

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.10.2020

Pronounced on : 06.10.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**WP (MD)No.12152 of 2020
and
WMP(MD)No.10459 of 2020**

Tvl.Rising International Co.,
Represented by its
Proprietor B.Kailashkumar

... Petitioner

Vs.

1.The Commissioner of Central GST and
Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002.

2.The Joint Commissioner,
CGST and Central Excise,
O/o.the Joint Commissioner,
CGST and Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002.

3.The Superintendent (HPU),
CGST and Central Excise,
Headquarters Office,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order of seizure in GST INS-02 and consecutive order of Prohibition in GST INS-03 both dated 21.08.2020 passed by the third respondent and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.B.Vijaya Karthikeyan

ORDER

M/s.Rising International Company (legal name, Kailashkumar), Madurai, the petitioner herein, is a dealer registered under the Goods and Services Tax Act. It imports toys from China. It also purchases goods from Delhi-based dealers. The dealer's specific stand is that returns till the month of March, 2020 have been filed and there are no arrears. On account of the lock down restrictions issued in the wake of Covid-19 pandemic, the business was shut down since April 2020. Following the partial lifting of restrictions, the petitioner reopened the business. While so, on 21.08.2020, the Superintendent (HPU), CGST and Central Excise, Madurai inspected and conducted search of the petitioner's place of business. After completion of the search operation, mahazar was also drawn. It was followed by an order of seizure. All the goods set out in the mahazar together with a number of documents were seized. The inspecting official on scrutiny of the books,

registers and goods found during the inspection, opined that he has reasons to believe that the goods are liable to confiscation. Hence, the order of prohibition was issued directing the dealer not to remove or part with or otherwise deal with the seized goods. These orders of seizure and prohibition issued on 21.08.2020 by the third respondent are put to challenge in this writ petition.

2.The primary contention of the petitioner is that there was absolutely no reason to believe that the petitioner had indulged in suppression or otherwise contravened any of the provisions of the Act. The respondents had conducted the search without any reasonable basis. It was a fishing enquiry. According to the petitioner, mere non-maintenance of the stock register in the place of business cannot be a ground to order seizure of the goods. The petitioner is ready to fully account the stock position. He also submitted that the petitioner has been prompt in remitting the customs duty. The petitioner has not at all come under adverse notice. The petitioner's counsel placed reliance on the decision of the Hon'ble Supreme Court reported in **AIR 1976 SC 1753 (Income Tax Officer, Calcutta and Ors. vs. Lakhmani Mewal Das)**. More than anything else, the impugned action will have calamitous consequences on the petitioner's business which had just restarted after remaining shut down for months due to Covid-19 outbreak.

3.This writ petition was listed for admission on 21.09.2020. At the admission stage itself, the learned standing counsel took notice for the respondents. The matter was ordered to be called on 30.09.2020. It was taken up for disposal on 30.09.2020. Acceding to the request for adjournment made by the respondents, the case was taken up for hearing on 01.10.2020. With the consent of the learned counsel on either side, the matter was heard finally.

4.The respondents have offered their para wise comments on the allegations made by the petitioner. The learned standing counsel for the respondent contended that the respondents received intelligence inputs that the petitioner has been evading goods and service tax by misdeclaring the China's origin plastic toys as non electric toys and paying 12% IGST on the imported goods in place of 18% IGST leviable on such imported chinese electric toys. However, the intelligence also indicated that the goods are sold in Indian market by charging 12% IGST in place of 18% IGST thereby evading GST and causing revenue loss to the exchequer. It is stated that the search operation was conducted with proper authorisation granted under Section 67(2) of the Central Goods and Services Tax Act, 2017. The search conducted on the business premises of the petitioner on 21.08.2020 showed that huge quantity of the chinese origin toys stocked in the petitioner's premises were found unaccounted.

5.The respondents deny the claim of the petitioner that he produced all the documents and soft copies of sales invoices for the previous assessment years. The respondents reiterated that on 21.08.2020, the petitioner was not able to produce true and correct account of stock of goods. The learned standing counsel drew my attention to the answers given by the petitioner in respect of the questions recorded on 31.08.2020 under Section 70 of the Act. He asserted that the petitioner was unable to submit any physical or soft copy of the stock details and sales details. According to the respondents, the petitioner was not maintaining any record relating to the current stock position of the goods. The actual stock position was physically taken and arrived at by the inspecting officials during the search proceedings on 21.08.2020.

6.The learned standing counsel would point out that as per Section 35 (1) of the Act r/w. Rule 56 of the Rules, the registered dealer is obliged to maintain true and correct account of stock of goods at his principal place of business. If he fails to account, consequences will follow. The learned standing counsel would state that the adjudication proceedings will now commence and therefore, the validity of the seizure cannot be challenged. The petitioner's rights will have to abide by the outcome of the adjudication proceedings. His core argument is that this Court cannot sit in appeal over the reasonable belief of the proper officer for ordering search. The learned

standing counsel placing reliance on the decisions reported in **1987 (20) E.L.T 483 (S.C) (State of Gujarat vs. Shri Mohanlal Jitamalji Porwal and another)**, **1992 (59) E.L.T 201 (S.C) (Indru Ramchand Bharvani vs. Union of India)** and **2004 (168) E.L.T 298 (Mad.) (Bhagawan R.Daswani vs. Collector of Central Excise, Coimbatore)**, submitted that the writ petition has been prematurely filed and called upon this Court to dismiss the writ petition.

7.I carefully considered the rival contentions and went through the materials on record. Lord Atkin in his celebrated dissent in **Liversidge vs. Anderson (1942) AC 206**, proclaimed that laws speak the same language in war as in peace and that the words have only one meaning. I bow in reverential agreement. Likewise, laws speak the same language during normal as well as in pandemic times. But, contemporary imperatives demand that courts, whenever possible, ought to adopt that approach which will kick-start the economy. Salaried classes may not be bearing the brunt. The position of the farmer, manufacturer and the trader is different. This Court is mindful of the pain and suffering experienced by them.

8. Section 67 (1) and (2) of the Central Goods and Services Tax Act, 2017 read as follows :

67. Power of inspection, search and seizure.-

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or

books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act."

Section 67(1) of the Act employs the expression "has reason to believe". The Hon'ble Supreme Court in ***Income Tax Officer, Calcutta and Ors. vs. Lakhmani Mewal Das (1976) 3 SCC 757*** held that the existence of the belief can be challenged by the assessee but not the sufficiency of reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the officer. It must be held in good faith. It cannot be merely a pretence. It is open to the Court to examine whether the reasons for the formation of the belief have a rational connection with or a

relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the authority in initiating proceedings is open to challenge. Of course, as contended by the learned standing counsel for the respondents this judgment was rendered in the context of Income Tax Act as regards the reopening of the assessment where income escaped assessment. But then, the same principles will govern the case on hand also. It is true that this Court cannot sit in appeal over the satisfaction of the proper officer. It is equally true as observed in **2004 (168) E.L.T 298 (Mad) (Bhagwan R.Daswani vs. Collector of Central Excise, Coimbatore)**, that whether the officer had materials to arrive at a reasonable belief or not before the search was conducted need not be tested under legal microscope.

9.In the case on hand, bare assertion has been made that the impugned proceedings were initiated based on the intelligence developed by CGST (HPU), Madurai that the petitioner is evading GST by misdeclaring the goods while importing. But not a scrap of material was produced before the court. The recitals set out in the order of seizure and the order of prohibition indicate that the formation of the requisite belief is predicated on the scrutiny of the books of account, registers and documents found during the search. This is sufficient to invalidate the entire proceedings. But I refrain from doing

so. Now that the search has been conducted and it has been shown that the stock register was not maintained at the petitioner's place of business, I do not want to quash the order of seizure. However, the order of prohibition has to be necessarily interfered with. The search and seizure had taken place on 21.08.2020. By now, more than 40 days have elapsed. Even, a show cause notice has not been issued till date. The respondents have made a cool statement in their para wise comments that no allegation has been made against the petitioner on the matter under investigation merely by issuing orders of seizure and prohibition and that the matter would be decided by proper officer under CGST Act only after completion of the investigation of the case.

10.The respondents may not be in a hurry. They can afford to wait. Officials who get their salaries in the first week of every month may not be conscious of the cost of delays in such cases. Adjudication proceedings may go on for months. That is why, the statute provides for provisional release of the detained goods. Section 67(6) of the Act reads as follows :

“The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.”

11.I am of the view that the respondents ought to release the goods on provisional basis. The respondents are directed to take personal bond from the petitioner. I wanted to know if the petitioner can offer any security. It appears that the two immovable properties of the petitioner are already under mortgage. The petitioner states that at best he can deposit a sum of Rs.2.00 lakhs. It is not as if the petitioner is going to run away. He has roots in Madurai. Unless the petitioner is permitted to deal with the goods in question, even if some levy is imposed on the petitioner in future, he will not be able to pay the same. Common sense dictates that the petitioner is allowed to do business. The respondents are directed to release the goods on taking personal bond from him and on payment of a sum of Rs.2.00 lakhs. Even while the order of seizure is sustained, the order of prohibition is modified in the above terms. Of course, the respondents are at liberty to conduct adjudication proceedings against the petitioner if he is unable to account for the stock position. The observations made in this order will not have any bearing on the said proceedings.

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12.I am done with this case. But I cannot help mumbling to myself that the general market is flooded with chinese goods. The public must make a conscious choice to encourage swadeshi products. Last Sunday, I went out to buy a mobile phone. I could not come across a single Indian brand. It is no

use telling the public not to buy chinese items. The Indian entrepreneur must rise to the occasion. He must ask himself as to why the chinese products are preferred and he must come out with alternatives. There must be no compromise in quality. At the same time, the price factor should also be borne in mind.

13.The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2020

Index : Yes/No
Internet: Yes/No
skm

Note: 1.Issue order copy expeditiously.

2.In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

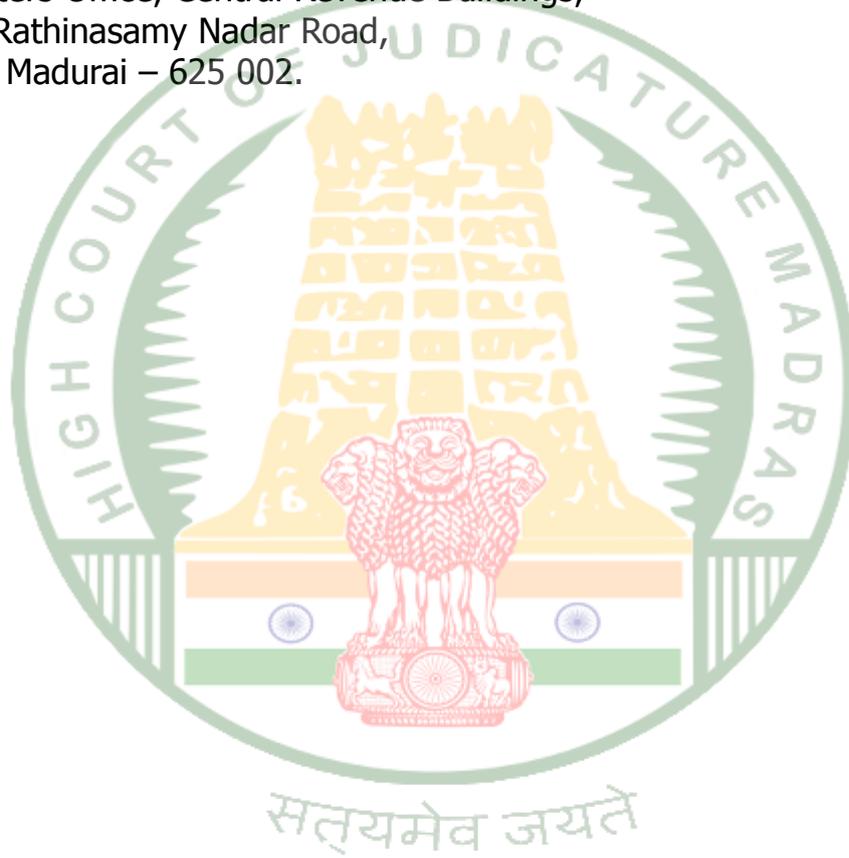
To

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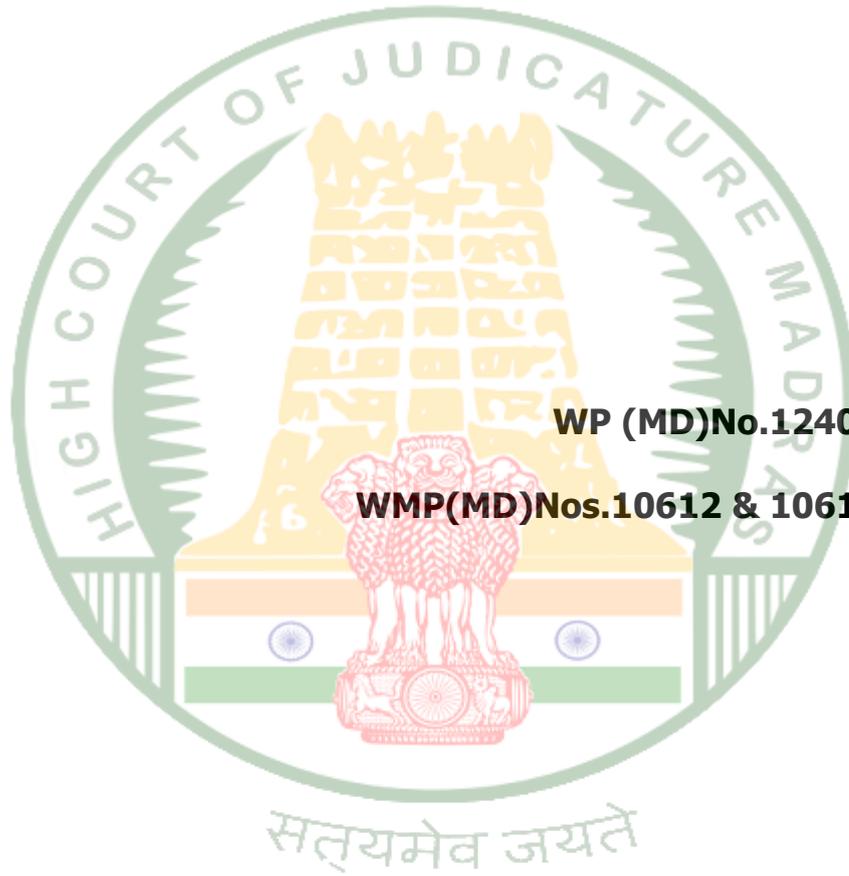


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W.P.(MD)No.12152 of 2020

G.R.SWAMINATHAN, J.

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**WP (MD)No.12405 of 2020
and
WMP(MD)Nos.10612 & 10613 of 2020**

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06.10.2020