IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2761 of 2023(O&M)
Date of Decision: 24.01.2024

Kasturi Lal **......Petitioner**

Vs

State of Punjab and others **.....Respondents**

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

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

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

(On the request of learned counsel for the petitioner, proceedings are conducted through Video Conferencing)

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

[1]. Challenge herein is made to the order dated 30.01.2023 (Annexure P-6) passed by respondent No.4, wherein the request for release of conveyance was rejected on the ground that the person has not been authorized by the driver or owner of the vehicle.

[2]. Perusal of the said order would go on to show that as many as six vehicles were the subject matter of consideration before the authorities to whom the request had been made.

[3]. Petitioner herein is stated to be person incharge of vehicle No.RJ 13D 7361 which was intercepted by respondent No.4 while carrying goods on 17.12.2022.

[4]. It is not disputed that the petitioner only approached this Court on 08.02.2023 by filing the present writ petition. On 10.02.2023, it had been informed that the owner of the vehicle is not ready to deposit the penalty, however, he is ready to pay the fine.

[5]. In the reply filed, it has been brought to our notice that vide order dated 30.12.2022, form GST MOV-02 has been issued, wherein it has been found that the goods have been transported without valid documents and driver of the vehicle is also involved in tax evasion. Nobody came forward from consignor's side or consignee's side for the verification of goods and documents. The discrepancies are stated to be as under:-

> *i. That the consignor firm has been created merely for the generation of E-way bills for the 'rahdari' purpose only, to evade the applicable taxes.*
>
> *ii The inward E-way bill date of the consignor firm has been examined qua which it has been revealed that fraudulent E-way bills have been generated.*
>
> *iii. As per the statement of the Driver, goods were loaded from Anupgarh (Raj.) whereas invoice produced is from Delhi to Mandi Gobindgarh. No proof of corresponding purchase from 'Anupgarh to Delhi has been produced.*
>
> *iv When the RFID data of the Vehicle No RJ13RD-7361 was checked from the GST Portal it has been revealed that from*

01. 12. 2022 to 23.12.2022 'no vehicle movement' is recorded for the given period though active E-way bill is there.

v. During the course of hearing the dealer has failed to produce any account book or documents to prove the genuineness of the transaction in question which clearly shows that the firm has created of E-way bills for the 'rahdari' purpose only, to evade the applicable taxes.

vi. As per EWB, the goods loaded in the conveyance (Tractor Troli) were being transported from Delhi to Mandi Gobindgarh' but the goods was detained in 'Bhiki'. Thus, route followed by the vehicle is also not practical. So, prima facie it has been established that the firm made the bogus transactions with intent to evade the tax.

vii. Involvement of the driver in evasion of tax has also been proved as he accepted the invoice from the consignor M/s Saurabhji Enterprises New Delhi whereas it is clear from the facts of the case that the goods loaded from 'Anupgarh' (Raj.) as such the transactions is being carried out with intention to evade tax by supplying goods without payment of tax.

[6]. In the reply filed, it is submitted that the release order dated 28.03.2023 in Form GST MOV-5 was issued by the respondent-Department, whereby the confiscated goods and conveyance were released by the respondent-Department in good condition after the payment of requisite tax amount by the petitioner.

[7]. Keeping in view the fact that there is a remedy of appeal as such

against the order dated 30.12.2022, wherein penalty of Rs.65,558/- has been imposed and the exigency of urgency no longer exists regarding the confiscation of the vehicle or the goods, we are of the considered opinion that the petitioner may avail his remedy of appeal in accordance with law before the competent authority in view of law laid down in ***The State of Punjab Vs. M/s Shiv Enterprises and others, 2023 (96) GST 120***.

[8]. This writ petition is accordingly disposed of.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

24.01.2024
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No