

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Special Appeal No. 942 of 2019

M/s LIVGUARD ENERGY TECHNOLOGIES PVT LTD

Vs

STATE OF UTTARAKHAND AND OTHERS

Ramesh Ranganathan, CJ & Alok Kumar Verma, J

Dated: October 18, 2019

Appellant Rep by: Mr S K Posti, Senior Adv.

Respondent Rep by: Mr Pradeep Joshi, Standing Counsel

GST - Appellant had filed a writ petition seeking a writ of certiorari to quash the order in MOV-6 and 7 dated 11.10.2019 and for a writ of mandamus directing the third respondent (Assistant Commissioner State Tax Department, Mobile Squad, Dehradun) to release the vehicle and the goods of the appellant-writ petitioner forthwith - Single Judge noted that the appellant-writ petitioner's truck was carrying goods from Baddi, Himachal Pradesh to Dehradun; it was detained at Kulhal border in Vikasnagar of Dehradun district on the ground that the truck had reached the check post in Uttarakhand after expiry of the time stipulated in the E-way bill; the appellant-writ petitioner had received a show-cause notice under Section 129(3) of the CGST Act whereby they were asked to show-cause why tax and penalty may not be imposed upon them; the appellant-writ petitioner had invoked the jurisdiction of this Court against the show-cause notice, and the Writ Petition was premature; they should give a reply to the show-cause notice to the authorities concerned furnishing valid reasons as to why delay had been caused; and since the goods can be released under Section 129(1) of the 2017 Act on the petitioner furnishing a security equivalent to the amount payable, in case, the appellant-writ petitioner deposits the security, the same shall be considered in accordance with law - Single Judge, thereafter, observed that the said provisions also provide that, once the goods are seized, the ultimate penalty/interest can only be imposed after affording an opportunity of hearing to the person concerned; and, in case the authorities concerned ultimately decide to impose penalty/tax, reasons must be assigned - aggrieved with this order, the present appeal is filed.

Held: Impugned show-cause notice dated 11.10.2019 itself refers to Section 129(3) of the 2017 Act and, consequently, the appellant-writ petitioner is entitled to file a reply thereto in terms of Section 129(4) of the 2017 Act - Since it is admitted that the 2017 Act provides for release of goods only on furnishing a bank guarantee, it would be wholly inappropriate for the Bench to issue any direction contrary thereto - no reason, therefore, to accede to the appellant-writ petitioner's request for release of the vehicle and the goods on merely furnishing an indemnity bond - Interference in an intra-court appeal would be justified only if the order under appeal suffers from a patent illegality - Since Bench does not find infirmity in the order under appeal, appeal is dismissed: High Court [para 7, 10, 13, 14, 15]

JUDGEMENT

Per: Ramesh Ranganathan:

Heard Mr. S.K. Posti, learned Senior counsel appearing on behalf of appellant and Mr. Pradeep Joshi, learned Standing Counsel appearing for the State.

2. This appeal, under Chapter VIII Rule 5 of the Allahabad High Court Rules, is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No.3178 of 2019 dated 15.10.2019.

3. The appellant herein filed Writ Petition (M/S) No.3178 of 2019 seeking a writ of certiorari to quash the order in MOV-6 and 7 dated 11.10.2019; and for a writ of mandamus directing the third respondent (Assistant Commissioner State Tax Department, Mobile Squad, Dehradun) to release the vehicle and the goods of the appellant-writ petitioner forthwith.

4. In the order under appeal, the learned Single Judge noted that the appellant-writ petitioner's truck was carrying goods from Baddi, Himachal Pradesh to Dehradun; it was detained at Kulhal border in Vikasnagar of Dehradun district on the ground that the truck had reached the check post in Uttarakhand after expiry of the time stipulated in the E-way bill; the appellant-writ petitioner had received a show-cause notice under Section 129(3) of the Central Goods and Services Tax Act, 2017 (for short the "2017 Act"), whereby they were asked to show-cause why tax and penalty may not be imposed upon them; the appellant-writ petitioner had invoked the jurisdiction of this Court against the show-cause notice, and the Writ Petition was premature; they should give a reply to the show-cause notice to the concerned authorities furnishing valid reasons as to why delay had been caused; and since the goods can be released under Section 129(1) of the 2017 Act on the petitioner furnishing a security equivalent to the amount payable, in case, the appellant-writ petitioner deposits the security, the same shall be considered in accordance with law. The learned Single Judge, thereafter, observed that the said provisions also provide that, once the goods are seized, the ultimate penalty/interest can only be imposed after affording an opportunity of hearing to the person concerned; and, in case the concerned authorities ultimately decide to impose penalty/tax, reasons must be assigned. Aggrieved thereby, the present appeal.

5. Mr. S.K. Posti, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that, while the E-way bill required the goods to reach Dehradun before 12 midnight of 8-9.10.2019, the goods reached Dehradun at 7.00 AM on 09.10.2019; the delay of seven hours had occurred because of traffic diversion in lieu of Dussehra festival; the delay was, therefore, not deliberate; in terms of Section 129(1)(a) of the 2017 Act, goods can be seized, and the vehicle detained, only with respect to goods on which tax is leviable; the goods being transported by the appellant writ petitioner from Himachal Pradesh to Dehradun, Uttarakhand is not liable to tax; since the appellant-writ petitioner is not even liable to pay tax, the question of levying penalty does not arise; the appellant-writ petitioner should, at least, be permitted to furnish an

indemnity bond instead of security; each day's delay, in detention of goods, is causing the appellant-writ petitioner irreparable loss and injury; and the learned Single Judge failed to notice that the appellant-writ petitioner had already submitted a reply to the show-cause notice.

6. Section 129 of the 2017 Act relates to detention, seizure and release of goods and conveyances in transit. Sub-section (1) thereof stipulates that notwithstanding anything contained in the Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of the 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 percent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two percent of the value of the goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty. Sub-section (3) of Section 129 obligates the proper office, detaining or seizing the goods or the conveyances, to issue a notice specifying the tax and penalty payable and, thereafter, to pass an order for payment of tax and penalty under clauses (a, b or c) of Section 129(1) of the 2017 Act. Section 129(4) stipulates that no tax, interest or penalty shall be determined, under sub-section (3), without giving the person concerned an opportunity of being heard.

7. The impugned show-cause notice dated 11.10.2019 itself refers to Section 129(3) of the 2017 Act and, consequently, the appellant-writ petitioner is entitled to file a reply thereto in terms of Section 129(4) of the 2017 Act.

8. Since Mr. S.K. Posti, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, stated that the appellant-writ petitioner had already submitted their reply to the show-cause notice, we were initially inclined to pass an order directing the respondents to pass a reasoned order, dealing with the contention raised in the reply already submitted by the appellant-writ petitioner, within one week since all the question raised before us can also be agitated by the appellant-writ petitioner, before the competent authority, in their reply to the show-cause notice and, in the absence of the competent authority examining the matter in the first instance, it would be wholly inappropriate for this Court to exercise its jurisdiction under Article 226 of the Constitution of India, and to take upon itself the task of determining whether or not the allegations in the showcause notice are justified.

9. Mr. S.K. Posti, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would request that the appellant-writ petitioner be given time till Monday i.e. 21.10.2019 to submit an additional reply to the show-cause notice.

10. Suffice it, in such circumstances, to dispose of the Special Appeal directing the third respondent to consider both the appellant-writ petitioner's original reply, and the additional reply to be submitted by 21.10.2019, and pass a reasoned order dealing with all the contentions raised in both the reply letters with utmost expedition and, in any event, within one week from the date of receipt of the appellant-writ petitioner's additional reply to the show-cause notice.

11. Mr. Pradeep Joshi, learned Standing Counsel, would submit that the Government offices are closed for four days for Diwali.

12. Needless to state that the one week time stipulated by this Court, to consider the appellant-writ petitioner's reply to the show-cause notice, shall exclude these four days, on which Government offices are closed for Diwali.

13. Mr. S.K. Posti, learned Senior Counsel, would again reiterate his request that the goods be released on furnishing an indemnity bond. When we asked him whether the appellant-writ petitioner is willing to deposit an unconditional bank guarantee, from a nationalized Bank, for the said amount, learned Senior Counsel would submit that such a condition is stipulated in the provisions of the 2017 Act itself, and it is only because the appellant-writ petitioner is not in a position to do so, has he invoked the jurisdiction of this Court seeking its indulgence to direct release of the detained vehicle and stock on the appellant-writ petitioner furnishing an indemnity bond. Since it is admitted that the 2017 Act provides for release of goods only on furnishing a bank guarantee, it would be wholly inappropriate for us to issue any direction contrary thereto. We see no reason, therefore, to accede to the appellant-writ petitioner's request for release of the vehicle and the goods on merely furnishing an indemnity bond.

14. Interference in an intra-court appeal would be justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

15. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.

16. Let a certified copy of this order be furnished to the learned counsel for the parties, today itself, on payment of the prescribed charges.