IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 12703 of 2019
Date of decision: 4.10.2019

Bioveda Action Research Company

Petitioner

vs.

Commissioner, Central Goods and Services Tax, Panchkula & anr

Respondents

CORAM Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Lalit Batra

Present: Mr. Jagmohan Bansal, Advocate for petitioner.
Mr. Anshuman Chopra, Advocate for respondents.

Jaswant Singh, J (Oral)

The petitioner, a partnership firm, is engaged in the manufacture of different Ayurvedic products at its factory, situated at Paonta Sahib (H.P.). One of its consignments from Paonta Sahib to New Delhi was intercepted by CGST Officer at Yamunanagar on a road side naka. The goods were detained on account of the alleged wrong classification of the goods under Section 129(1) of CGST Act (for short 'the Act'). The detention was followed by a show cause notice under Section 129 (3) of the Act and the subsequent order in original dated 3.5.2019 (Annexure P-10), whereby tax, fine and penalty was imposed on the petitioner-owner of the goods as well as the transporter. Hence this petition challenging the assessment order dated 3.5.2019 (Annexure P-10).

This Court on 31.5.2019 passed the following order:-

“ Proxy counsel for the respondents prays for more time to file reply.

Counsel for the petitioner has prayed for release of his goods (*Ayurvedic Product)*, detained in transit by respondent No.2 (*Assistant Commissioner, Central Goods and Services Tax, Jagadhari, District Yamunanagar)*, who is alleged to have no jurisdiction to go into the rate of tax, alleging wrong classification of goods. It is next submitted that as per the documents, tax @ 12% on the goods in transit stood, concededly, paid, whereas the claimed rate of tax is 18% ***plus*** the penalty, instead of the difference of the rate of tax, but still the goods have not been received due to non- acceptance of the bank guarantee.

Keeping in view the facts of the case, we **direct** that in case the bank guarantee for an amount of Rs.38,47,504/-, i.e. equal to the aforesaid amount, is furnished within next five (05) days, in that eventuality, respondent No.2 shall release the goods within next two (02) days thereafter. The petitioner shall ensure the validity of the bank guarantee till the final adjudication of the writ petition. The tender shall be subject to final adjudication between the parties.

List on **19.09.2019** for further consideration."

At the time of arguments, learned counsel for the parties are agreed that the goods have already been released and the issue of correct classification can only be adjudicated in view of the pleas raised before the Appellate Authority under Section 107 of the Act.

In view of the aforesaid, the present writ petition is disposed of as infructuous with liberty to the petitioner to file a statutory appeal against the aforesaid impugned order dated 3.5.2019 (Annexure P-10) before the Appellate Authority. It is also agreed that in case the appeal is now filed within 30 days of the receipt of certified copy of the instant order, the question of limitation would not be raised by the respondents and Appellate Authority would decide the appeal, if any, within next six months, in accordance with law.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

October 4, 2019
TSM

Whether speaking/ reasoned Yes/ No

Whether Reportable Yes/ No