

WP (MD) No. 4958 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.04.2022

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THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.4958 of 2022

and

W.M.P.(MD)No.4073 of 2022

Algae Labs Pvt. Ltd.,
Rep. by its Managing Director,
Shri Adhi Visvanathan,
7/116A, Chotta Panikan Theri Villai,
South Thamaraikulam & Post,
Agasteeswaram Taluk,
Kanyakumari – 629 701.

.. Petitioner

Versus

State Tax Officer-I,
Adjudication,
CTO Building Complex,
AR Lane Road,
Palayamkottai, Tirunelveli – 627 002.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 11.03.2022, passed by the respondent in Order No.OR. 317/2021-22, quash the same and direct the respondent to release the vehicle bearing Registration No.RJ-06-GC-7978 along with its consignment within a time frame that may be fixed by this Court.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.K.S.Selvaganesan
Additional Government Pleader



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ORDER

After hearing the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, this Writ Petition is disposed of.

2. In this Writ Petition, the petitioner has challenged the impugned order of demand of tax and penalty under Section 129 of the respective GST Acts. By the impugned order, the respondent has demanded a sum of Rs.12,46,678/- [Rs.6,23,339+Rs.6,23,339].

3. The petitioner is a new start up company and is engaged in research and development on Algae and its utilization. The petitioner placed purchase order on 07.10.2021 for supply of a specialized spray dryer and the parts thereof with M/s.ABV Engineering, Ahmedabad, who had consigned the same along with the invoice bearing No.197/21-22, dated 28.02.2022. The goods also accompanied with E-way Bill. As per the invoice, the name and address of the Consignee read as under:

"Algae Labs Private Limited,
5/150, South Karumpattor, South Thamaraiikulam,
Kanyakumari, Tamilnadu - 629708"

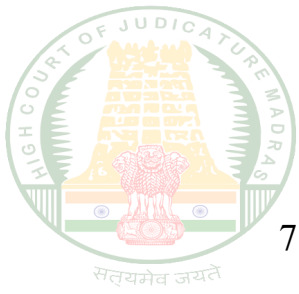


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4.The vehicle along with spray dryer were seized by the respondent on the ground that the address of the Consignee mentioned as No.5/150, South Karumpattor, South Thamaraiikulam, Kanyakumari, Tamil Nadu – 629708, was not a place mentioned in the GST Registration of the petitioner.

5.The learned counsel for the petitioner submits that the petitioner has entered into a rental agreement with one of the Directors of the petitioner Company, who is running a Proprietary concern at the said premises called "Tvl.Pinnacle Biosciences" and the above said premise has been taken on rent by the petitioner. *Post facto* the petitioner has also amended GST Registration by including the address at No.5/150, South Karumpattor, South Thamaraiikulam, Kanyakumari, Tamil Nadu – 629708 in the GST Registration.

6.The learned counsel for the petitioner submits that there is no violation of Section 129 of the respective GST enactments as the transportation by the supplier from Gujarat not only accompanied tax invoice, but also E-way Bill showing sufferance of tax to the goods transported from Gujarat to the petitioner. It is therefore submitted that the impugned order is not sustainable. The learned counsel for the petitioner has also drawn the attention of this Court to Circular No.10/2019 Q1/17253/2019, dated 31.05.2019, issued by the Commissioner of Commercial Taxes.



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7. Opposing the prayer, the learned Additional Government Pleader for the respondent submits that the registration profile of the petitioner reveals that one M. Adhi Visvanathan is the Director of the petitioner concern and also the Proprietor of Tvl. Pinnacle Biosciences, having address at No. 5/150, South Karumpattor, South Thamaraiikulam, Kanyakumari, Tamil Nadu – 629708. It is submitted that the place of delivery of the consignment is the business place of Tvl. Pinnacle Biosciences, who is also in the same trade and thus, there is an attempt to evade tax. It is further submitted that the attempt was to clear the goods to the said said Tvl. Pinnacle Biosciences and therefore, the impugned order cannot be interfered.

8. It is further submitted that the reliance placed by the petitioner on Circular No. 10/2019 Q1/17253/2019, dated 31.05.2019, is of no relevance.

9. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perused the impugned order and Circular No. 10/2019 Q1/17253/2019, dated 31.05.2019.

10. Both the petitioner and the respondent admit that as on date the above said address has been included in the petitioner's place of business in the GST Registration. Thus, there is a *post facto* inclusion of the address,



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which was mentioned in the tax invoice raised by the supplier and in the E-way Bill.

11. Considering the above fact, I am inclined to quash the impugned order, as there is no attempt to evade tax. Incidentally, in W.P.(MD)No.5720 of 2022 [M/S.Smart Roofing Private Limited, represented by its Authorized Signatory, N.Karthick vs. The State Tax Officer (Int), Adjudication-II, Madeira], an order came to be passed under a some what similar circumstances on 30.03.2022. There also, *post facto* GST Registration was amended and relief was therefore granted. The facts of the present case and the facts of the above said case are not different. Considering the same, I am inclined to allow this Writ Petition.

11. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.04.2022

Index : Yes/No
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C.SARAVANAN, J.

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