

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 765 of 2019

M/s Agarwal Timber Suppliers

...Appellant

Vs.

State of Uttarakhand and others

...Respondents

Mr. Piyush Garg, learned counsel for the appellant-writ petitioner.

Mr. C.S. Rawat, learned Additional Chief Standing Counsel for the State of Uttarakhand-respondents 1 to 3.

Mr. V.K. Kapruwan, learned Standing Counsel for the Uttarakhand Forest Development Corporation-respondents 4 and 5.

Dated: 06th August, 2019

Coram: Hon'ble Ramesh Ranganathan, C.J.

Hon'ble Alok Kumar Verma, J.

Ramesh Ranganathan, C.J. (Oral)

Heard Mr. Piyush Garg, learned counsel for the appellant-writ petitioner, Mr. C.S. Rawat, learned Additional Chief Standing Counsel for the State Government, Mr. V.K. Kapruwan, learned Standing Counsel for the Uttarakhand Forest Development Corporation and, with their consent, the Special Appeal is disposed of at the stage of admission.

2. This intra-Court appeal is preferred by the appellant-writ petitioner aggrieved by the order passed by the learned Single Judge in Writ Petition (M/S) No. 2190 of 2019 dated 31.07.2019, whereby the learned Single Judge dismissed the Writ Petition on the ground of alternative remedy.

3. The appellant-writ petitioner purchased timber from the Uttarakhand Forest Development Corporation, a statutory Corporation created under Section 3 of the Uttar Pradesh Forest Corporation Act, 1974. The invoice raised by the Uttarakhand Forest Development Corporation (for short "the Corporation"), on the appellant-writ petitioner, is said to be a tax invoice, meaning thereby that both CGST and SGST were charged on the sale price of the goods. The appellant-

writ petitioner claims to have paid the said amount to the Corporation even before the goods were transported. It is the appellant-writ petitioner's case that it is the Corporation which, instead of raising two separate e-way bills for two separate consignments, had raised one e-way bill for the total amount on both the consignments.

4. While the goods of the appellant-writ petitioner were in transit, they were seized and, on the ground that only one e-way bill was issued instead of two, a penalty of Rs. 1,70,688/- was sought to be levied on the appellant-writ petitioner. Contending that the penalty, if at all, should have been paid by the Corporation, since the error in issuing one e-way bill instead of two was on their part and not on the part of the appellant-writ petitioner, the jurisdiction of this Court was invoked under Article 226 of the Constitution of India. The learned Single Judge, however, dismissed the writ petition at the stage of admission relegating the appellant-writ petitioner to the remedy under Section 107 of the Central Goods and Services Tax Act, 2017 (for short "the CGST Act"). Aggrieved thereby, the present Special Appeal.

5. Mr. Piyush Garg, learned counsel for the appellant-writ petitioner, would submit that the proceedings under challenge is an order of detention of goods under Section 129 of the CGST Act; it is against the demand raised on detention of the goods, for payment of tax and penalty, that the writ jurisdiction of this Court was invoked; tax has already been paid to the Corporation before the goods were even transported by the appellant-writ petitioner; the remedy, under Section 107 of the CGST Act, is not efficacious since Sub-Section (6) of Section 107, which requires 10% of the disputed amount to be paid, only provides for stay of payment of the remaining amount, and nothing more; the appellant-writ petitioner would not be able to take delivery of the seized goods from the second respondent since Section 107 of the CGST Act does not provide for such an eventuality; and the appellant-writ petitioner had perforce to avail the remedy of invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

6. Section 107 of the CGST Act relates to Appeals to the Appellate Authority and, under Sub-Section (1) thereof, any person, aggrieved by any decision or order passed, under the CGST Act or the State Goods and Services Tax Act, by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which such decision or order is communicated to any such person. While an appeal, under Section 107 of the CGST Act, would lie to the Appellate Authority against any decision or order passed by an adjudicating authority, Section 2(4) of the CGST Act defines “adjudicating authority” in very broad terms. Under Section 2(4) of the CGST Act, an “adjudicating authority” has been defined to mean any authority, appointed or authorised to pass any order or decision under the Act, but not to include the authorities specified therein. Admittedly the Appellate Authority, under Section 107(1) of the CGST Act, is not one such. Since an appeal would lie against any order passed or decision taken by any authority appointed or authorized to pass any order or decision under the Act, it does appear that an order of detention can also be appealed against under Section 107(1) of the CGST Act.

7. Section 107(6) of the CGST Act stipulates that no appeal shall be filed, under Sub-Section (1), unless the appellant has paid – (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a sum equal to 10% of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed. Section 107(7) of the CGST Act stipulates that, where the appellant has paid the amount under Sub-Section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

8. On a conjoint reading of Sub-Sections (1), (6) and (7) of Section 107 of the CGST Act, it is evident that, while an appeal can be filed against any order or decision of an adjudicating authority, the pre-

condition, for such an appeal to be filed, is payment of the demanded tax or penalty and 10% of the disputed amount.

9. In the present case, there is no dispute regarding tax and it is the appellant-writ petitioner's case that the tax in its entirety has been paid to the Corporation which, in turn, is obligated to remit the said amount to the State Tax Department. Since the appellant-writ petitioner disputes levy of penalty in its entirety, they would, in terms of Section 107(6) of the CGST Act, only be required to deposit 10% of such penalty and as a result, in terms of Sub-Section (7) of Section 107 of the CGST Act, the remaining penalty need not be paid. That does not, however, solve the problem which the appellant-writ petitioner faces i.e. for release of the goods detained by the respondent-authorities. If, on the other hand, he were to comply with the demand notice issued under Section 129(1) of the CGST Act then, in terms of Section 129(5) of the CGST Act, on payment of the amount referred to in Sub-Section (1), all proceedings in respect of the notice specified in Sub-Section (3) shall be deemed to be concluded, in which event the goods would be released. Would conclusion of all proceedings mean that the appellant would not be entitled to prefer an appeal?

10. It is unnecessary for us to examine this contention in the present proceedings. Suffice it, in the facts and circumstances of the present case, to modify the order of the learned Single Judge and, instead, direct the appellant-writ petitioner to deposit the entire amount of penalty i.e. for a sum of Rs. 1,70,688/- with the concerned authorities, and furnish proof of deposit of the said amount along with the Appeal to be preferred under Section 107(1) of the CGST Act. On such deposit, and on an Appeal being preferred thereafter within the period of limitation prescribed under Section 107(1) of the CGST Act, the Appeal shall be entertained by the Appellate Authority, and shall be adjudicated on its merits. As soon as an Appeal is preferred by the appellant-writ petitioner, enclosing thereto proof of payment of total penalty amount of Rs. 1,70,688/-, the subject goods shall be released in their favour.

11. It is made clear that, in case the Appeal is decided in the appellant-writ petitioner's favour, they shall then be entitled for refund of the amount deposited by them pursuant to the order now passed by us.

12. Needless to state that it is always open to the appellant-writ petitioner to raise all such contentions, as are available to them in law, before the Appellate Authority.

13. The Special Appeal is, accordingly, disposed of. No costs.

14. Let a certified copy of this order be issued to the parties, on payment of the prescribed charges, by 07.08.2019.

(Alok Kumar Verma, J.)

06.08.2019

Rahul

(Ramesh Ranganathan, C.J.)

06.08.2019