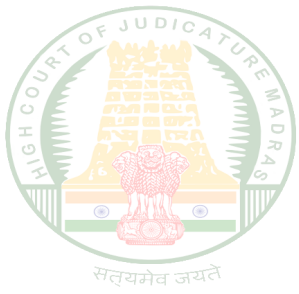


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superiors for extension of time for completion of inspection proceedings, ii) service of a copy of order of extension upon the person in charge of conveyance and iii) non-adherence to the requirement for uploading of Part-B of Form GST EWB-03 on the portal. Learned government pleader emphasises that the procedure was within time, arguing that the limitation of 7 days expires on a holiday, 19.08.2022 being Janmashtami. Thus, according to him, excluding 20.08.2022 and 21.08.2022, being Saturday and Sunday, when the GST Department does not function, the notice was liable to be issued only on 22.08.2022.

9. Incidentally, notice has, admittedly, not been issued on 22.08.2022, but only on 24.08.2022. That apart, Section 129(3), read with the proviso thereunder, requires a show cause notice to be issued within 7 days of detention or seizure. Vide an amendment brought to clause 2(e) of Circular dated 13.04.2018 vide Circular No.49/23/2018-GST dated 21.06.2018 in F.No.CBEC/20/16/03/2017-GST, the expression '*three working days*' in the April circular has been replaced by the expression '*three days*'.

10. Thus, in matters of interception, seizure and detention, it is clear that the GST Department does not recognise the concept of '*working day*' and '*holiday*' and

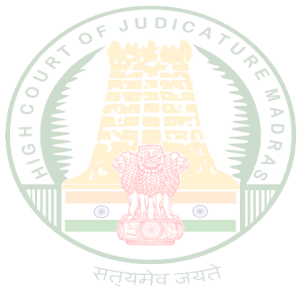


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rightly so, since substantial civil rights of the parties are at stake by the aforesaid powers. Thus, the decision in regard to whether such detention is required at all and the fate of such detention must be decided expeditiously by the officials concerned. In this context learned pleader will agree, on instructions, that the roving squad of the GST Department knows no distinction between working and non-working days and the wing works 24/7, the year through.

11. In such circumstances, neither the petitioner nor the respondents can have the luxury of reference to a holiday to delay or protract the proceedings. This is precisely what the respondents seek to do in the present case. This is made explicitly clear from the Circular and the amendment brought about on 21.06.2018 and the submission of learned Government Pleader runs directly contrary to the amendment under the Circular and the purpose it evidently seeks to advance. These submissions are thus found to be misconceived and hyper-technical, and are rejected.

12. The acts of interception and retention, though an invasion into the rights of citizens, have been accorded statutory sanction in pursuance of the aims and objects of the Goods and Services Act. Thus, it is imperative that such intrusive acts be carried in strict compliance of the statutory provisions in this regard. Thus, and as



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the detention is a pre-condition/requisite for the issuance of the SCN, the order of detention is necessarily to be issued prior to the 7th day from date of detention/seizure of the conveyance/consignment in question, being, in this case, on or before the 20.08.2022, to validate both the interception and the SCN.

13. Since the order of detention is dated 22.08.2022, it is clearly beyond the date provided and in my view, is a serious flaw, one that vitiates the proceedings for interception in full and in entirety. In this context, learned Additional Government Pleader relies upon Section 10 of the General Clauses Act, 1897, as per which, if any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within the prescribed period and if the office or Court were closed on that day or the last day of prescribed period, that act or proceeding shall be considered as done or taken in due time if it done or taken on the next day afterwards when the Court or office were open.

14. In my considered view, there is no necessity to refer to the Section 10 in the present situation. The Goods and Services Tax Department has, by amendment brought on 21.06.2018, effaced the difference between a working day and a holiday. Revenue counsel also confirms that interception, detention and seizure of vehicles



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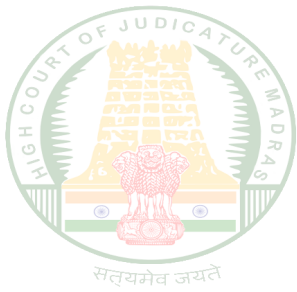
and consignments take place without reference to day or time and the roving squad is on duty at all times, 24/7, 365 days of the year. In these circumstances, reference to Section 10 is of no assistance to the revenue.

15. Lastly, reliance is placed on Form GST MOV-02, which is the statement of the driver, recorded upon interception. In this case, the directions of the officer, in conclusion, read as follows:

'Hence you are hereby directed –

- (1) to station the conveyance carrying goods at puzhal (place) at your own risk and responsibility,*
- (2) to allow and assist in physical verification and inspection of the goods in movement and related documents,*
- (3) not to move the goods and conveyance from the place at which it is stationed until further orders and not part with the goods in question.'*

16. According to learned Government Pleader, the above directions should be read to be an order of detention. This argument is rejected outright. There is a critical difference between directing the driver to station the vehicle carrying the consignment and not to move the same until further orders, when compared with an order of detention in Form GST MOV-06, (that has not been passed in this case). In the former situation, the risk and responsibility for the consignment remains with the



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transporter/consignor whereas, in the latter, and upon passing an order of detention, the risk and responsibility in regard to the consignment shifts upon the GST Department. This transition has not transpired in this case and thus to say that Form GST MOV-02 would tantamount to an order of detention, is entirely misconceived.

17. In light of the discussions in the paragraphs supra, I find that the procedure that has been followed by the respondents in this matter is contrary to statutory requirements as well as the instructions issued by the Commissioner. The submissions of the revenue, that the Circular has no statutory force and the instructions thereunder are to be taken as flexible, are rejected. Mandamus as sought for is granted and this Writ Petition is allowed.

29.08.2022

Index: Yes/No

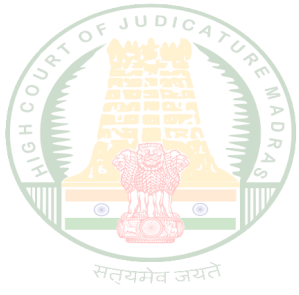
Speaking order/Non-speaking order

sl

Note: Registry is directed to upload this order on 05.09.2022.

To

1. The Assistant /Deputy Commissioner (ST)
Adjudication, Intelligence – I,
Commercial Tax Office, Greaves Road,
Chennai – 600 006.



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Dr.ANITA SUMANTH, J.
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2. The Deputy State Tax Officer,
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