
[2022] 137 taxmann.com 156 (Andhra Pradesh)/[2022] 91 GST 399 (Andhra Pradesh)[30-12-2021]

GST : Where Competent Authority detained vehicle of assessee-transporter and issued notice, since proceedings had been initiated, same was required to be taken to its logical conclusion

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[2022] 137 taxmann.com 156 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Chillale Sanjiv

v.

State of Andhra Pradesh*

AHSANUDDIN AMANULLAH AND MS. B.S. BHANUMATHI, JJ.

WRIT PETITION NO. 29999 OF 2021

DECEMBER 30, 2021

Detention - Initiation of proceedings - Competent Authority detained vehicle of assessee [transporter] on plea that no document with regard to movement of goods being carried by vehicle, i.e., granite slabs was produced when vehicle was stopped for physical verification - He further issued notice to person concerned under Form GST MOV-02 - Held : Keeping in mind provisions of section 129(2) as also fact that once proceedings had been initiated, same was now required to be taken to its logical conclusion, assessee was to be granted liberty to get proceedings which had already been initiated by Authority taken to its logical conclusion, besides praying before Authority for provisional release of vehicle, which would be considered by Authority [Section [129](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 8 and 9] [In favour of assessee]

CASES REFERRED TO

State of Uttar Pradesh v. Kay Pan Fragrance (P.) Ltd. [[2019](#)] [112 taxmann.com 81](#)/[[2020](#)] [77 GST 576 \(SC\)](#) (para 7).

Somisetty Ganesh Babu, Adv. for the Petitioner. **V. Maheswar Reddy** and **Y.N. Vivekananda**, Govt. Pleaders for the Respondent.

JUDGMENT

Ahsanuddin Amanullah, J. - Heard Mr. Somisetty Ganesh Babu, learned counsel for the petitioner; Mr. V. Maheswar Reddy, learned Government Pleader, Home, for the respondents nos. 1 and 3 and Mr. Y. N. Vivekananda, learned Government Pleader, Commercial Tax, for the respondent no. 2.

2. The petitioner has moved the Court for the following relief :—

"..... to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus under article 226 of the Constitution of India declaring the action of the 2nd respondent in seizing the Lorry Vehicle bearing No. MH 24 AB 8893 of the petitioner without following any procedure under statutes contemplated under law as illegal, arbitrary, high handedness and against to the principles of natural justice and violative of articles 19, 21 of the Constitution of India and consequently direct the 3rd respondent to release the vehicle from their custody and pass...."

3. The petitioner claims to be the owner of vehicle which had been detained by the authorities on the plea that no document with regard to movement of the goods being carried by the vehicle i.e., granite slabs was produced when the vehicle was stopped for physical verification.
4. Learned counsel for the petitioner submitted that the petitioner is the owner of the truck and being transporter has nothing to do with the goods as he was hired by the granite factory to transport the granite slabs from Prakasam District to Maharashtra.
5. Learned counsel submitted that law does not permit any detention of vehicle as only the concerned consignment/goods is liable to the same. Learned counsel relied upon various judgments of Coordinate Benches in which after putting certain conditions, the vehicle has been directed to be released in favour of the owner.
6. Learned Government Pleader, Commercial Tax, submitted that the action of the authorities is under the Andhra Pradesh Goods and Services Tax Act, 2017 (for short, 'A.P.G.S.T. Act') and Section 129(2) thereof clearly provides for detention, seizure and release of goods and conveyances in transit. Thus, it was contended that the law does not make any distinction between the conveyances and the goods and, in the present case, admittedly, no papers or documents were produced relating to the granite, which was subject to taxation under the A.P.G.S.T. Act, leading to a presumption that there was evasion and the authorities have rightly detained the vehicle in question. Further, it was submitted that the authorities have also issued notice to the person concerned under FORM GST MOV-02. Learned counsel submitted that in the notice form itself, opportunity to show cause within seven days after receipt of the notice is given and also a date is given for appearance. Thus, learned counsel submitted that sufficient safeguard against violation of principles of natural justice and giving reasonable opportunity of hearing are self contained. It was submitted that the petitioner should get the proceedings concluded as per the provisions of A.P.G.S.T. Act. Further, with regard to the contention that he is a mere transporter, learned counsel submitted that the same is a matter of fact between the petitioner and the owner of the goods, which besides requiring proof, cannot also be a matter of consideration under the provisions of the A.P.G.S.T. Act, as admittedly, it was the vehicle in question on which the finished granite was being transported and upon interception, valid papers have not been furnished till date.
7. Learned counsel further submitted that the Supreme Court, in the judgment dated 22-11-2019, in *State of Uttar Pradesh v. Kay Pan Fragrance (P.) Ltd.* [\[2019\] 112 taxmann.com 81/\[2020\] 77 GST 576](#) has observed that the High Court ought to have been loathe to entertain the writ petitions questioning the seizure of goods and to issue directions for its release and further that the High Court, in all such cases, ought to have relegated the assessee before the appropriate Authority for complying with the procedure prescribed as applicable for release (including provisional release) of the seized goods.
8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to interfere in the matter. Keeping in mind the provisions of section 129(2) of A.P.G.S.T. Act, as also that once such proceeding has been initiated, the same is now required to be taken to its logical conclusion.
9. Accordingly, the writ petition stands disposed of with liberty to the petitioner to get the proceeding which has already been initiated by the authorities taken to its logical conclusion, besides praying before the authorities concerned for provisional release of the vehicle, which shall be considered by the authorities concerned in accordance with law expeditiously. No order as to costs.
10. Miscellaneous petitions, if any pending, also stand disposed of.

S.K. JAIN

[*](#)In favour of assessee.