04.09.2024
Item No.
ML 170
Saswata

W.P.A. 19933 of 2024
Ashok Sharma
versus
The State of West Bengal & Ors.

Mr. Himangshu Kr. Ray
Mr. Subal Saha
Mr. Subhasis Podder
Ms. Shiwani Shaw
Mr. Piyas Chowdhury

...For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, AGP
Mr. Tanoy Chakraborty
Mr. S. Sanyal

...For the State

1. Affidavit of service filed in Court today is retained with the record.

2. Challenging, inter alia, a notice dated 27th June 2024 passed under Section 129(3) of the WBGST / CGST Act, 2017 (hereinafter referred to as the "Said Act") and the show cause notice issued in Form GST DRC – 01 dated 5th July 2024, inter alia, including the order passed in Form GST MOV – 09 dated 16th July 2024, the instant writ petition has been filed.

3. Mr. Ray, learned advocate appearing for the petitioner submits that the respondents had not only illegally detained the goods and conveyance of the petitioner but had subsequently, on the basis of an illegal show cause notice, determined the penalty. By referring to the physical verification report dated 17th June, 2024, he submits that the only ground for detention of the goods and conveyance was for the physical description and the quantity mismatch in the goods. Admittedly, in this case the conveyance was carrying the

requisite e way bills, e invoices and other documents. Mr. Ray submits that if proper scrutiny is made, it would transpire that there is no product description and quantity mismatch. He submits that the petitioner's goods had been illegally detained and the petitioner, by reason thereof has been denied the right to carry on trade or business, as is guaranteed under Article 19(1)(g) of the Constitution of India. Having regard thereto, this Court may be pleased to quash not only the show cause notice but also the order of detention and the order determining the penalty leviable on the petitioner.

4. Mr. Siddiqui, learned Additional Government Pleader, by placing before this Court Sections 129 and 107 of the said Act submits that the petitioner has an alternate remedy in the form of an appeal. According to him the statute inbuilts, in itself adequate safe guards which enables the Registered Tax Payer to seek return of the vehicle, upon fulfilling certain conditions. Admittedly in this case the petitioner has chosen not to take immediate steps for release of the vehicle. The petitioner also did not file an appeal. Having regard thereto, no interference is called for.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record.

6. In this case, it may be noticed that the respondents by invoking the provisions of Section 129 of the said Act has detained the goods and vehicle belonging to the petitioner. Although, Mr. Ray has questioned the very action of the respondents in detaining the petitioner's goods and vehicle and the ground on which the same had been

detained, no issue as regards the authority and jurisdiction of the authority detaining the vehicle or passing of the order has been raised. It is not the case of lack of jurisdiction or authority or of a procedural irregularity. What the petitioner seeks to question is the correctness of the order.

7. In my view since an alternate remedy is available, the petitioner, at the first instance ought to approach the appellate authority under Section 107 of the said Act. It may be noticed that although, the petitioner claims that his right to carry out trade and business as protected under the Indian Constitution, has been infringed, I find that such right is subject to reasonable restrictions. This apart, the statute inbuilts in it, specific provisions for immediate release of the vehicle, subject to certain conditions.

8. Having regard to the aforesaid, I find no reason to entertain the present writ petition.

9. At this stage, the petitioner submits that dismissal of the instant writ petition shall prejudice his rights to prefer the appeal since he intends to prefer an appeal.

10. Having regard thereto, I am of the view that considering the plight of the petitioner, if the petitioner files the appeal within 15 days from date, the appellate authority, subject to compliance of other formalities by the petitioner and taking note of the grounds alleged by the petitioner, shall hear out and dispose of the appeal as expeditiously as possible preferably within a period of 2 weeks from the date of filing of the appeal.

11. With the above observations and directions, the writ petition being WPA 19933 of 2024 is accordingly disposed of.

12. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)