

In Chamber

Case :- WRIT TAX No. - 304 of 2020

Petitioner :- Sohan Lal Commodity Management Pvt. Ltd. And Another

Respondent :- State Of U.P. Through Its Principal Secretary (Tax And Institutional Finance) And 6 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Shashi Kant Gupta,J.

Hon'ble Saurabh Shyam Shamsbery,J.

This writ petition has been filed, inter alia, for the following prayers:

"(a) Issue a writ, order or direction in the nature of certiorari quashing the proceedings pursuant to the search and seizure operation carried out at the warehouse of the petitioner no. 1 on 13.09.2019 at Chandausi and on 13.09.2019 and 28.02.2020 at Barabanki (Annexure-1 and 2 to the writ petition).

(a-i) Issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to transfer the adjudication of the case to an independent officer, who should not be an officer of the Moradabad and Ayodhya Zones of State GST.

(a-ii) Issue a writ, order or direction in the nature of directing the respondent to not to take any coercive action against any officer, employee and director of the company till the time the proceeding is ongoing.

(b) Issue a writ, order or direction in the nature of mandamus directing the respondent to release all the documents, assets and other material seized by them on 13.09.2019 at Chandausi and on 13.09.2019 and 28.02.2020 at Barabanki."

The Court convened through Video Conferencing.

Heard Shri Rahul Agarwal, learned counsel for the petitioners, Shri Manish Goyal, learned Senior Advocate/Additional Advocate General assisted by Shri B.K. Pandey, learned Standing Counsel appearing on behalf of the State and perused the material available on record.

During course of arguments, learned counsel for the petitioners confined his prayer only with respect to prayer no. (b) in the writ petition.

At the very outset, Shri Manish Goyal, learned Additional Advocate General appearing on behalf of the State has placed before us the judgment and order dated 22nd November, 2019 passed by the Hon'ble Apex Court in the Case of **The State of Uttar Pradesh & Others Versus M/S Kay Pan Fragrance Pvt. Ltd in Civil Appeal No. 8941 of 2019** wherein the Apex Court has interalia observed as follows:-

"There is no reason why any other indulgence need be shown to the assessee, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even upto the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in [Section 67](#) (6) of the Act. In the interim orders passed by the High Court which are subjectmatter of assail before this Court, the High Court has erroneously extricated the assessee concerned from paying the applicable tax amount in cash, which is contrary to the said provision.

In our opinion, therefore, the orders passed by the High Court which are contrary to the stated provisions shall not be given effect to by the authorities. Instead, the authorities shall process the claims of the concerned assessee afresh as per the express stipulations in [Section 67](#) of the Act read with the relevant rules in that regard. In terms of this order, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated

provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances. That be done within four weeks without any exception.

We reiterate that any order passed by the High Court which is contrary to the stated provisions need not be given effect to in respect of all the cases referred in the affidavit by the State Government before this Court and fresh cases which may have been filed or likely to be filed before the High Court in connection with the subject matter of these appeals, by all concerned and are deemed to have been set aside/modified in terms of this order.

In view of this order, all the Writ Petitions pending before the High Court, list whereof has been furnished in the affidavit are deemed to have been disposed of accordingly. We have passed this common order to cover all cases of seizure during the relevant period, to obviate inconsistency in application of Law and also to do away with multiple appeals required to be filed by the State/ assessee to assail the unstatable orders/directions passed by the High Court in subject writ petition(s) referred to in the affidavit filed by the State before this Court.

Accordingly, the appeals are disposed of in the afore stated terms. All pending applications are also disposed of."

Shri Manish Goyal, learned Addl. Advocate General has submitted that the Central Goods and Services Tax Act, 2017 provides a complete procedure for release of such goods, as contained in Section 67 of the Act read with Rule 141 of the relevant Rules. It has been further submitted by him that the petitioners should have approached the appropriate authority under Uttar Pradesh Goods and Services Tax Act, 2017 (in short "the Act") to ventilate their grievance.

Per contra, learned counsel for the petitioners has submitted that "Mentha Oil" has been seized in the matter which is perishable in nature but the concerned authority has not yet exercised its power under Section 67 of the Act (in short "the Act, 2017").

While rebutting the contention made by the learned counsel for the petitioners, learned Standing Counsel has stated that "Mentha Oil" is not perishable in nature and it has not been included in the schedule contained in the Notification dated 13th June, 2018 issued by Government of India.

Considering the facts and circumstances of the case, without expressing any opinion on the merits of the case, this writ petition is finally disposed of with a direction to the petitioners to make an appropriate application/representation before the concerned authority under the relevant provision of the Act, 2017 ventilating their grievances along with a certified copy of this order enclosing therewith a copy of the writ petition and its Annexures and, if any such application/representation is filed, the concerned authority shall make all endeavour to consider and decide the same by a reasoned and speaking order, after affording opportunity of personal hearing to the petitioners, in accordance with law expeditiously preferably within two weeks from the date of receipt of the said application.

Order Date :- 2.6.2020

Arun