



**NC: 2024:KHC:9313**  
**WP No. 4419 of 2024**

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 6<sup>TH</sup> DAY OF MARCH, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR**

**WRIT PETITION NO. 4419 OF 2024 (T-RES)**

**BETWEEN:**

M/S KRISTNA ENGINEERING WORKS  
A REGISTERED PARTNERSHIP FIRM  
HAVING ITS OFFICE AT TATAPURAM  
ENIKEPADU, VIJAYAWADA 521108  
ANDHRAPRADESH  
REP BY ITS AUTHORISED SIGNATORY  
SRI. T JEJI PRASAD  
S/O LATE T T PRAKASH RAO  
AGED ABOUT 69 YEARS.

...PETITIONER

(BY SRI. GIRIDHAR S V, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
FINANCE DEPARTMENT  
REPRESENTED BY ITS  
PRINCIPAL SECRETARY  
VIDHANA SOUDHA  
BANGALORE - 560 001.
2. COMMERCIAL TAX OFFICE  
ENFORCEMENT, KOLLEGAL  
7/420, 1st FLOOR  
SWAMY VIVEKANANDA ROAD  
KOLLEGALA  
PIN 571 440  
MYSORE KARNATAKA.

...RESPONDENTS

(BY SRI. HEMA KUMAR K., AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS ON THE FILE OF THE RESPONDENTS CULMINATING IN THE ISSUANCE OF SHOW CAUSE NOTICE BEARING NO. CTO (ENF) KOLLEGAL/38/23-24

Digitally signed by  
VANDANA S  
Location: High  
Court of Karnataka



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DATED 06/02/2024 (RFN.MA2902240338122) VIDE ANNEXURE-J, QUASH THE IMPUGNED SHOW CAUSE NOTICE BEARING NO. CTO (ENF) KOLLEGAL/38/23-24 DATED 06/02/2024 (RFN.MA2902240338122) VIDE ANNEXURE-J SO FOR AS PETITIONER CONCERNED AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

In this petition, petitioner seeks quashing of the impugned show cause notice at Annexure-J dated 06.02.2024 and impugned assessment order at Annexure-P dated 16.02.2024 and for other reliefs.

2. Heard learned counsel for the petitioner and learned AGA for the respondents and perused the material on record.

3. The material on record indicates that the subject vehicle bearing registration No.AP -07 - TC-1755 of the petitioner carrying the subject goods and travelling from Vijayawada to Kuntur was assigned e-way bill generated on 31.01.2024 at 8.03 p.m. which was valid upto 11.59 p.m. on 05.02.2024. During transit, there was a breakdown of the subject vehicle, as a result of which, the petitioner shifted the goods to another vehicle bearing No.KA-51-1AC-5539 and since there was a delay in this regard, the vehicle which was supposed to reach the destination on 05.02.2024 was



not able to do so and was intercepted at Kollegala on 06.02.2024 at 09.51 a.m.

4. It is the contention of the petitioner that due to bonafide reasons, unavoidable circumstances and sufficient cause and on account of oversight and inadvertence and reasons beyond its control, the petitioner could not update the e-way bill by showing the number of the new vehicle bearing No.KA-51-1AC-5539, as a result of which, the respondents issued the impugned show cause notice and passed the impugned assessment order levying penalty upon the petitioner under Section 129 of the CGST Act on the ground that at the time of interception on 06.02.2024 at 09.51 a.m., the subject vehicle did not possess a valid e-way bill which had expired on 05.02.2024 itself at 11.59 p.m.

4.1 It is contended that since the non-updation of the e-way bill was not intentional or deliberate on the part of the petitioner, who had no intent to evade / avoid payment of tax nor contravene any of the provisions of the CGST Act, especially when the breakdown of the subject vehicle leading to interception of the new vehicle was not within the control of the petitioner nor was attributable to it and as such, it was a fit case to levy a maximum



general penalty of Rs.25,000/- on the petitioner by invoking Section 125 of the CGST Act and consequently, the impugned order and show cause notice deserve to be quashed.

4.2 It is also submitted that pursuant to the impugned order, the petitioner has paid the entire penalty demanded by the respondents and the same may be directed to be refunded back to the petitioner by deducting Rs.25,000/- towards general penalty payable by the petitioner. In support of its contention, reliance is placed on the judgment of the Apex Court in the case of ***Assistant Commissioner vs. Satyam Shivam Papers Pvt. Ltd., - (2022) 14 SCC 157.***

5. Per contra, learned AGA for the respondents – revenue would oppose the petition and submit that the same is liable to be dismissed.

6. A perusal of the material on record will indicate that the petitioner possessed a valid e-way bill in relation to the subject vehicle bearing No.AP-07–TC-1755 which was valid upto 11.59 p.m. on 05.02.2024. However, due to breakdown of the subject vehicle, the goods had to be shifted to one more vehicle bearing No.KA-51-1AC-5539 and due to the delay in this process, the said



vehicle could not reach the destination within the time stipulated in the e-way bill and was intercepted on 06.02.2024 at 09.51 a.m. It is the specific assertion of the petitioner that it could not update the e-way bill earlier due to bonafide reasons, unavoidable circumstances and sufficient cause. These facts and circumstances are sufficient to come to the conclusion that the inability and omission on the part of the petitioner to update the e-way bill as also the breakdown was not intentional or attributable to the petitioner nor can any negligence be attributed to the petitioner in this regard.

7. At any rate, the material on record does not disclose that there was any intention on the part of the petitioner to either contravene the provisions of the CGST Act or avoid / evade payment of tax and on account of non-extension of the validity of the e-way bill by the petitioner due to breakdown of the vehicle, no presumption or inference can be drawn against the petitioner as regards its intent to avoid / evade payment of tax. Consequently, the facts of the instant case make it just and proper to impose general penalty of Rs.25,000/- on the petitioner by invoking Section 125 of the CGST Act by setting aside the impugned order and



notice and by directing the respondents to refund the tax paid by the petitioner by deducting Rs.25,000/- from the said amount.

8. In identical circumstances, in **Satyam's case supra**, the Apex Court confirmed the judgment of the Telengana High Court and held as under:-

*1. Having heard the learned counsel for the petitioners and having perused the material placed on record, we find no reason to consider interference in the well-considered and well-reasoned order dated 2-6-2021, as passed by the High Court for the State of Telangana at Hyderabad in Satyam Shivam Papers (P) Ltd. v. CST [Satyam Shivam Papers (P) Ltd. v. CST, 2021 SCC OnLine TS 698] . Rather, we are clearly of the view that the error, if any, on the part of the High Court, had been of imposing only nominal costs of Rs 10,000 (Rupees ten thousand) on Respondent 2 of the writ petition, who is Petitioner 2 before us.*

*2. The consideration of the High Court in the order [Satyam Shivam Papers (P) Ltd. v. CST, 2021 SCC OnLine TS 698] impugned and the material placed on record leaves nothing to doubt that the attempted inference on the part of Petitioner 2, that the writ petitioner was evading tax because the e-way bill had expired a day earlier, had not only been baseless but even the intent behind the proceedings against the writ petitioner was also questionable, particularly when it was found that the goods in question, after being detained were, strangely, kept in the*



*house of a relative of Petitioner 2 for 16 days and not at any other designated place for their safe custody.*

**3.** *The High Court has, inter alia, found that : (Satyam Shivam Papers case [Satyam Shivam Papers (P) Ltd. v. CST, 2021 SCC OnLine TS 698] , SCC OnLine TS paras 44-46)*

*“44. It was the duty of second respondent to consider the explanation offered by petitioner as to why the goods could not have been delivered during the validity of the e-way bill, and instead he is harping on the fact that the e-way bill is not extended even four (04) hours before the expiry or four (04) hours after the expiry, which is untenable.*

*45. The second respondent merely states in the counter-affidavit that there is clear evasion of tax and so he did not consider the said explanations.*

*46. This is plainly arbitrary and illegal and violates Article 14 of the Constitution of India, because there is no denial by the second respondent of the traffic blockage at Basher Bagh due to the anti-CAA and NRC agitation on 4-1-2020 up to 8.30 p.m. preventing the movement of auto trolley for otherwise the goods would have been delivered on that day itself. He also does not dispute that 4-1-2020 was a Saturday, 5-1-2020 was a Sunday, and the next working day was only 6-1-2020.”*

**4.** *The High Court has further found and, in our view, rightly so thus : (Satyam Shivam Papers case [Satyam Shivam Papers (P) Ltd. v. CST, 2021 SCC OnLine TS 698] , SCC OnLine TS paras 47-48)*

*“47. How the second respondent could have drawn an inference that petitioner is evading tax merely because the e-way bill has expired, is also nowhere explained in the counter-affidavit.*

*48. In our considered opinion, there was no material before the second respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill because even the second respondent does not say that there was any evidence of attempt to sell the goods to somebody else on 6-1-2020. On account of non-extension of the validity of the e-way bill by the petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax.”*



*5. The High Court has also commented on the blatant abuse of the power by Petitioner 2 and has deprecated his conduct in the following words : (Satyam Shivam Papers case [Satyam Shivam Papers (P) Ltd. v. CST, 2021 SCC OnLine TS 698] , SCC OnLine TS paras 49-51)*

*“49. We are also unable to understand why the goods were kept for safe keeping at Marredpally, Secunderabad in the house of a relative of the second respondent for (16) days and not in any other place designated for such safe keeping by the State.*

*50. In our opinion, there has been a blatant abuse of power by the second respondent in collecting from the petitioner tax and penalty both under the CGST and SGST and compelling the petitioner to pay Rs 69,000 by such conduct.*

*51. We deprecate the conduct of the second respondent in not even adverting to the response given by the petitioner to Form GST MOV-07 in Form GST MOV-09 and his deliberate intention to treat the validity of the expiry on the e-way bill as amounting to evasion of tax without any evidence of such evasion of tax by the petitioner.”*

*(emphasis in original)*

*6. Having said so, the High Court has set aside the levy of tax and penalty of Rs 69,000 (Rupees sixty-nine thousand) while imposing costs of Rs 10,000 (Rupees ten thousand), payable by Petitioner 2 to the writ petitioner within four weeks.*

*7. The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of Petitioner 2 and the corresponding harassment faced by*





*the writ petitioner we find it rather necessary to enhance the amount of costs.*

*8. Upon our having made these observations, the learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the operation and effect of Section 129 of the Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic.*

*9. Having said so; having found no question of law being involved; and having found this petition itself being rather misconceived, we are constrained to enhance the amount of costs imposed in this matter by the High Court.*

*10. The High Court has awarded costs to the writ petitioner in the sum of Rs 10,000 (Rupees ten thousand) in relation to tax and penalty of Rs 69,000 (Rupees sixty-nine thousand) that was sought to be imposed by Petitioner 2. In the given circumstances, a further sum of Rs 59,000 (Rupees fifty-nine thousand) is imposed on the petitioners toward costs, which shall be payable to the writ petitioner*



*within four weeks from today. This would be over and above the sum of Rs 10,000 (Rupees ten thousand) already awarded by the High Court.*

*11. Having regard to the circumstances, we also make it clear that the State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person(s) responsible for this entirely unnecessary litigation.*

*12. This petition stands dismissed, subject to the requirements foregoing. Compliance to be reported by the petitioners.*

9. In view of the aforesaid facts and circumstances, I am of the view that the impugned order and notice deserve to be quashed.

10. In the result, I pass the following:-

**ORDER**

(i) Petition is hereby allowed.

(ii) The impugned Notice at Annexure-J dated 06.02.2024 and the impugned order at Annexure-P dated 16.02.2024 are hereby set aside.

(iii) In the peculiar/special facts and circumstances of the instant case, I deem it just and proper to invoke Section 125 of



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CGST Act and impose maximum penalty of Rs.25,000/- on the petitioner.

(iv) Submission of the learned counsel for the petitioner that the entire penalty as demanded in the impugned order including the said amount of Rs.25,000/- has already been paid is placed on record and accordingly, any amount paid by the petitioner to the respondents in excess of Rs.25,000/- is directed to be refunded back to the petitioner within a period of one month from the date of receipt of a copy of this order.

**SD/-  
JUDGE**

LRS/SRL  
List No.: 1 Sl No.: 26