

Court No. - 7

Case :- WRIT TAX No. - 344 of 2018

Petitioner :- M/S Skipper Limited

Respondent :- Union Of India And 3 Ors

Counsel for Petitioner :- Alope Kumar

Counsel for Respondent :- A.S.G.I., Anant Kumar Tiwari, C.S.C.

Hon'ble Biswanath Somadder,J.

Hon'ble Ajay Bhanot,J.

1. The order dated 4th December, 2019 issued by the Assistant Commissioner (Incharge) Commercial Tax, Mobile Squad Mughalsarai Unit, Chandauli is taken in the record.

2. By the order dated 4th December, 2019, the petitioner was required to furnish a bank guarantee equivalent to the amount of his liability determined under Section 129 of the Uttar Pradesh Goods and Services Tax Act, 2017 at the time of seizure of goods and conveyance in transit.

3. It is a subsequent development, which this Court has taken into cognizance for a just adjudication of the controversy. The order dated 4th December, 2019 has been passed in purported compliance of the judgment of the Hon'ble Supreme Court rendered in the ***State of Uttar Pradesh and others Vs. M/s Kay Pan Fragrance Pvt. Ltd reported in [2019] 71 NTNDX 409 (SC)***. The operative portion of the said judgment rendered by the Hon'ble Supreme Court is set forth hereunder:

“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.”

4. The order dated 4th December, 2019 while being passed in compliance of the orders of the judgment of the Hon'ble Supreme Court in **M/s Kay Pan Fragrance Pvt. Ltd. (supra)** is under section 129 of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'UPGST Act'). Section 129 of the UPGST Act, 2017 is extracted below for ease of reference:

“**[129]. Detention, seizure and release of goods and conveyances in transit.**-(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, —

(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under Clause (a) or Clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of Section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under Clause (a) or Clause (b) or Clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within {fourteen days} of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of Z{fourteen days} may be reduced by the proper officer.”

5. A perusal of the provision shows that upon seizure of goods and conveyances in transit, the Revenue shall issue a notice specifying the tax and penalty liable to be paid by the assessee and pass an order for payment and tax and penalty in the manner provided under Clause (a) or Clause (b) or Clause (c) of Section 129(1) of the UPGST Act, 2017. The provision envisages payment of the applicable tax and penalty or furnishing security equivalent to the amount payable. The goods and conveyances are liable to be released immediately upon payment of such amount or furnishing security of equivalent amount. Further, upon payment of amount or furnishing of security referred to Section 129(1) of the UPGST Act, 2017, the proceedings initiated by the notice under Section 129(3) of the UPGST Act, 2017 shall be deemed to be concluded in view of Section 129(5) of the UPGST Act, 2017.

6. The scheme of Section 129 of the UPGST Act, 2017 is the most reliable guide of the legislative intent. Section 129 of the UPGST Act, 2017 contemplates a comprehensive scheme with a summary procedure for release of goods and conveyances seized in transit. The

legislative intent is to secure revenue interests and equally to ensure expeditious release of the seized goods and conveyances. This procedure is distinct from the adjudicatory process of determination of tax liability. The scheme of Section 129 of the UPGST Act, 2017 thus achieves the purpose of keeping trade and commercial transactions unhindered by the adjudicatory process for determination of tax liability, while at the same time protecting revenue interests and allowing adjudicatory mechanism to run its course independently.

7. To prevent haemorrhaging of trade and commerce by prolonged of detention seized goods caused by inordinately long periods of litigation, the proceedings triggered by issuance of notice under Section 129(3) of the UPGST Act, 2017 stand concluded under Section 129(5) of the UPGST Act, 2017 after noticee has deposited the amount or furnished the security required of him. This allows the seized goods to be released expeditiously and the proceedings in regard thereof to arrive at a litigative terminus in a short time frame.

8. The facts of the case will now be construed in the light of the above said provisions of the Act. The facts themselves lie in a narrow compass.

9. It is admitted by the State Revenue that the petitioner had furnished a security in the form of a bank guarantee, equivalent to the amount payable under clause (a) of section 129(1) of the UPGST Act, 2017, upon demand made by the Revenue to furnish such security of like

amount. The security in the form of a bank guarantee so furnished upon demand to the satisfaction of the State Revenue Authorities is clearly relatable to Section 129 (1)(c) of the UPGST Act, 2017.

10. The order dated 4th December, 2019 issued by the Assistant Commissioner (Incharge) Commercial Tax, Mobile Squad Mughalsarai Unit, Chandauli directs the petitioner to furnish a bank guarantee of the amount mentioned in the order, in compliance of the order passed by the Hon'ble Supreme Court. The operative portion of the said order passed by the authorities reads as under:

"मा0 उच्चतम न्यायालय के उक्त संदर्भित निर्णय के अनुपालन हेतु आपको सूचित करते हुए निर्देशित किया जाता है कि उपरोक्त विनिर्दिष्ट कर एवं अर्थदंड की जमा का चालान अथवा बैंक गारंटी प्रत्येक दशा में अधोहस्ताक्षरी के समच्छ दिनांक-11.12.2019 तक प्रस्तुत करना सुनिश्चित करे अन्यथा मा0 उच्चतम न्यायालय के आदेश के अनुपालन में आपके विरुद्ध अधिनियम की धारा-130 के अंतर्गत अनुवर्ती कार्यवाही प्रारम्भ की जाएगी"

11. It is beyond dispute that the petitioner had furnished the security in the form of a bank guarantee of the amount and in the manner required of him by the State Revenue Authorities, under Section 129(1)(a) read with Section 129(1)(c) of the UPGST Act, 2017, even prior to the order dated 04.12.2019. The security in the shape of bank guarantee remains deposited with the State Revenue. The seized vehicle and goods have been released on the strength of such security deposit. Hence, the proceedings taken out under section 129 of the UPGST Act, 2017 are liable to be concluded in view of section 129 (5) of the UPGST Act, 2017.

12. Clearly the notice under Section 129(3) of the UPGST Act, 2017, dated 4th December, 2019 is infructuous and the proceedings taken thereunder are liable to be treated as concluded.

13. In the light the preceding discussion, the writ petition is being disposed of with the following directions:

14. The Revenue Authorities are directed to adjudicate the case on merits, expeditiously, preferably, within a period of three months from the date of receipt of a certified copy of this order.

15. The bank guarantee furnished by the petitioner – assessee to the State Revenue Authorities shall remain with the State Revenue Authorities and its invocation shall be subject to the result of the adjudication.

16. The writ petition is finally disposed of accordingly.

Order Date :- 07.02.2020
Ashish Tripathi

(Biswanath Somadder,J.)

(Ajay Bhanot,J.)