



NC: 2024:KHC:12526
WP No. 9284 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2024

BEFORE

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

WRIT PETITION NO.9284 OF 2023 (T-RES)

BETWEEN:

M/S MERRY GOLD,
4TH FLOOR, NO.26/28, VITHALWADI,
MULCHAND MANSION, KALBADEVI,
MUMBAI 400 002
REP. BY ITS PROPRIETOR
SHRI.SURESH S SAKARIYA,

...PETITIONER

(BY SRI. ANIRUDHA R NAYAK, ADVOCATE)

AND:

1. UNION OF INDIA
REP BY THE REVENUE SECRETARY,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE
NEW DELHI 110 001.
2. CENTRAL BOARD OF INDIECT TAXES AND CUSTOMS
NEW DELHI 110001
REP BY ITS CHAIRPERSON.
3. THE COMMERCIAL TAX OFFICER (ENFORCEMENT)
VIJAYAPURA CIRCLE, DEVANAHALLI,
BENGALURU RURAL DISTRICT 562 110.

...RESPONDENTS

(BY SRI.JEEVAN J. NERALAGI., ADVOCATE FOR R-1 & R-2;
SMT. JYOTI.M.MARADI, AGA FOR R-3)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER IN
APPEAL VIDE APPEAL NO.GST.AP.46/2022-23 DT. 15.12.2022
ENCLOSED AS ANNEX-M AS BAD IN LAW AND ETC.



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

ORDER

In this petition, petitioner has sought to quash the impugned order at Annexure – M dated 15.12.2022 passed by the respondents, whereby the appeal filed by the petitioner against the proceedings dated 15.07.2022 was dismissed by the Appellate Authority.

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

3. A perusal of the material on record will indicate that the petitioner was transporting gold jewellery from Mumbai to Bengaluru. When the vehicle was intercepted by respondent No.4 on 30.06.2022, an order for vehicle verification was issued in GST MOV-02, pursuant to which proceedings under Section 129(3) of the Central Goods and Services Tax Act, 2017 (for short, 'CGST Act') having been initiated, the same culminated in the order at Annexure – H dated 15.07.2022, in pursuance of the same, petitioner paid penalty of Rs.14,50,560/- and filed an appeal which was also dismissed by the Appellate Authority on 15.12.2022.



Aggrieved by the impugned order passed by the respondents, petitioner is before this Court by way of the present petition.

4. In addition to reiterating the various contentions urged in the memorandum of petition and referring to the material on record, learned counsel for the petitioner invited my attention to the Delivery Challan at Annexure – B as well as Rule 55 of the Central Goods and Services Tax Rules, 2017 (for short, 'CGST Rules) in order to point out that there was no violation committed by the petitioner insofar as the Delivery Challan was concerned. It is also submitted that the minor discrepancy of not mentioning existence of Kundan stones in the Delivery Challan could not have been made the basis to impose the penalty upon the petitioner and it was always open for the respondents to proceed against the petitioner for not disclosing the Kundan stones in the Delivery Challan. It is submitted that the Original Authority as well as Appellate Authority have come to the erroneous conclusion that there is violation of Rule 55 of the CGST Rules, which is contrary to the said provision as well as the Delivery Challan and as such, the same deserves to be set aside and penalty of Rs.14,50,560/- deserves to be refunded back to the petitioner.



5. Per contra, learned AGA would support the impugned order and submits that since there was a mismatch between the goods and discrepancy shown in the Delivery Challan, it was open for the respondents to initiate proceedings under Section 129 of the CGST Act and pass the impugned order, which do not warrant interference in the present petition and that the petition is liable to be dismissed.

6. A perusal of the material on record including the impugned order and the Delivery Challan will indicate that except for non-disclosure of Kundan stones in the Delivery Challan, all other requirements of Rule 55 of the CGST Rules have been complied with by the petitioner as can be seen from the Delivery Challan itself. Despite this, both the Original Authority and the Appellate Authority have wrongly / erroneously invoked Rule 55 of the CGST Rules in order to come to the conclusion that there was mismatch between the Delivery Challan and the actual goods without appreciating that mere non-disclosure / non-mentioning of the Kundan stones in relation to the subject gold ornaments, which were being transported only for sample purpose could not have



been made the basis to come to the conclusion that the petitioner would be liable to pay penalty of Rs.14,50,560/-.

7. A perusal of the impugned order will also indicate that both authorities have committed an error in proceeding on the erroneous presumption / assumption that the gold was not being sent for sample purpose but was being transported for the purpose of sale and since the names of the prospective purchaser were not mentioned in the Delivery Challan, petitioner would be liable to pay penalty as directed in the impugned order. However, the said reasoning of the Authorities and findings recorded by it is clearly contrary to the material on record, which establishes that there is no basis to come to the conclusion that gold ornaments were meant for sale in favour of the prospective purchasers and not for sample as indicated in the Delivery Challan. It is also pertinent to note that so long as the Delivery Challan contains all the details as required under Rule 55 of the CGST Rules, mere non-mentioning of the Kundan stones cannot be treated as violation of Rule 55 of the CGST Rule and on this ground also, the impugned order cannot be sustained.



8. Under these circumstances, I am of the considered opinion that the order passed by the Original Authority at Annexure – H dated 15.07.2022 as well as the impugned order passed by the Appellate Authority at Annexure – M dated 15.12.2022 deserve to be quashed and penalty of Rs.14,50,560/- deserves to be refunded back to the petitioner and to grant liberty in favour of the respondents to proceed against the petitioner for alleged mismatch/discrepancy of the Kundan stones, which are not shown in the Delivery Challan.

9. In the result, I pass the following:

ORDER

(i) The petition is hereby **allowed**.

(ii) The order passed by the Original Authority at Annexure – H dated 15.07.2022 as well as the impugned order passed by the Appellate Authority at Annexure – M dated 15.12.2022 are hereby quashed.

(iii) Respondents are directed to refund the penalty of Rs.14,50,560/- back to the petitioner within a period of two months from the date of receipt of a copy of this order.



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(iv) Liberty is reserved in favour of the respondents to initiate proceedings against the petitioner only in relation to alleged mismatch of the Kundan stones, which are not shown in the Delivery Challan.

SD/-
JUDGE

SV
List No.: 1 Sl No.: 7