<u>Court No. - 29</u>

Case :- WRIT TAX No. - 1411 of 2018

Petitioner :- M/S R K International
Respondent :- Union Of India And 3 Others
Counsel for Petitioner :- Naveen Chandra Gupta
Counsel for Respondent :- C.S.C.,A.S.G.I.,Om Prakash Srivastava

<u>Hon'ble Pankaj Mithal,J.</u>
<u>Hon'ble Ashok Kumar,J.</u>

Heard Sri N.C. Gupta, learned counsel for the petitioner and Sri C.B. Tripathi, learned counsel for the respondents.

The goods of the petitioner which were being carried from Delhi to Ghaziabad were seized on 22.9.2018 on the basis of certain irregularities in the documents accompanying the goods.

The seizure of the goods and the vehicle was challenged by the petitioner by filing Writ Tax No. 1328 of 2018 (M/s. R.K. International Vs. Union of India and three others). The Court vide interim order dated 4.10.2018 directed for the release of the goods subject to deposit of the security other than cash and bank guarantee or in the alternative to accept an indemnity bond, equal to the value of tax and penalty, if any, to the satisfaction of the seizing authority.

In pursuance to the above interim order, petitioner approached the Assistant Commissioner (Commercial Tax) for release of the goods by offering to furnish security and the indemnity bond of the value of tax and penalty. However, the Assistant Commissioner (Commercial Tax) vide order dated 6.10.2018 directed for furnishing security of Rs. 10,75,770/- and an indemnity bond of the same amount for the purposes of the release of the goods and the vehicle.

Aggrieved by the aforesaid order, petitioner has preferred this writ petition.

The submission of Sri Gupta, learned counsel for the petitioner is that the aforesaid order is clearly in violation of the interim direction of this court dated 4.10.2018 wherein security and indemnity bond equal to the value of tax and penalty alone were directed to be submitted for the purposes of release of the goods and the vehicle.

The interim order of the court dated 4.10.2018 is very clear. It only directs for furnishing security of indemnity bond of the value of the tax and penalty and therefore the Assistant Commissioner (Commercial Tax) can not demand security or indemnity bond of any higher value.

The notice under Section 129 (3) of the Act proposes tax of Rs. 59,120/- and imposition of penalty of the same amount of Rs. 59,120/-.

In the present case, it is the owner who has come forward for release of the goods and the vehicle and therefore in the light of the interim direction of this court, security or indemnity bond equal to the amount of the purposed tax and penalty alone as mentioned above could have been demanded by the Assistant Commissioner (Commercial Tax), instead he has unnecessarily asked for security/indemnity bond of heavy amount of Rs. 10,75,770/-.

The aforesaid demand can not be sustained in law in the facts and circumstances of the case and the provisions of Section 129 (1) of the Act.

Accordingly, impugned order dated 6.10.2018 is quashed and the direction is issued to the Assistant Commissioner (Commercial Tax) to accept the security and indemnity bond as directed vide order dated 4.10.2018 of the value of tax and penalty ie. Rs. 59,120/- each from the petitioner and to release the goods and the vehicle forthwith accordingly.

We would like to observe that the impugned order is nothing but an act of harassment at the hands of the authorities of the Commercial Tax. Such highhandedness on part of the authorities is highly depreciated and a note of caution is sounded to the department to be careful in dealing with such matters and to follow the directions issued by the High Court in its true sense without intermedling with them.

The writ petition is allowed with costs.

Order Date :- 12.11.2018
SKS