IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112 ***2024:PHHC:009246-DB***

CWP-1629-2024
Date of Decision: 24.01.2024

M/s. Kanchan Supplier through its Proprietor .....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. J.S. Bedi, Advocate,
for the petitioner.

Mr. Saurabh Kapoor, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

1. The petitioner, in the present petition filed under Articles 226 and 227 of the Constitution of India seeks quashing of the notice in Form GST MOV-02 dated 26.12.2023 (Annexure P-2) and Form GST MOV-10 dated 02.01.2024 passed by respondent No.2 (Annexure P-3) under Section 130 of the Central Goods Service Tax/Punjab Goods Service Tax Act, 2017 (in short 'the Act') by respondent No.3 being without jurisdiction.

2. Mr. Saurabh Kapoor, Addl. A.G., Punjab, on account of having advance copy, puts in appearance and has brought to our notice that in pursuance of the proceedings, order dated 18.01.2024 has been passed in Form GST MOV-11 after giving a notice as such to the petitioner who had not appeared on 16.01.2024 and thereafter, the matter was decided on the next date. The said order is taken on record. Resultantly, order has been passed to confiscate the goods, vehicle and penalty and fine was imposed under Sections 130(1) and 130(2) of the Act. The liability of penalty and fine has been assessed at Rs.5,33,004/- against the value of goods of Rs.9,87,044/-

3. It is not disputed that an appeal would lie under the provisions of the Act before the Appellate Authority and, therefore, the petitioner has a remedy as such against the said order. Counsel has referred to the order dated 20.10.2023 passed by the Apex Court in ***SLP (C) No. 19535 of 2023, Garg Oil Traders through its Proprietor vs. The State of Punjab and others*** (Annexure P-13), wherein the Apex Court has accepted the view of depositing 25% of the total amount by cash and for the remaining amount, the petitioner can furnish personal surety bond.

4. We have perused the said order. Apparently, the State of Punjab was un-represented in the said order and the SLP was directed against the interim order passed by the co-ordinate Bench on 25.05.2022 in CWP-4504 of 2022, Garg Oil Traders vs. State of Punjab and others, wherein vide interim order, the respondents were directed to provisionally release the goods/conveyance. The relevant directions read thus:-

> *"In order to secure the interest of Revenue, bank guarantee in terms of following provision as contained in Section 130 (2) of the Act, is ordered to be furnished:-*
>
> > *"(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit;*
> >
> > *Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon :*
> >
> > *Provided further that the aggregate of such*

fine and penalty leviable shall not be less than the [penalty equal to hundred per cent. of the tax payable on such goods].

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon...."

5. Accordingly, the respondents were directed provisionally to release the goods/conveyance involved in the writ petitions subject to the petitioners depositing tax chargeable on the goods and furnishing bank guarantee which shall be :-

(i) In case the goods, of amount equivalent to the market value of the goods (under proceedings of Section 130); and

(ii) In case where conveyance is being proceeded against, for an amount equal to tax payable on the goods being transported thereon while apprehended in the present case(s).

6. Counsel for the petitioner has accordingly submitted that he would furnish the personal surety bonds.

7. It is not disputed that the petitioner as such is a proprietorship concern which is situated in the State of Uttar Pradesh. Vide the order dated 18.01.2024 passed by the authorities, a specific finding has been recorded that the supply chain of the petitioner-firm has been verified to be ingenuine and on the purchases which they have made at an earlier point of time, the said

persons have not paid any tax. In such circumstances, a finding has been recorded that there are bogus transactions made for defrauding the exchequer.

8. In view of the fact that a *prima facie* finding has already been recorded, which the petitioner is free to challenge, we are of the considered opinion that deposit of 25% of the amount by cash and for balance furnishing of bank guarantee would be the adequate remedy as such to ensure that the interest of the State is secured as it would be almost impossible to enforce the surety bonds of a person who does not belong to this State.

9. Keeping in view the law laid down by the Apex Court in ***The State of Punjab vs. M/s. Shiv Enterprises and others, 2023 (96) GST 120***, we dispose of the writ petition with liberty to the petitioner to challenge order dated 18.01.2024 passed in Form GST MOV-11. The vehicle and the goods shall be released on furnishing of 25% of the amount mentioned in MOV-11 order and the balance outstanding amount shall be secured by furnishing of a bank guarantee. The contention which has been raised that the consignee being local as such would furnish the surety bonds is not liable to be accepted since the consignee is not before us and we cannot as such direct the said person to furnish any surety bonds.

(G.S. SANDHAWALIA)
JUDGE

24.01.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No

Shivani Gupta
2024.02.06 12:41