IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102 ***2023:PHHC:157162-DB***

<u>CM-20301-CWP-2023 in/and</u>
<u>CWP-5902-2023</u>
<u>CM-20290-CWP-2023 in/and</u>
<u>CWP-6300-2023</u>
<u>CM-20296-CWP-2023 in/and</u>
<u>CWP-6304-2023</u>
<u>CM-20478-CWP-2023 in/and</u>
<u>CWP-6288-2023</u>
<u>Date of Decision:</u> 08.12.2023

Aman Kumar Rathaur .....Petitioner(s)

Versus

State of Punjab and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Bhuwan Vats, Advocate,
for the applicant-petitioner.

Mr. Arjun Sheoran, DAG, Punjab.

<u>G.S.SANDHAWALIA, J. (Oral)</u>

<u>CM-20301-CWP-2023 in CWP-5902-2023</u>
<u>CM-20290-CWP-2023 in CWP-6300-2023</u>
<u>CM-20296-CWP-2023 in CWP-6304-2023</u>
<u>CM-20478-CWP-2023 in CWP-6288-2023</u>

1. Applications have been filed praying for interim relief for release of goods alongwith conveyance.

2. With the consent of counsel for the parties, main cases are pre-poned from 11.01.2024 to today and taken up for hearing today itself.

<u>Main Cases (O & M)</u>

1. The present order shall dispose of four writ petitions i.e. CWP Nos. 5902, 6300, 6304 and 6288 of 2023 as common questions of facts are involved in all the writ petitions and have been filed by the same petitioner. Reference is being made to ***CWP-5902-2023, Aman Kumar Rathaur vs. State of Punjab and others.***

2. The petitioner, in the present bunch of case, is the consignor and challenges the action of the respondents whereby they have issued the interception proceedings in the form GST MOV 02 dated 06.03.2023 (Annexure P-3) including the order dated 13.03.2023 (Annexure P-4) whereby, the conveyance bearing No. HR38 W 0782 was intercepted by State Tax Officer-cum-Proper Officer, Mobile Wing, Ludhiana on 06.03.2023 at Bansal Casting, R G Mill Road, Mandi Gobindgarh and the same was directed to be stationed at Ludhiana for inspection by serving an Order in Form GST MOV-02. Thereafter, the consequential show cause notice dated 13.03.2023 (Annexure P-6) was issued wherein the petitioner was put to notice that purchases had been made from M/s. BN Traders which had not shown any purchase and neither paid any tax. The tax liability between 01.03.2023 to 06.03.2023 was tentatively determined at Rs.76,41,499/-.

3. The petitioner, instead of filing the reply to the said show cause notice, approached this Court on the ground that the goods were seized from the premises of the consignee. Resultantly, interim order was passed on 24.03.2023 whereby passing of MOV-02 was stayed.

4. The sole argument as such which has been raised is that the goods are not in transit and, therefore, the authorities as such had no jurisdiction. Reference is made to the tax invoice (Annexure P-1) wherein, the iron scrap, which was the consignment weighing 17360 kgs valuing Rs.8,39,876.80 inclusive of tax, had been consigned to M/s. Bansal Casting vide e-Way bill (Annexure P-2). It is, thus, the case that the respondent-authorities were acting beyond their jurisdiction.

5. The State, in its response, has taken the plea that only a notice has been challenged by placing reliance upon the judgment of the Apex Court in ***The State of Punjab vs. M/s. Shiv Enterprises and others, 2023 (96) GST 120.*** It has also been informed that the vehicle in question as such has been released. However, in view of the interim order, no further proceedings are being initiated.

6. A perusal of Annexure P-3 would go on to show that the inspection of the goods under movement was required to be done to ascertain the genuineness of the goods in transit or verification of documents and it is on that account, show cause notice as such was issued. We have already referred to the show cause notice wherein, the tax had not been paid on the goods which were sent to the consignor. It is for the petitioner as such to explain as to whether the said show cause notice has been served validly or not and explain how the purchases have been made from M/s. BN Traders and it is for the authorities thereafter to pass the order. It is not for this court as such to take on the role of the Assessing Authority. The Apex Court has also as such in *M/s. Shiv Enterprises case (supra)* gone on to hold that the exercise of powers under Articles 226 of the Constitution of India for entertainment of the writ petition against the show cause notice and setting aside was not justified. It is settled principle that the writ Court is not to go into the disputed questions of facts and it is for the petitioner as such to place the relevant material before the respondents to show whether there was any substance in the show cause notice and tax was not being avoided by it. In *M/s. Shiv Enterprises case (supra)*, the co-ordinate Bench as such had set aside the order issued by the Assistant Commissioner of State Tax, Mobile

Wing, Chandigarh and the notice dated 14.09.2021 issued under Section 130 of the Central Goods Service Tax Act, 2017. Resultantly, directions were issued to release the conveyance and the goods in question. The order of detention had apparently been passed and also show cause notice dated 14.09.2021 had been issued. The Apex Court accordingly came to the conclusion that it is not for this Court to opine anything whether there was any evasion of tax or not while not interfering in the orders releasing the goods in question. The relevant portion reads thus:-

> *"Apart from the fact that the aforesaid is factually incorrect, even otherwise, it was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice under Section 130 of the Act was issued. Therefore, we are of the opinion that the High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same. However, at the same time, the order passed by the High Court releasing the goods in question is not to be interfered with as it is reported that the goods have been released by the appropriate authority.*

7. Resultantly, we are of the considered opinion that the petitioner has an alternative remedy as such to put forth his case before the respondents and thereafter the respondents shall proceed in accordance with law. Accordingly, no cause is made out to entertain the writ petitions any further.

8. The writ petitions are disposed of with the aforesaid liberty. All interim orders accordingly stand vacated.

(G.S. SANDHAWALIA)
JUDGE

08.12.2023
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No