IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No.38 of 2020

M/s Shah Concast Pvt. Ltd., ...Petitioner

Versus

The State of Uttarakhand & others

.......Respondents

Present:- Mr. Jitendra Chaudhary, Advocate for the petitioner.
Mr. Yogesh Pandey, Additional CSC, for the State/respondents.

Hon'ble Sudhanshu Dhulia, J. (Oral)

Petitioner's truck was evidently transporting the building material in form of iron rods, which was apprehended by the Commercial Tax Department, Rudrapur, District Udham Singh Nagar. The petitioner was not able to show the relevant papers, and therefore, a tax, including a penalty of Rs.2,52,810/- (Rupees Two Lakh Fifty Two Thousand Eight Hundred Ten Only) has been imposed on the petitioner and the truck has also been seized.

2. Learned counsel for the petitioner relies upon sub-section (6) of Section 67 read with Section 129 of the Uttarakhand Goods and Services Tax Act, 2017 which read as under:-

"**67**.

(1)....

(2)....

(3)....

(4)....

(5)....

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

129. (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."

3. Learned counsel for the petitioner says that on furnishing the security, goods are liable to be released.

4. On the other hand, learned State Counsel submits that the order under challenge is an appellable order under Section 107 of the Uttarakhand Goods and Services Tax Act, 2017 before the Commissioner.

5. The order impugned is indeed appellable, which gives rights to the petitioner to get his goods and the vehicle released, provided the petitioner gives a security in the form of bank guarantee to the concerned Department.

6. Since the petitioner has an alternative remedy, no interference is being called for in the matter.

7. Consequently, the writ petition is dismissed on ground of alternative remedy.

(Sudhanshu Dhulia, J.)
06.01.2020

Nitesh/