IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 237

CWP-24298-2023 (O&M)
Date of decision: 09.11.2023

M/s S.S.Enterprises

…Petitioner

Vs.

State of Haryana and another

...Respondents

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

Present:- Mr. Kapish Chawla, Advocate,
For the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

****

G.S.Sandhawalia, J. (Oral)

1. Challenge under Article 226/227 of the Constitution of India is to the Physical Verification/Inspection issued by respondent No.2 in Form GST MOV-02 dated 28.09.2023 (Annexure P-1) and for release of goods along with conveyance being held illegally and arbitrarily.

2. It is not disputed that any goods were detained on 28.09.2023, but petitioner has approached this Court only for the first time on 19.10.2023.

3. Counsel for the State has placed on record an order dated 18.10.2023 whereby detention order was already served on the person in charge of the conveyance on 04.10.2023. Thereafter, the order dated 18.10.2023 has been passed imposing penalty under clause 4 sub section (1) of Section 129 of the Haryana Goods and Services Tax Act, 2017.

4. Counsel has vehemently submitted that it is in violation of the Instructions issued in the form of Circular No.41 by the Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing, New Delhi.

5. Counsel for the State, on the other hand, has submitted that order is appealable under Section 107 of The Haryana Goods and Services Tax Act, 2017 (for short 'The Act).

6. Keeping in view the fact that an alternative efficacious remedy under the provisions of the Act is already available, we do not feel it is a fit case to exercise extraordinary writ jurisdiction. In the present case, petitioner has remedy before the appellate authority since the impugned order is purportedly passed without jurisdiction and does not meet the statutory requirements, but passed before approaching this Court and not challenged.

7. It is, thus, open to the petitioner to file an appeal by depositing a sum of 25% of the penalty amount. Since the provision under Sub Section 7 of Section 107 of the Act, *ibid* provides that where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed. Needless to say that appellate authority has all the powers to set aside the said order, if found without jurisdiction.

8. In our considered opinion and to protect the interest of the petitioner, it is directed that appellate authority shall decide the appeal within a period of two weeks from the date of filing of the appeal.

9. Disposed of accordingly.

10. Pending application(s), if any, shall also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

November 09, 2023
Vandana

Whether speaking/reasoned: Yes

Whether reportable: No