



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 5266/2021

1. H.R. Enterprises, H26 (F/G/H), Marudhar Industrial Area, Phase 2nd Basni, Jodhpur Through Its Proprietor Mohammed Asif Ghouri S/o Abdul Rahman, Aged About 40 Years, Resident Of 99, Kamla Nehru Nagar, Near Chirghar Masjid, Jodhpur.

2. Gurpreet Singh S/o Suba Singh, Aged About 36 Years, Kolkapura, Faridkot, Punjab, Being The Driver/person Incharge Of Vehicle No.PB04-V-8310.

-----Petitioners

Versus

1. State Of Rajasthan, Through The Commissioner Of State Tax, RGST, Kar Bhawan, Ambedkar Circle, Bhawani Singh Road, C-Scheme, Jaipur.

2. Assistant Commissioner, State Tax (GST), Ward-II, Circle Anti Evasion, Sri Ganganagar.

-----Respondents

For Petitioner(s) : Mr. Sharad Kothari
For Respondent(s) : Mr. Sunil Bhandari

JUSTICE DINESH MEHTA

Order

01/04/2021

1. By way of the present writ petition, petitioners have challenged order of detention dated 18.03.2021 and the very jurisdiction of respondent No.2 to proceed in the matter.

2. Learned counsel for the petitioners submits that consignment in question (34.120 MT of MS Scrap), belonging to petitioner No.1, which was being transported by petitioners vide G.R. No.6411 dated 10.03.2021 of Amritsar Gobindgarh Roadways in Vehicle No.



PB 04-V-8310, was having all requisite/prescribed documents while in transit.

3. When the respondent No.2 intercepted the goods on 11.03.2021 at 02.30 pm, all the documents prescribed under law, such as Invoice No.194 dated 10.03.2021; G.No.6411 dated 10.03.2021; E-Way Bill No.741179867941; Weigh Slip; Tax Invoice No.183 dated 10.03.2021 of Marwar Steels etc. were furnished, yet he did not allow the petitioner to move.

4. Mr. Sharad Kothari invites Court's attention towards the documents placed on record and highlights that in spite of the fact that the requisite documents were produced before the respondent No.2 on 11.03.2021 itself, he firstly directed the petitioner No.2 to remain stationed with the vehicle and goods loaded therein for the purpose of physical verification. He firstly issued notice in MOV-2 and, thereafter on 15.03.2021, got extension to complete inspection from the competent authority, simply with a view to conduct inquiry relating to alleged wrongful availment of input tax credit.

5. It is the argument of the petitioners that such fishing and roving inquiry in relation to availment of input tax credit and suspicion about the purchase transaction is not within the domain of respondent No.2, while exercising powers under Section 68 of the CGST Act, 2017 (for short, 'the Act of 2017') while goods are in movement. It is argued by learned counsel for the petitioners that such inquiry, if at all, is necessary, the same is permissible to be done by regular Assessing Officer and not by the Anti Evasion Officer or any check-post incharge or flying squad.

6. While emphasizing that not only the detention, even the inquiry sought to be undertaken by the respondent No.2, is



without jurisdiction, learned counsel for the petitioners points out petitioners' predicament that for getting release of vehicle and goods, provisions of Section 129 of the Act of 2017 read with Rules 140 and 141 of the Goods and Service Tax Rules, 2017 (for short, 'the Rules of 2017') require payment of tax and penalty or furnishing of a bank guarantee equal to the amount of applicable tax and penalty. He argues that in the facts of the present case, if the petitioners are required to pay the proposed amount or to furnish bank guarantee, it would adversely affect business rights of petitioner No.1 inasmuch as, final amount is yet to be adjudicated and the proposed penalty is to the tune of Rs.10,74,780/- (50% of the value of goods) apart from tax of Rs.1,93,460/-.

7. Learned counsel invites Court's attention towards the circular dated 10.04.2018, issued by the Central Board of Indirect Taxes and Customs and submits that an officer empowered to intercept and inspect a conveyance, is only required to verify prescribed documents and where prima-facie no discrepancies are found, he is required to allow the goods to move further. It is argued by Mr. Kothari that the respondent No.2 has neither understood the import and purport of the provisions of Sections 68 & 129 of the Act nor has he adhered to the mandate of the circular, which is binding upon him.

8. Mr. Bhandari, learned counsel for the respondents, on the other hand, submits that the petitioners have directly rushed to this Court without even filing reply before the respondent No.2. It is argued that the petitioners could have applied for release of the goods as provided under Sections 67, 68 and 129(1) of the Act of 2017, instead of invoking writ jurisdiction of this Court. He further



argues that as an efficacious alternative remedy of preferring an appeal against the detention order is available to the petitioners, instant writ petition is not maintainable.

9. Learned counsel places heavy reliance upon the judgment dated 22.11.2019, passed by Hon'ble the Supreme Court in the case of State of Uttar Pradesh & Ors. Vs. M/s. Kay Pan Fragrance Pvt. Ltd. [Civil Appeal No.8941/2019] and argues with equal vehemence that Hon'ble the Supreme Court has clearly held that the High Court should not interfere and issue order(s) of release of the vehicles/goods and in appropriate case, it should direct the concerned petitioner to furnish security as provided under Rules 140 and 141 of the Rules of 2017.

10. Learned counsel further relies upon orders dated 15.03.2019 [M/s. Amit Traders Sangariya Vs. State & Ors. : SBCWP No.2055/2019), 05.02.2020 (M/s. Govindwal Sahib Vanaspati Mills : SBCWP No.48/2020); and 03.03.2021 (Leeladhar Meghwal & Anr. Vs. The Asstt. Commissioner State Commercial Taxes : SBCWP No.2672/2021) passed by this Court and judgment of Gujarat High Court dated 06.11.2020, rendered in the case of *Majid Bilalbai Akbani Vs. State of Gujarat* (Special Civil Application No.12754/2020) to contend that in all similar cases, the Courts have either refused to interfere or has required the concerned petitioner to furnish bank guarantee in accordance with Rules 140 and 141 of the Rules of 2017.

11. During the course of arguments, Mr. Bhandari adverts to the provisions contained in Section 129 of the Act of 2017 and argues that on finding any violation of the provisions of the Act of 2017, the respondent No.2 is empowered to conduct inquiry and assess the tax/penalty.



12. Learned counsel cites a judgment of Hon'ble the Supreme Court in the case of State of U.P. & Ors. Vs. Ram Sukhi Devi [2005 SCC (L&S) 560] to argue that this Court cannot direct release of the goods/vehicles and grant final relief at the interim stage.

13. Having heard learned counsel for the parties, this Court is of prima facie view that the provisions of Sections 67, 68 and 129 of the Act of 2017 are required to be interpreted. The circular dated 13.04.2018, issued by the Central Board of Indirect Taxes and Customs though addresses the hardship being faced by the trade/industry on account of incorrect interpretation, if not misuse/abuse of the provisions of Sections 67/68 & 129 of the Act of 2017 and lays down guidelines for inspection and release of the goods in transit, but the same has not been adhered to by the respondent No.2.

14. As is evident in the present case, if a Check Post Officer or Anti Evasion Officer intercepting the goods and vehicle while in transit, is permitted to carry on such fishing and roving inquiry, it would impede, rather retard free flow of trade resulting in unnecessary and unwarranted harassment to the carrier of goods, so also to the consignor/consignee.

15. Upon perusal of detention memo (Annex.8), so also Physical Verification Report (Annex.R/4), this Court finds that it is an admitted case of the respondent No.2 that all the documents prescribed under law were available and goods, including its weight, was found in order. Even, genuineness of the goods in transit per se is not in dispute inasmuch as, documents and e-way bill/other documents in relation to transit depicting the goods to be 34.120 tons of MS Scrap in quantity and the nature of goods on physical examination was found to be in accord.



16. In preliminary opinion of this Court, once the goods in question are in conformity with the documents of transit, the scope of inquiry under Section 68 of the Act of 2017 by Anti Evasion Officer/ Check Post Officer or flying squad ends. He cannot kick start an inquiry relating to the genuineness of purchase and corresponding input tax credit, which essentially relates to purchase of goods.

17. No satisfactory reason has surfaced justifying the inquiry being conducted by respondent No.2. Complete report of the jurisdictional assessing authority, as mentioned in Annex.7, is not on record.

18. Mr. Bhandari's contention that the enquiry being undertaken by the respondent No.2 is permissible as per the provisions of Section 129 (1) of the Act of 2017, on a deeper scrutiny turns out to be not as palatable as has been projected. Because, sub-section (1) uses the expression "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.....". The language used in sub-section (1) of Section 129 of the Act of 2017 is indicative of the position that the goods in transit or under stock, which are in transit themselves must be subject matter of violation/contravention of the statutory provision.

19. As far as applicable tax on the goods under consideration is concerned, the same has admittedly been appropriately charged and the goods and vehicle in transit are accompanied with the prescribed documents. Thus, in the prima-facie opinion of this Court, provision of Section 129 cannot be resorted to. It is moreso, when the allegation is, that the seller/consigner is seeking to avail wrong input tax credit. The incident or occasion of



availing input tax credit is an event preceding the transaction in question and completely divorced from the movement/transit in question, which is in pursuance of inter-state sale from Jodhpur to Mandi Gobindgarh; transacting parties are different – H.R. Enterprises (Petitioner No.1) and Devbhoomi Castings (P) Ltd.

20. So far as judgment of Hon'ble the Supreme Court in case of *M/s Kay Pan Fragrance* (supra) is concerned, in the opinion of this Court, Hon'ble the Supreme Court passed the order dated 22.11.2019, having regard to the fact that various interim orders were passed by Allahabad High Court releasing the goods on furnishing of the solvent security and the writ petitions were thereafter disposed of as having rendered infructuous, without there being any adjudication on merit.

21. Moving on to the final orders passed by Coordinate Benches of this Court requiring the concerned petitioners to furnish bank guarantee have also been placed for perusal of this Court; upon perusal of the same, this Court finds that neither the jurisdiction of the respondent – authority nor the question relating to scope of powers of the empowered officer while goods in transit was brought for consideration of the Court.

22. Adverting to the final judgment dated 05.02.2020 in the case of *M/s. Govindwal Sahib Vanaspati Mills* (supra), suffice it to mention that this Court, upon perusal of the record and reply, recorded a categorical finding of evasion of tax and discrepancy in the documents, whereas, such is not the position, when it comes to the case in hands.

23. Mr. Sunil Bhandari, learned counsel requests that instead of passing interim order, the petition itself be decided. Record of proceedings reveals that when this petition, which was filed on



23.03.2021, came up for motion hearing on 24.03.2021, a Coordinate Bench of this Court directed the matter to be listed on 01.04.2021 (today). No notices have yet been issued. That apart, final decision of the case will require a rather thorough examination of facts and law and indepth deliberation.

24. Both the learned counsel have cited host of judgments, but none of them deal with the scope of provisions under consideration. The scope of provisions of Sections 67/68 & 129 of the Act, in the light of the facts like the ones at hands, has perhaps not been examined by any Constitutional Court. The assesses and the authorities under CGST/SGST/IGST are giving their own interpretation of the provisions of the Act relating to Goods in Transit.

25. All stake holders are treading in the new GST regime with uncertainties as the path is comparatively unfamiliar, unmarked and unpaved. The parameters of the authorities' powers and dealers' duties/responsibilities/liabilities are yet to be demarcated.

26. Notice dated 18.03.2021 (Annex.9) is an example of such uncertainty. A perusal of the said notice issued in MOV-07 shows that respondent No.2 has jumped to propose penalty under clause (b) of Section 129(1)(a) on the pretext that as per petitioner No.2, no-one has appeared for the owner of goods and proposed penalty as high as 50% of the value of goods. As against this, he was firstly required to propose penalty under clause (a) of Section 129(1), which would have been equal to the amount of tax. Given that the penalty under clause (a) would have been Rs.1,93,460/- and proposed penalty under clause (b) is Rs.10,74,780/-, in the opinion of this Court, the statutory remedies will be inefficacious.



Even, remedy relating to release of goods under Section 129(1)(c) of the Act of 2017 would be illusory.

27. Hence, issue notice. Issue notice of stay application also.

28. Mr. Sunil Bhandari accepts notices on behalf of the respondents and prays for two weeks' time to place on record the original report and documents sent by the jurisdictional assessing officer.

29. Having regard to the fact that goods and vehicle are lying stationed/detained with the respondent No.2 since 11.03.2021; inspection and physical verification of the goods including its weight has already been done. Hence, goods and vehicle are not required, at least for the purpose of inquiry. If they are detained for indefinite period, the condition of stationary truck with weight of 38.120 MT on its tyres, and loss of business of hopeless driver will be irreversible. Besides this, the kind of interim order, which this Court proposes to pass, would not amount to final relief, hence, the judgment cited by learned counsel for the respondents does not apply in the facts of the present case.

30. In view of what has been stated hereinabove and in the interest of justice it is deemed expedient and hence, respondent No.2 is directed to release the goods and vehicle in question forthwith, in case petitioner No.1 furnishes two solvent sureties to the tune of Rs.15 lakhs executed by dealers registered in the State of Rajasthan. He shall not insist upon furnishing of bank guarantee or cash security.

31. The petitioner No.1 shall further be required to file an undertaking before this Court that in the event of dismissal of the writ petition and/or upon final determination of liability (if any),



subject of course to their rights of availing appropriate remedies,
the amount would be paid.

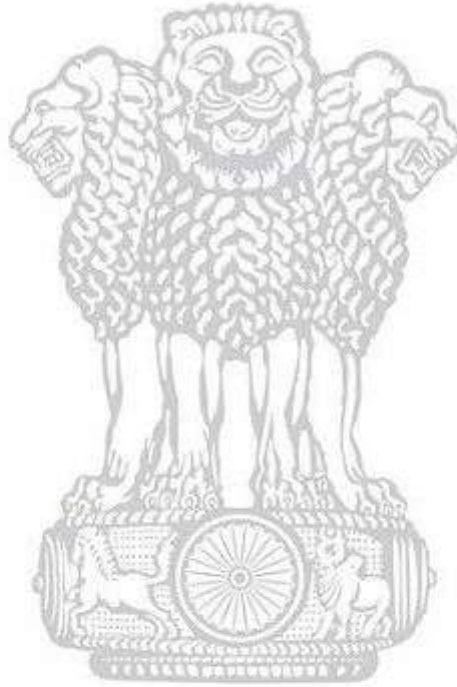
32. The case be listed on 19.04.2021.

(DINESH MEHTA),J

61-skm/-



RAJASTHAN HIGH COURT



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