

A.F.R.

Court No. - 3

Case :- WRIT TAX No. - 111 of 2018

Petitioner :- M/S R K Overseas

Respondent :- Union Of India And 3 Ors

Counsel for Petitioner :- Naveen Chandra Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Mithal,J.

Hon'ble Saral Srivastava,J.

Heard Sri N.C. Gupta, learned counsel for the petitioner and Sri C.B. Tripathi Special Counsel for the State of U.P. Sri Anant Kumar Tiwari learned counsel appearing for the Union of India.

The goods in transit have been seized vide order dated 18.01.2018 passed under Section 129(1) of the U.P. Goods and Service Tax Act, 2017 (hereinafter referred to as Act).

The order of seizure has been passed on two grounds that the goods were being transported from New Delhi and not from Ghaziabad as alleged. Secondly, the value of the goods has been suppressed and according to Kaccha bill found with the consignment, the value of the goods is much higher.

A preliminary objection is taken by Sri C.B. Tripathi, that against the order passed under Section 129(1) of the Act an appeal would lie under Section 107 of the Act and that a penalty order has also been passed under Section 129(3) of the Act.

In response to the above preliminary objection Sri Gupta has submitted that he is not challenging the order of penalty passed under Section 129(3) of the Act rather his challenge is only confined to the order of seizure.

Section 107 of the Act provides for appeal to appellate authority against the orders passed under the Act by the adjudicating authority but Section 121 of the Act carves out the exceptions.

Section 121 of the Act which provides for non-appealable orders reads as under:-

"121. Non-appealable decisions and orders- Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of State tax if such decision taken or order passed relates to any one or more of the following matters, namely:

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under this Act; or

(d) an order passed under Section 80."

A simple reading of the aforesaid provision reveals that the legislature has not provided for any appeal against the order if any passed pertaining to the seizure. The order impugned is nothing but an order pertaining to seizure and as such is not appealable.

On the conjoint reading of Sections 107 and 121 of the Act it is thus apparent that though all orders passed under the Act by the adjudicating authority are appealable but not the one's which have been specifically excluded from the purview of appeal under Section 121 of the Act such as orders pertaining to seizure.

In view of the aforesaid facts and circumstances, we hold that the order of seizure of the goods in transit or storage passed under Section 129(1) of the Act is not appealable and therefore, a writ petition is maintainable against it subject to the limitations of judicial review.

In the instant case, the goods in transit have been seized for the reason that the authorities are of the opinion that the goods have originated from New Delhi and as such amounted to interstate transaction.

This finding has been returned by refusing to accept the statement of the driver of the vehicle, who had categorically stated that he had loaded the goods from Ghaziabad, on the basis of some secrete information furnished to the authorities and the loose papers (Kacchi Parchi) recovered from the vehicle in uttered disregard to the invoice and other documents accompanying the

goods which disclosed the transit of goods from Ghaziabad only.

Prima facie the recording of the aforesaid finding for the purposes of seizure is in the nature of adjudication which cannot be done without opportunity of hearing to the party concerned.

In this view of the matter, we consider that the matter requires consideration.

Accordingly, Sri Tripathi, is directed to seek instructions and file counter affidavit within two weeks.

List the petition for admission/final disposal immediately thereafter.

In the meantime, the goods along with vehicle shall be released on furnishing indemnity bond and security other than cash and bank guarantee in respect of proposed tax and penalty as has been determined under Section 129(3) of the Act subject to the penalty of the said order.

Order Date :- 1.2.2018

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