

Court No. - 5

Case :- MISC. BENCH No. - 15067 of 2019

Petitioner :- M/S Maa Vindhyavasini Pvt. Ltd. Thru Sujit Kumar Tiwari

Respondent :- State Of U.P. Thru Secretary Institutional Finance & Ors.

Counsel for Petitioner :- Kushagra Dikshit, Atul Krishna, Sameer Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Dr. Devendra Kumar Arora, J.

Hon'ble Alok Mathur, J.

Heard Mr. Sameer Gupta, learned Counsel for the petitioner and learned Standing Counsel appearing on behalf of respondents.

The petitioner, by means of the present writ petition, has challenged the jurisdiction of the U.P. State Officers/Authorities (respondent No.3) under the Goods and Services Tax (GST) regime in seizing the consignment of goods which were going from Kanpur (Uttar Pradesh) to Bihar. He has also challenged the authority of respondent No.3 who has adjudicated the penalty proceedings against the petitioner.

Submission of the learned Counsel for the petitioner is that the petitioner is the seller of goods (pan masala and tobacco) and a registered dealer under GST having GSTIN 09AAFCM0306D1ZO. The goods are being sold by the petitioner to the registered buyers located in Bihar, which were being transported by the transporter, namely, Shri Pawan Carrying Corporation. Both the sellers and buyers are duly registered under GST. He further submits that the consignments of goods were carried by the requisite documents including tax invoice, e-way bills, bilties and the declared value of such goods. The goods were checked and detained on 9.5.2019 and the respondents have proceeded and issued a notice under the Uttar Pradesh Goods and Services Tax Rules, 2017 (hereinafter referred to as "**Rules, 2017**") to the petitioner. The petitioner by means of the present writ petition has challenged the detention order dated 9.5.2019 passed by the respondent No.3 as well as the penalty notice of the same date and also MOV-9 dated 17.5.2019 under Rule 129 (3) of Rules, 2017.

Learned Counsel for the petitioner has also submitted that the petitioner has duly paid tax on the goods and all the documents have been handed over to the respondents and despite all the

documents being inplaced, the respondents have illegal and arbitrary invoke the penalty provisions against the petitioner and seized the goods of the petitioner.

Learned Standing Counsel has raised a preliminary objection with regard to the fact that the penalty order passed by the respondents is an appealable order under Section 107 of the Rule, 2017 and, therefore, the petitioner is having equally efficacious remedy to raise his grievance before the appropriate authority in appeal. He has also placed reliance upon the judgment of ***Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal*** : 2014 (1) SCC 603, wherein the Apex Court has made it clear that High Court should not entertain writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. A writ petition should not be entertained when statutory forum is created by law for redressal of such grievance. The relevant para-17 of Chhabil Dass Agarwal (supra) is reproduced as under :

"In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case. In light of the same, we are of the considered opinion that the Writ Court ought not to have entertained the Writ Petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the re-assessment orders passed and the consequential demand notices issued thereon."

We have heard learned Counsel for the parties and perused the record.

From perusal of the writ petition, it is clear that the petitioner has challenged the penalty order against which he has an efficacious remedy under Section 107 of the Act of filing an appeal. The petitioner can raise all the plea as has been pleaded before us in the present writ petition before the competent authority in appeal, who shall consider the same and pass reasoned and speaking order in accordance to law after providing proper opportunity of hearing to the petitioner.

Learned Counsel for the petitioner, at this stage, submits that the petitioner will file an appeal within period of one week from

today.

In case the petitioner files an appeal within a period of one week, the authority concerned shall decide the appeal within a period of three weeks thereafter as directed hereinabove.

With regard to the seizure of the goods/vehicle of the petitioner, attention has been drawn by the petitioner upon Rule 140 of Rules, 2017 wherein it has been provided that respondents are bound to release the goods on furnishing of a security by the petitioner in the form of bank guarantee to the satisfaction of the authority concerned.

Learned Standing Counsel does not also dispute the fact that the goods/vehicle of the petitioner can be released in accordance with Rule 140 of Rules, 2017.

In the light of the above, the petitioner is directed to move appropriate application before the competent authority for release of goods/vehicle. If such an application is moved by the petitioner, we hope and trust that the competent authority shall release the goods/vehicle on furnishing the bank guarantee to the satisfaction of the authority concerned. The said exercise shall be completed within a period of one week from the date of moving the application by the petitioner for release of goods/vehicle.

The writ petition stands ***disposed of***, accordingly.

Order Date :- 28.5.2019

Ajit/-