HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 48/2020

M/s Govindwal Sahib Vanaspati Mills, Through Its Partner Rajeev Kumar Age About 59 Years, S/o Late Sh. Raj Kishore, 136 Shaheed Udham Singh Nagar, Jalandhar Punjab Pan Csfpm0146Lgstin03Aadfg5879N1Zx.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary Department Of Finance, Secretariat, Jaipur.
2. The Commissioner, Commercial Taxes Department, Kar Bhawan, Ambedkar Circle, Jaipur.
3. The Assistant Commissioner (Anti Evasion), Commercial Taxes Department, Sri Ganganagar.
4. State Tax Officer, Ward I Anti Evasion, Sri Ganganagar.

----Respondents

For Petitioner(s) : Mr. J.S.Bedi.
For Respondent(s) : Mr. Anil Bhansali.

HON'BLE MR. JUSTICE ARUN BHANSALI

Order

05/02/2020

This writ petition has been filed by the petitioner firm seeking a direction to the respondents to release the goods along with vehicle intercepted on 9/12/2019 under Rajasthan Goods & Service Tax Act, 2017 ('RGST Act') and has sought inquiry by an independent agency against the role of respondent no. 4 on account of his having exercised the powers in an illegal and arbitrary manner.

It is *inter alia* indicated in the writ petition that the petitioner is a registered dealer under the Punjab GST Act, 2017 and having its factory at Taran Taran Road, Sangrana Sahib, Punjab. It is claimed that the vehicle No. PB-03-AT-4881 loaded with cotton seed oil from M/s. Sunil Oil Mills, Goluwala, Rajasthan in favour of the petitioner was intercepted by respondent no. 4 on 9/12/2019 at Sriganganagar by issuing MOV-1 and MOV-2 indicating that the owner/driver/person-in-charge of the goods has tendered documents mentioned in Annex.2 for verification and upon verification the authority was of the opinion that inspection of the goods under movement was required to be done under the provisions of Section 68(3) of the RGST Act read with Central GST Act, 2017 on account of the fact that E-way bill was dated 7/12/2019 and it was claimed that the vehicle broke down on the same date at the starting point and on account of contradictory statements, the documents were also required to be examined.

The petitioner approached the respondents for release of goods along with vehicle and made a written request on 16/2/2019 (Annex.5) under the provisions of Section 129 of RGST Act. It is alleged in the petition that despite the petitioner being entitled for release of goods under Section 129 (3) of the RGST Act, the respondent no.4 acted unreasonably in not releasing the goods in question.

During the pendency of the petition, an additional affidavit was filed placing on record certain other documents i.e. Form MOV-3, MOV-4 and MOV-6, whereby, the goods have been detained indicating the findings based on the statements of driver of truck regarding violation of provisions of GST Act and with reference to GPS Status of the vehicle in question, finding that gross violation of provisions of GST Act were made, a notice was issued under Section 129 (3) of the Act to the driver/person-in-charge of the vehicle indicating that the goods can be released upon furnishing a security collateral to the amount payable under clause (a) or clause (b) of said sub-section along with calculation applicable for the purpose.

It is submitted by learned counsel for the petitioner with reference to provisions of Section 129 of the Act that the petitioner being consignee of the goods was deemed to be owner and was, therefore, entitled to seek release of the goods under Section 129 of the Act and, therefore, the action of the respondents in denying release of goods despite petitioner being ready to comply with the requirements of the provisions is wholly unjustified and, therefore, the respondents be directed to comply with the requirements of Section 129 of the Act and release the goods.

A response to the writ petition has been filed by the State *inter alia* raising preliminary objection that the petitioner does not have the *locus standi* to invoke the extra ordinary jurisdiction of this Court as the petitioner has failed to establish his ownership on the goods found in the intercepted vehicle. It is submitted that from the material which has come on record, it is apparent that goods are from one M/s. Sunil Oil Mills, Goluwala and though E-Way bill pertains to the petitioner, from the statements of driver, records of the Toll Plaza and GPS location of the driver/goods-in-charge it is apparent that the goods which were loaded by M/s Sunil Oil Mills on 7/12/2019 have already been delivered to the petitioner on 8/12/2019 and in second round the vehicle (oil tanker) was refilled for some other firm and it started its journey under the same E-way bill and other documents only with a motive to avoid tax liability and, therefore, the petition deserves to be dismissed.

Submissions have been made that pursuant to the notice MOV-6 and MOV-7 dated 28/12/2019 the requisite order has been passed on 14/1/2020, which order is appealable under Section 107 of the Rajasthan GST/ Central GST Act and, therefore, the petition is not maintainable.

Along with the reply, copies of material including statements of goods-in-charge, Toll Plaza transaction, VRN Report, booking register of carrier, submissions pertaining to GPS location along with notice MOV-6 and MOV-7 issued to the petitioner have been placed on record. The respondents have also placed on record the order dated 14/1/2020 (Annex.R/5), wherein, the order has been passed requiring the driver/person-in-charge to show cause as to why the proposed tax & penalty should not be paid by him, wherein, all the above facts have been indicated.

Submissions have also been made that under the provisions of Section 107 of the Act any person aggrieved by any decision or order passed under the Act can file appeal and, therefore, the petitioner, if feeling aggrieved also can file appeal and the petition filed seeking release of the goods on that count deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

A bare look at the various submissions made and the material which has been placed on record reveals that though the petitioner has tried to make out a case of having made an innocuous prayer of seeking release of goods under the provisions of Section 129(1) of the Act, the copious material produced by the respondents shows the *modus operandi* being employed for the purpose of evasion of the tax liability under the provisions of the

Act and on that count the status of the petitioner in seeking release of the goods claiming himself to be the owner, if at this stage is recognized by the respondents, is likely to prejudice the plea/stand which has been taken by the respondent department. The status of the petitioner as owner of the goods is in question inasmuch as while the petitioner relies on E-way bill dated 7/12/2019 for claiming himself the consignee, the claim of the respondents is that the goods already stand delivered insofar as the E-way bill dated 7/12/2019 is concerned. Therefore, the claim of the petitioner as owner qua the goods which are loaded on the detained vehicle has to be determined by the competent authority in accordance with law and the said aspect cannot be preempted by directing release of the goods to the petitioner.

Further, no rejoinder has been filed by the petitioner disputing and/or contradicting the material which has been produced by the respondents by way of detailed reply and, therefore, at this stage, purportedly innocuous prayer made by the petitioner cannot be taken on its face value so as to order for release of the goods/vehicle.

The order is open to appeal as submitted by learned counsel for the respondents and, therefore, on account of availability of alternative remedy also interference under Article 226 of the Constitution of India in the present nature matter would not be justified.

In view of the above discussion, no case for interference is made out in the writ petition and the same is, therefore, dismissed.

(ARUN BHANSALI),J

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