

The Assistant Commissioner Of State Tax vs M/S Commercial Steel Company on 3 September, 2021

Author: Dhananjaya Y Chandrachud

Bench: D.Y. Chandrachud, Vikram Nath, Hima Kohli

CA 5121/2021

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 5121 of 2021
(Arising out of SLP (C) No 13639 of 2021 @ D No.11555 of 2021)

The Assistant Commissioner of State Tax
and Others

Versus

M/s Commercial Steel Limited

JUDGMENT

Per Dr Dhananjaya Y Chandrachud 1 Leave granted.

2 This appeal arises from a judgment of a Division Bench of the High Court of Telangana dated 4 March 2020.

3 The High Court in the exercise of its writ jurisdiction under Article 226 of the Constitution set aside the action of the appellants in collecting an amount of Rs 4,16,447 from the respondent towards tax and penalty under the Central Goods and Services Tax Act 2017 (CGST) and State Goods and Services Tax Act (SGST) and directed a refund together with interest at the rate of 6% per annum from 13 December 2019. A further direction has been issued to the State of Telangana to consider initiating disciplinary proceedings against the Assistant Commissioner. Costs of Rs 25,000 have been imposed on the first appellant, who was the first respondent before the High Court. 4 The

respondent is a proprietary concern engaged in the business of iron and steel and is registered under the Central Goods and Services Tax Act 2017 and has been allotted a GST code. The respondent purchased certain goods from a dealer, JSW Steel Limited, Vidyanagar, Karnataka, under a tax invoice dated 11 December 2019. The consignment of goods was being carried in a truck bearing registration No KA 35 C 0141. While it was proceeding from the State of Karnataka, it was intercepted on 12 December 2019 at 5.30 pm at Jeedimetala. The tax invoice indicated that the goods were earmarked for delivery at Balanagar, Telangana. The case of the appellants is that Balanagar is situated between the State of Karnataka and Jeedimetala and that no reasonable person would cross Balanagar and then turn around to go back to the place of destination. The purchase value of the goods appeared to be in the amount of Rs 11,14, 579 from the tax invoices. 5 The case of the revenue was that in the guise of an inter-State sale, the respondent was attempting to sell the goods in the local market by evading SGST and CGST. An order of detention was issued in Form GST MOV-06 on 12 December 2019 and a notice was served on the person in charge of the conveyance. The respondent paid the tax and penalty, following which the goods and the conveyance were released on 13 December 2019. 6 The respondent instituted writ proceedings under Article 226 of the Constitution before the High Court in order to challenge the order of detention dated 12 December 2019 and the notice which was issued under Section 20 of the IGST Act 2017. A refund of tax was sought. A counter affidavit was filed on behalf of the appellants before the High Court. 7 The High Court entertained the writ petition and ordered the refund of the amount collected towards tax and penalty together with interest. The High Court has observed that a mere possibility of a local sale would not clothe the officials to take such an action and there was no material to indicate that an attempt was made by the respondent to deliver the goods at a different place and to sell them in the local market evading CGST and SGST. The High Court has also come to the conclusion that since the vehicle was being driven from Karnataka by the local driver from that State, “it is perfectly possible for the driver to lose his way on account of being unfamiliar with the roads” in Hyderabad and bypass Balanagar to proceed to Jeedimetala. 8 Mr Prashant Tyagi, counsel appearing on behalf of the appellant submits that the High Court was in error in entertaining the writ petition under Article 226 of the Constitution, having regard to the statutory alternative remedy which is available under Section 107 of the CGST Act. Counsel urged that while the existence of an alternative remedy under the statute is not an absolute bar to the maintainability of a writ petition under Article 226, none of the exceptions which have been enunciated by the judgments of this Court apply in this case. Hence, it has been urged that the High Court ought not to have entertained the writ petition. On merits, it has been submitted that the High Court has proceeded on the basis of surmises.

9 On the other hand, it was urged by Mr Shaik Mohamad Haneef, counsel for the respondent that the High Court having entertained the writ petition, it was justified on merits in setting aside the detention and the order by which the tax and penalty was collected under duress. Hence, it is urged that no interference of this Court is warranted.

10 Section 107 is extracted below:

“107. Appeals to Appellate Authority – (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union

Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him;

and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed:

Provided that no appeal shall be filed against an order under sub- section (3) of Section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under Section 73 or Section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of Section 108 or Section 113 or Section 117 or Section 118 be final and binding on the parties.”

11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article

226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation. 12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13 For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case.

14 Pending applications, if any, stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]J.
[Vikram Nath]J. [Hima Kohli] New Delhi;

September 03, 2021

CKB

ITEM NO.22

Court 4 (Video Conferencing)

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No.11555/2020 (Arising out of impugned final judgment and order dated 04-03-2020 in WP No.2161/2020 passed by the High Court for The State of Telangana at Hyderabad) THE ASSISTANT COMMISSIONER OF STATE TAX & ORS. Petitioner(s) VERSUS M/S COMMERCIAL STEEL COMPANY Respondent(s) (With appln.(s) for IA No. 51165/2020 - EXEMPTION FROM PAYING COURT FEE) Date : 03-09-2021 These matters were called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE VIKRAM NATH HON'BLE MS. JUSTICE HIMA KOHLI For Petitioner(s) Mr. Prashant Tyagi, Adv.

Mr. P. Venkat Reddy, Adv.

Mr. P. Srinivas Reddy, Adv.

M/s. Venkat Palwai Law Associates For Respondent(s) Mr. Shaik Mohamad Hanif, Adv.

Mrs. Srilakshmi Velicheti, Adv.

Mrs. Divya Mishra, Adv.

Mrs. Suresh Kumar, Adv.

Mr. Irshad Ahmad, AOR UPON hearing the counsel the Court made the following O R D E R 1 Leave granted.

2 The appeal is allowed in terms of the signed reportable judgment.

3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. - cum-P.S.

(SAROJ KUMARI GAUR)
Court Master

(Signed reportable judgment is placed on the file)