<u>Court No. - 7</u>

Case :- WRIT TAX No. - 1583 of 2018

Petitioner :- M/S Ashu Traders Madar Gate, Aligarh through its propritor Girraj Kishore Rathore son of Dwarika Prasad Rathore, Resident of 14/128, Gali Girdharilal, Ramlila Ground, G.T. Road, Aligarh
Respondent :- Union of India through its Secretary, Ministry of Finance, New Delhi and 3 Others
Counsel for Petitioner :- R. S. Mishra
Counsel for Respondent no. 1 :- Chandra Prakash Yadav
Counsel for Respondent nos. 2 to 4 :- C. B. Tripathi (Special Counsel)

<u>Hon'ble Biswanath Somadder,J.</u>
<u>Hon'ble Dr. Yogendra Kumar Srivastava,J.</u>

The subject matter of challenge in the instant writ proceeding is in respect of a seizure order dated 10th May, 2018, issued by the respondent no. 4, namely, the Deputy Commissioner, (Special Investigation Branch), Commercial Tax, Range-B, Aligarh, District Aligarh, whereby the goods of the writ petitioner were seized. The writ petitioner is not only challenging the seizure order dated 10th May, 2018, it is also praying for release of the seized goods.

A counter affidavit filed on behalf of the State reveals, *inter alia*, as follows :-

> *"5. That, it is to submit here that INS-01 is an Authorization letter / Order issued by the Higher Authority constituting a Team of responsible officers to conduct raid in such cases, where the Department is affirm that irregularities and theft of Tax are being committing after secret enquiry. It is also submitted that after issuance of INS-01, the constituted Team raids the suspected*

person / firm in the presence of witness after taking their signatures on INS-01 and after conducting the enquiry, the constituted Team pass order of seizure, which is known as INS-02.

6. That, the Answering Respondent has got confidential information from reliable sources that the Petitioner is indulged in irregularities in order to evade tax and not maintaining the Account Book / Stock Register as per norms of the UPGST Act 2017 and U.P.G.S.T. Rule, in order to get illegal profit.

7. That, upon such information, a enquiry was conducted by the Answering Respondents and when the aforesaid fact was found true, then raid was conducted after the Authorization.

10. That, the contents of Paragraph No.4 of the Writ Petition are declaratory in nature, it is submitted that the Petitioner is involved in transactions outside of UP, which is clear from return file and till date no Tran-1 has been submitted by the Petitioner.

11. That, in reply to the contents of Paragraph Nos. 5, 6 and 7 of the Writ Petition it is submitted that there was enough reason to believe that the Petitioner is indulged in the transaction out of account book and which has been clear from the return file, where opening stock, closing stock, purchase and sale are mentioned. On the basis of aforesaid data, enquiry of the place of business has been conducted and it has been found that Petitioner has shown carry forward amount of ITC of Rs.3.37 in return of June 2017 and opening stock has been shown zero, while the Petitioner has opening stock of Rs.52142 / - of Agrabati, which was non taxable in VAT, while in the GST Agarbati is taxable @ 5%, which should be shown in the stock by the Petitioner, while Petitioner has shown Zero stock of the same as such, it is clear that petitioner is having malic intention and is intent to evade tax. On the basis of data in return file, the petitioner should have kept stock of Rs. 166.25 Lakh on 31-03-2018. On the basis of Data shown in the return file, there was sale of Rs. 5418768.67 for the month of April, 2018 and

Rs.6034342.64 up to the 10-05-2018 and on the basis of the same, the Petitioner should have stock of Rs. 16009426.03 at the time of enquiry, but same has not been found. At the time of enquiry it as also been found that on the basis of per day sale approximate @ 2.25 Lakh, Petitioner should have stock of Rs. 13043768.67/- while at the time of enquiry, the stock of Rs. 1318264.54/- has been found at declared stock and stock of worth Rs.6266800/ - have been found at undeclared godown, which was been kept by the Petitioner from the department and transactions are being carried out. If the both the stock of both declared and undeclared godown be counted at the time of enquiry, even then, same has not been verified. It is further submitted that at time of inspection, the Petitioner has shown the sale of Rs.30,000/ - while he has issued invoices of Rs.10,000/- only. It is further submitted that at the time of enquiry, 3 free leaflet has been collected by the enquiry officer and no document has been submitted by the Petitioner in order to prove the same, as such it is clear that the Petitioner is doing transaction out of account register and stock with intention to evade the tax, which is violation of provisions the UPGST Act 2017, as such there as strong reason to believe that Petitioner is indulged in transaction out of account register, as such proceeding has been initiated Under Section 67 (2) of the UPGST Act 2017 and Rule 139 (1) of the Act, which provides:

> *Section 67 (2) of the UPGST Act 2017:*
>
> *(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorize in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:*

> *Rule 139 (1) of CGST Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorization in FORM GST INS-01 authorizing any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.*

At the time of enquiry, one declared godown and three undeclared godown has been found and the stock has also been found at undeclared godown and there was no document for such stock, as such INS-02 dated 10-05-2018 has been issued under the aforesaid provision of 67 of the Act and same has been seized and signature of the Proprietor and two witnesses have been taken on the order of seizure and as it is provided Under Section 67 (6) of the Act that :

> *67 (6) of the CGST ACT 2017: The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing a security, in such manner, and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.*

But the petitioner has not deposited and security, Tax, Interest, and penalty till date.

12. That, in reply to the contents of Paragraph No. 8 of the Writ Petition, it is submitted that enquiry was conducted by the Respondent No. 4 and on the basis of enquiry summon has been served. It is stated that in the department, there is no permanent officer is posted for full time in the unit and time has been extended up to 28-01-2019 by the competent Authority for further proceeding.

14. That, the contents of Paragraph No. 9 of the Writ Petition are not admitted, hence denied. In reply thereto, it is submitted that due *to reasons disclosed in preceding paragraphs, goods of the Petitioner has been seized and signature of proprietor and 2 witnesses have been taken on INS-02, but Petitioner has not deposited any amount of Tax or Penalty or bond or security, as it was required under Section 67 (6) of the Act and as such goods have not been released. It is further stated that in the matter, hearing was done on 30-05-2018 and next date had been given on 02-06-2018, but neither Petitioner has appeared nor any Application for stay the same has been submitted. On 10-08-2018, notice has been served upon the Petitioner for hearing, even then neither Petitioner has appeared nor any Application for stay the same has been submitted. Lastly on 22-12-2018, notice has been served to the Petitioner, but no one appeared on the fix date i.e. 03-01-2019.*

15. That, the contents of Paragraph No. 10 of the Writ Petition are not admitted, hence denied. In reply thereto, it is submitted that in the department, there is no permanent officer is posted for full time in the unit and time has been extended up to 28-01-2019 by the competent Authority for further proceeding. Petitioner has not deposited any amount of Tax or Penalty or bond or security, as it was required Under Section 67 (6) of the Act and as such goods have not been released.

16. That, the contents of Paragraph No. 11 of the Writ Petition are not admitted, hence denied. In reply thereto, it is submitted that Petitioner has declared only one godown in his registration but except the same there are 3 other godowns, from where business activity is being done, Petitioner is indulged in evasion of tax.

17. That, the contents of Paragraph No.12 of the Writ Petition are not admitted, hence denied. In reply thereto, it is submitted that at the time of enquiry, one declared godown and three undeclared godown has been found, when the stock has been found and there was no document for such stock, as such INS-02 dated 10-05-2018 has been issued under the aforesaid provision of 67 of the Act and *same has been seized and signature of the Proprietor and two witnesses have been taken on the order of seizure.*

18. That, the contents of Paragraph Nos. 13, 14 and 15 of the Writ Petition are not admitted, hence denied. In reply thereto, it is submitted that the Petitioner has not deposited and security, Tax, Interest and penalty till date as it was required Under Section 67 (6) of the CGST Act 2017. Petitioner has not done effective pairavi of his case, otherwise same had been finalized. As it is provided Under Section 67 (6) of the Act that the goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be."

The facts, as revealed in the counter affidavit, clearly reflect upon the conduct of the writ petitioner post seizure of its goods. Till date, no TRAN-1 has been submitted by the writ petitioner. The enquiry preceding seizure has revealed that the petitioner has one declared godown and three undeclared godowns and stocks were also found at the undeclared godowns during seizure. As such, proceedings have been initiated under section 67 (2) of the Uttar Pradesh Goods and Services Tax Act, 2017, read with Rule 139 (1) of the Uttar Pradesh Goods and Services Tax Rules, 2017. That apart, it is noticed that consequent upon proceedings initiated by the concerned respondent authority, the writ petitioner never deposited any tax or penalty or bond or security, as required under section 67 (6) of the Uttar Pradesh Goods and Services Tax Act, 2017. Notices / summonses have been issued but no one appeared on behalf of the writ petitioner on the date fixed. So far as the rejoinder affidavit is concerned, the stand of the writ petitioner, as contained therein, is evasive and vague.

For reasons stated above, we are unable to afford any relief to the writ petitioner by exercising our discretionary jurisdiction under Article 226 of the Constitution of India. The writ petition is liable to be dismissed and stands accordingly dismissed.

Order Date :- 24.02.2020
Ravi

(Biswanath Somadder, J.)

(Dr. Y. K. Srivastava, J.)