

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.729/2019

M/S. Kalpana Stores represented by its sole Proprietor, Sri Amitava Deb Roy, S/O. Late Sudhendhu Sekhar Deb Roy, having his Office at Nayapara, Kadamtala Road, Dharmanagar, North Tripura, PIN-799250.

-----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s) : Mr. T.D. Majumder, Advocate,
Mr. Biplab Debnath, Advocate.

For Respondents No.1 to 3 : Mr. Debalay Bhattacharjee, G.A.,
Mr. Nepal Majumder, Advocate.

For Respondent No.4 : Mr. H. Deb, Asstt. S.G.I.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment: **17th December, 2019.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

(Akil Kureshi, C.J.)

Heard learned counsel for the parties for final disposal of the petition.

2. Petitioner has challenged the action of the respondents who are the tax authorities of the State of Tripura. In particular the grievance of the petitioner is that the petitioner's goods in the nature of TMT Bars which were being transported from one place within the State to another, were illegally detained by the authorities along with the transport vehicle in which the goods were being transported. The petitioner was forced to pay up the illegal

demand of tax with penalty raised by the respondents only upon which the goods were released.

3. Brief facts are as under:

Petitioner is a proprietary concern and is a registered dealer under the Goods and Services Tax Act, 2017 (GST Act, for short). The petitioner is engaged in the business of dealing in TMT Bars of different dimensions. In the course of such business, the petitioner had purchased 3(three) bars of different measurements weighing approximately 25.990 Metric Tons for a sale consideration of ₹10.59 lakhs (rounded off). On such purchase according to the petitioner IGST of ₹1.90 lakhs (rounded off) was paid. Tax invoice to this effect was also generated. The seller had also generated e-Way bill dated 06.10.2018 for transport of the goods. According to the petitioner, along with all legal documents the consignment was being transported on 15.10.2018 when the respondents intercepted the transport vehicle, detained the vehicle and seized the goods. According to the petitioner, such movement of goods was pursuant to the sale in favour of respondent No.6. The official respondents thus did not have authority to seize the goods or detain the vehicle.

4. On 25.10.2018 the official respondents raised a bill of a sum of ₹5,10,066 lakhs comprising of basic tax with penalty. The petitioner was under compulsion to deposit the said amount since failing which the State respondents would not release the goods or the vehicle. The petitioner made the payment and got the same released on 26.10.2018 after which the present petition came to be filed.

5. Learned counsel for the petitioner submitted that the action of the State authorities is totally illegal and unlawful. The goods in question were fully covered by necessary documents of payment requisite taxes. The respondents raised an unlawful demand of tax with penalty without affording any opportunity of hearing to the petitioner.

6. On the other hand, learned counsel for the State authorities opposed the petition contending that the said order dated 25.10.2018 is an appealable order. The petitioner has directly approached this Court without availing such appeal.

7. In our opinion, the action of the State authorities cannot be approved. The order dated 25.10.2018 is not an order of assessment of the petitioner's tax liability. It is merely an order of demand of tax and penalty. Before such demand can be confirmed and penalty levied, the petitioner must have a minimum opportunity of hearing. Quite apart from the question of levying basic tax, the authorities proceeded to impose penalty, which is in the nature of a penal action, without hearing the petitioner. The rate of the penalty, even if there are justifiable grounds for imposing the penalty, is discretionary and cannot be decided without involvement of the petitioner.

8. Whenever the movement of goods is *prima facie* found to be without proper documents or payment of legal taxes, under the GST Act the State authorities undoubtedly have the power to seize the goods, release of which would be subject to fulfillment of

conditions which may be imposed by the authority in order to secure the interest of revenue. However, demand of full tax with maximum imposable penalty without hearing the dealer, by way of a pre-condition to release the goods is not within the purview of the powers of the State authority. Reference in this respect can be made to Section 68 and Section 129 of the Tripura State Goods and Services Tax Act, 2017. Section 68 of the said Act reads as under:

"68. Inspection of goods in movement.

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods."

9. Sub-sections (1) and (2) of Section 68 authorize the Government to require the person in charge of conveyance of carrying consignment of goods to carry documents as may be prescribed and the manner of validating such documents. Sub-section (3) of Section 68 provides that where any conveyance referred to in sub-section (1) is inspected by the proper officer he may require the person in charge of the conveyance to produce the

documents so prescribed and the said person would be liable to produce the documents and allow inspection of goods.

10. Section 129 of the said Act pertains to detention, seizure and release of goods and conveyances in transit and reads as under:

“129. Detention, seizure and release of goods and conveyances in transit.

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-

(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer."

11. Under sub-section (1) of Section 129 thus the authorities enjoy the power of detention of goods in transit if it is found that the same is in contravention of the provisions of the Act or the rules. The detention can also be made of the transport vehicle

carrying the goods. However, this sub-section itself provides a condition upon which such seizure shall be released. Clauses (a) and (b) of sub-section (1) pertain to payment of tax with penalty as mentioned therein. Clause (c) of sub-section (1) pertains to the person concerned furnishing a security equivalent to the amount payable under the clause (a) or (b) in such manner as may be prescribed. Thus, the seized goods and the transport vehicle can be released either upon payment of tax with penalty in terms of clause (a) or (b) as the case may be of sub-section (1) or upon furnishing security for payment of the same in terms of clause (c).

12. However, sub-section (3) of Section 129 provides that the proper officer detaining or seizing the goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter pass an order for payment of tax and penalty under clause (a) or (b) or (c). Sub-section (4) of Section 129 further clarifies that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

13. The determination of payable tax and interest in terms of clause (a) or (b) of sub-section (1) upon payment of which the goods or the transport vehicle would be released or upon furnishing security in terms of clause (c), has to be after a notice to the person concerned and granting an opportunity of being heard in this respect as provided in sub-sections (3) and (4) of Section 129 of the said Act. In the present case, no such steps were taken. The State authority straightway passed the order dated 25.10.2018

which is titled as "Order of Demand of Tax and Penalty". This order thus clearly breaches the requirement of sub-sections (3) and (4) of Section 129 of the said Act. In view of such facts despite availability of appellate remedy, present petition should be entertained. The said order is, therefore, quashed.

14. In fact of the case, since the petitioner has already deposited the amount indicated in the said order dated 25.10.2018 and the goods along with the transport vehicle are already released, by moulding the relief it is provided as under:

(a) The respondents shall give a notice of hearing to the petitioner why the said tax with penalty demand should not be confirmed giving clear 4(four) weeks time to respond;

(b) The petitioner will file written opposition to such demand with documents as may be found necessary within the said stipulated period;

(c) The competent authority shall thereafter pass a speaking order within a period of 4(four) months from today;

(d) The amount of ₹5,10,066 which is already deposited by the petitioner shall be adjusted towards the final crystallized tax/penalty if any as per such order. If the demand is dropped partially or fully, refund shall be made with statutory interest.

15. Petition is disposed of.

(ARINDAM LODH), J

(AKIL KURESHI), CJ