



2020-TIOL-589-HC-KERALA-GST

IN THE HIGH COURT OF KERALA

AT ERNAKULAM

WP(C).No.7339 OF 2020(N)

TIGER STEELS

Vs

**ASSISTANT STATE TAX OFFICER
SQUARD - III
STATE GOODS AND SERVICE TAX DEPARTMENT
PALAKKAD AND OTHERS**

Amit Rawal, J

Dated: March 11, 2020

Appellant Rep. by: Sri P S Soman, Smt T Radhamany, Sri Prakash P B, Advs

Respondent Rep. by: Dr Thushara James, GP

GST -

Petitioner's grievance is that while transporting goods for purpose of weighment, same was intercepted by the officials of the State GST for the reason that in the delivery challan, instead of IGST, inadvertently CGST and SGST was levied - Petitioner prays for issuance of an appropriate direction to release the goods without collecting tax and penalty.

Held:

Writ petition is disposed of with a direction to the petitioner to seek the release of the goods and carriage on furnishing of the bank guarantee and other charges as enshrined under Section 129 subject to condition that the adjudicating authority would afford an opportunity of hearing to the petitioner for imposition of the penalty, strictly in accordance with law and till such time, the bank guarantee furnished by the petitioner shall not be encashed: High Court [para 3]

Petition disposed of

JUDGEMENT

The grievance of the petitioner in the instant case is that while transporting the goods for the purpose of weighing was intercepted by the officials of the State Goods and Service Tax, for the reason that in Ext.P2 Delivery Chelan, instead of IGST inadvertently CGST and SGST was levied. It is in this circumstances, the jurisdiction of this Court has been invoked for issuing an appropriate direction to release the goods without collecting tax and penalty.

2. Having heard the counsel for the parties, I am of the view that this Court cannot have writ jurisdiction to adjudicate whether the error so reflected can be condoned or otherwise. In my view, the petitioner, if complies with the requirement as enshrined under Section 129 of the SGST and IGST Act without prejudice to the rights, can seek the adjudication by apprising the adjudicating authority regarding the error with the imposition of minor penalty.

3. The learned counsel for the petitioner submits that the petitioner has an apprehension that by any adjudicating authority may not be acted on the Act, after affording an opportunity of hearing and till such time, the department need not encash the bank guarantee.

In my view, the aforementioned request seems to be justified. Accordingly I dispose of the writ petition with a direction to the petitioner to seek the release of the goods and carriage on furnishing of the bank guarantee and other charges as enshrined under Section 129 subject to condition that the adjudicating authority would afford an opportunity of hearing to the petitioner for imposition of the penalty, strictly in accordance with law and till such time, the bank guarantee furnished by the petitioner shall not be encashed. On furnishing the bank

guarantee, the goods carriage along with goods may be released forthwith.

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