IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.11835 of 2006
Date of Decision: 13.02.2023

Anil Kumar ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Aman Bansal, Advocate,
for the petitioner.

Mr. Alankar Narula, Assistant Advocate General, Punjab.

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MANISHA BATRA, J.

1. The challenge in the present writ petition is to the notice dated 25.07.2006 as issued by respondent No.2 under Section 51 (6) (a) (b) read with Section 51 (7) of the Punjab Value Added Tax Act, 2005 (for short 'the Act'). The petitioner has prayed for direction for issuance of a writ of mandamus directing the respondents to release the truck bearing No.HR-22-GA 0195 (for short 'the truck') along with the goods and not to pass any assessment order.

2. The brief facts of the case relevant for the disposal of this writ petition are that the petitioner is proprietor of firm M/s Anil Traders which is registered under the Punjab General Sale Tax Act, 1948 as well as under Central Sales Tax Act, 1956. His firm is dealing in the business of sale and purchase of fire works and is having a valid licence. On 24.07.2006, the truck was coming from Kishangarh (Rajasthan) to Dhuri

while carrying fire works/goods of the firm of the petitioner. The said truck was stopped by the authorities of respondents at Melhan Chowk, Moonak barrier and the driver was asked to supply bills and other documents which were shown by the driver and were found to be genuine by the authorities of the respondents. However, still the truck and goods contained therein were detained by them without any basis and justification. On 25.07.2006, the impugned notice was issued to the petitioner calling upon him to appear before respondent No.2 along with the account books and other documents and intimating that otherwise the goods shall be detained. The petitioner submitted that he had gone to the office of respondent No.2 and had shown all the bills etc. which were found to be genuine. However, the respondent No.2 still did not release the truck and the goods on the plea that goods appeared to be undervalued. It was submitted that the firm of the petitioner had no intention to evade any tax. The MRP mentioned on the goods was not the actual rate at which the goods were to be sold. He requested the respondents to release the truck with goods but in vein. Hence, this petition has been filed by the petitioner raising the following substantial questions of law:-

> "1) Whether the action on the part of the respondents not to release the goods and truck though the same were found genuine after physical verification, is legally sustainable in the eyes of the law?
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> 2) Whether the M.R.P. can be deciding factor at this stage to under value the goods by the respondents?
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> 3) Whether the action on the part of the respondents is violative of the Article 14 and 16 of the constitution of India?"

3. The respondents filed joint written statement admitting therein that the vehicle was got stopped and the goods kept therein were checked by Excise & Taxation Officer, Mobile Wing, Patiala on 24.07.2006. The detention order was passed by the respondents because rate of goods as mentioned in the bills produced by the driver was found to be lesser than the rates printed on the boxes of the fire works which appeared to be a valid reason for detaining the goods. The physical verification was also required as there was suspicion that the quantity of the goods was more than mentioned in the bill. It was also submitted that the petitioner had remedy of getting the goods released against security which had not been availed by him and further that he could resort to the efficacious and speedy remedy of appeal under Sections 62 and 63 of the Act in case, any penalty was imposed. Therefore, dismissal of the petition had been prayed for.

4. It was argued by learned counsel for the petitioner that the physical verification of the goods was got done by the respondents in his presence when he had appeared in response to the impugned notice. So far as the detention of the truck and the seizure of goods was concerned, the action of the respondent was not sustainable only because of the reason that the goods were alleged to be undervalued. He argued that the undervaluation of seized goods in transit could not be a ground to confiscate the goods. In this regard, he relied upon **M/s. Karnataka Traders v. State of Gujarat**, 2022 (91) GST 68.

5. Per contra, it was argued by learned State counsel for the respondents that the goods kept in the truck and to be delivered to the petitioner, were undervalued and, therefore, the vehicle was rightly detained and no illegality could be stated to have been committed by the respondents

by seizure of the goods. Therefore, it was urged that the writ petition was liable to be dismissed.

6. On giving due deliberations to the submissions made by learned counsel for both the parties and on a careful consideration of facts and circumstances, we are of the opinion that the petition deserves to be allowed. Though on a perusal of contents of the impugned notice, a copy of which has been kept on record, it is revealed that the same had been issued on the grounds that the documents appeared to be suspicious and needed verification; that the goods needed physical verification and appeared to be undervalued; that VAT number was not mentioned/wrongly mentioned on the documents and that the required information had not been generated at any Information Collection Centre (ICC) in the State of Punjab but on perusal of the written statement, it is crystal clear that except the allegation that the maximum retail price (MRP) printed on the boxes containing fire works was more than the price mentioned in the invoices from which it appeared that the goods were undervalued, no other objection had been taken by the respondents to justify detention of the vehicle as well as the seizure of the goods. It is well settled proposition of law that undervaluation of seized goods in transit cannot be a ground to confiscate the goods and the vehicle. There cannot be any mechanical detention of a consignment in transit on the basis that the goods being transported are undervalued. In this regard, reliance can be placed upon **K.P. Sugandh Ltd. v. State of Chhattisgarh**, 2020 (38) GSTL 317 (Chhattisgarh) wherein the detention of vehicle and seizure of goods merely on the ground that there was undervaluation was not held to be sustainable by holding that it was for the department to initiate appropriate separate proceedings with regard to the

alleged undervaluation and that itself could not furnish a ground for detention of vehicle. Similar proposition was laid down in **M/s. Karnataka Traders's** case (Supra) as cited by learned counsel for the petitioner. No contrary decision has been cited by the respondents.

7. In view of this discussion, it is held that the detention of the truck and seizure of the goods carried therein, by respondent No.2 was illegal. The goods and the truck have, however, already been ordered to be provisionally released in pursuance of order passed by this Court on 07.08.2006. They are ordered to be released. The order for provisional release is made absolute. The writ accordingly succeeds and is hereby allowed. The detention proceedings initiated by the respondents are hereby quashed and set aside. However, it is also clarified that the respondents may initiate appropriate separate proceedings with regard to alleged undervaluation in accordance with law, if so required.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

13.02.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No