

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

Sr. No. 6

OWP No.2560/2018
CM No.1763/2019
[1/2019]
IA No.1/2018

Arvind Gupta

.....Petitioner

Through:- : Mr. Ankush Mahajan, Advocate.

V/s

Commissioner of Sales Tax Department,
J&K and Others

.....Respondent(s)

Through:- : Mr. K.D.S Kotwal, Dy. AG.

Coram:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

JUDGMENT(ORAL)

OWP No.2560/2018

1. The writ petition has been filed submitting that a consignment of nuts and bolts was purchased by the petitioner's firm from Shree Ambey Metal Industries Ltd., Ludhiana through bill No.719 dated 30th November, 2018. Another consignment was purchased by the SGF Infra Private Ltd., on the 13th November, 2018 itself from Jatinder Enterprises, Ludhiana. We may note that the petitioner has placed on record only the bill relating to the purchase effected from SGF Infra Private Ltd.

2. The material from Ludhiana was placed in a truck bearing No.JK08A-7439 for delivery to Jammu on 1st December, 2018. This truck was intercepted by respondent No.3 at Lakhanpur and upon examination of

the documents, inspection of the goods was directed for the reason that part B of the E-Way bill has not been tendered with the goods in movement.

3. The respondents issued an order of detention dated 2nd December, 2018 under Section 129(1) of the Central Goods and Service Tax Act, 2017 and J&K Goods and Services Tax Act, 2017 and under Section 20 of the Integrated Goods and Service Tax Act, 2017.

4. It is claimed by the petitioner that on 6th December, 2018, he had filed a petition for release of the material before the respondent No.2 asserting that it was on account of a mistake on the part of the transporter in filing of the part B with reference to the E-Way bill.

5. For the reason that the respondent No.2 has not accepted the petition, the present writ petition was filed seeking the following prayer:

“(i) Writ of Mandamus: Directing the respondents to release the consignment of the petitioner loaded in the detained truck bearing registration No. JK08A-7439, in favour of the petitioner”.

6. Before us on 27th December, 2018, a submission was made by the petitioner that the transporter was not interested in the payment of the penalty and was not taking any steps to release the truck or consignment. The petitioner had stated that he would be willing to comply with any interim order and deposit an amount directed by the Court, with the respondent as also to secure the balance amount of the penalty.

7. In view thereof, we had directed that subject to the petitioner's

depositing an amount equivalent to 50% of the penalty and the bank guarantee securing the balance amount with the State Tax Department within a period of five days from making of the order, the respondent shall release the consignment which was being transported by the truck No. JK08A-7439 and stood seized by the respondents. It was directed that the truck shall continue to remain to be seized in the custody of the respondents.

8. We are informed that pursuant to the said order, the petitioner has deposited 50% of the penalty and furnished a bank guarantee securing the balance 50%. The seized consignment of goods stands also released to the petitioner.

9. In view thereof, it would appear that the prayer made in this petition stands satisfied.

10. Learned counsel for the petitioner submits that the issue regarding the legality of the penalty requires to be considered. In our view, this issue has to be assailed by the petitioner by way of the statutory appeal provided to the petitioner under the provisions of Section 107 of the Central Goods and Service Tax Act, 2017.

11. This writ petition is consequently disposed of with liberty to the petitioner to invoke the appropriate remedy by way of the statutory appeal before the competent authority.

12. We make it clear that nothing herein contained is an expression of opinion on the merits of the case.

13. We also make it clear that in case the petitioner files the

statutory appeal within a period of four weeks from today, the appeal of the petitioner shall not be rejected on the ground that the same is beyond the statutory period of limitation and would be considered on its merits.

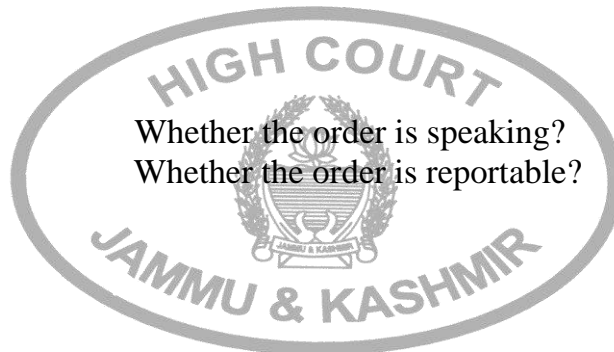
CM No.1763/2019 & IA No.1/2018

In view of the order passed in writ petition, these applications are rendered infructuous and are disposed of as such.

**(RAJESH BINDAL)
JUDGE**

**(GITA MITTAL)
CHIEF JUSTICE**

Jammu
05.02.2020
Surinder



Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No