HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.37996 of 2017

Date:13.11.2017

Between:

M/s Vishal Arogya Sampath
Private Limited, Devar Yamjal Village,
reptd by its authorized representative-
D.Kiran Kumar

..... Petitioner

And:

The Deputy Assistant Commissioner (ST),
Kurnool and another.

.....Respondents

Counsel for the petitioner: Dr. S.R.R.Viswanath

Counsel for the respondents: Mr. S.Suri Babu
Special Standing Counsel for CT (AP)

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed for a *Mandamus* to declare the action of respondent No.1 in initiating the confiscation proceedings in respect of the vehicle bearing registration No.AP 16 TJ 0413 along with the goods during their transit and the seizure of the same as illegal. The petitioner also sought for a consequential direction to release the seized vehicle along with the goods.

In the affidavit, filed in support of the Writ Petition, the Proprietor of the petitioner has averred that the petitioner is a registered company engaged in trading of Patanjali Ayurvedic Products and that on 26.10.2017, the petitioner sent a consignment of soaps, detergent powder and cosmetics from Hyderabad to its branch at Proddatur, Kadapa District in the vehicle bearing registration No.AP 16 TJ 0413. It is further averred that the consignment was covered by sale invoice and *e*-way bill issued by the State of Telangana; and that when the said vehicle was transporting the said goods, on 27.10.2017 at Panchalingala, Andhra Pradesh, respondent No.1 stopped the same and seized the vehicle along with the goods therein.

Following the seizure, detention notice was issued by the office of respondent No.1 on 27.10.2017 and four notices, dated 27.10.2017, proposing levy of tax and penalty, both under the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') and the Andhra Pradesh Goods and Services Tax Act, 2017 (for short 'the APGST Act'), were issued to the petitioner. It is further stated in the said notices that the petitioner is liable to pay tax of Rs.1,11,306/- and penalty of Rs.1,11,306/- under the CGST Act and further tax of Rs.1,11,306/- and penalty of Rs.1,11,306/- under the SGST Act

Dr. S.R.R.Viswanath, learned counsel for the petitioner, submitted that the whole action of respondent No.1 in seizing the goods belonging to the petitioner and issuing the afore-mentioned show cause notices and penalty show cause notices is highly arbitrary and illegal. He has further submitted that the entire consignment was supported by sale invoice and *e*-way bill, which were shown by the driver of the said vehicle to the detaining authority, and that, in spite of the same, both the vehicle and the goods were seized.

Mr. S.Suri Babu, learned Special Standing Counsel for Commercial Taxes (Andhra Pradesh), however, submitted that as evident from the impugned show cause notices, the driver of the vehicle failed to produce any of the statutory records.

As could be seen from the prayer in the Writ Petition, the reliefs claimed by the petitioner are in two parts, *viz.*, (1) invalidation of the proceedings for confiscation/demand for payment of tax and penalty and (2) the release of the vehicle and the goods.

As regards the first part of the relief, we are of the opinion that the petitioner is not entitled for grant of the same as, it is not its pleaded case that respondent No.1 has no jurisdiction to initiate the proceedings. The question whether the consignment was supported by tax invoices or not, needs to be decided in the proceedings initiated by respondent No.1. Therefore, we are not inclined to interdict the said proceedings at this stage.

As regards the seizure of the goods and the vehicle, it is stated that the same are detained from 27.10.2017. Therefore, in our opinion, the ends of justice would be met if the seized vehicle and the goods are released to the petitioner, subject to its depositing the tax component of Rs.2,22,612/- excluding the penalty.

Accordingly, respondent No.1 is directed to release the seized vehicle and goods to the petitioner subject to the latter depositing a sum of Rs.2,22,612/- towards the tax liability, which shall be subject to the outcome of the proceedings pending before respondent No.1.

Subject to the above direction and directions, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, WPMP.No.47196 of 2017 stands disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE CHALLA KODANDA RAM

13th November 2017
DR