M/S Adarsh Tobacco Co. v. State Of U.P. And 3 Others

WRIT TAX No. 1403 of 2022 | Decision: 2023-03-17 | Allahabad High Court

Court No. - 47

Case :- WRIT TAX No. - 1403 of 2022

Petitioner :- M/S Adarsh Tobacco Co.

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Manish Gupta,Arjit Gupta,Naveen Chandra

Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Vinod Diwakar,J.

This petition has been filed with the prayer to quash the seizure order dated 20th July, 2022, passed by the respondent no. 4, under section 67 of UPGST Act. A further prayer has been made to command the respondent no. 3 to release the goods of the petitioner forthwith.

The facts of the case, in brief, are that the petitioner is a registered dealer under the GST having registration which is specified in para 3 of the writ petition. The petitioner has multiple godowns, one of which is at Etah. It transpires that a survey was made by the department on 20 th July, 2022 and certain goods were found in the premises beyond the goods which were already disclosed by the assessee. Action was taken by the competent authority in terms of section 67 of the UPGST Act. Petitioner claims to have deposited the amount in terms of section 74 (5) of the GST Act and sought release of the goods seized by the department. Since such request of the petitioner has not been considered, the petitioner is before this court.

The department on the other hand contends that the deposit made by the petitioner is not sufficient for the release of seized goods as the commodity which has been seized by the department is a perishable good and by virtue of section 67 (8), and a different procedure for deposit of amount is contemplated than what is observed by the petitioner. According to the department unless the petitioner complies with the requirement of section 67 (8) of the Act he would not be entitled to release of the seized goods.

From the respective stands taken by the parties before this court, the basic issue that arises for consideration in the facts of the case is as to whether the goods seized by the department qualifies to be a perishable good or a non-perishable good. Reliance has been placed upon the notification issued by the Central Board of Indirect Taxes and Customs dated 13th June, 2018 under sub-section (8) of section 67 of the GST Act, 2017, whereby all taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 would be covered by it and would be treated as perishable goods. The said notification has also been followed by State Government on 12th June, 2018 which is to the similar effect. In such circumstances, it remains no longer in doubt that tobacco is to be treated as perishable goods and its release would be regulated by sub-section (8) of section 67 of the GST Act. Petitioner’s contention that the release would be dealt with in accordance with section 67 (6) of the GST Act cannot be accepted.

On facts, it is not in dispute that the goods seized by the department are included within the definition of tobacco and, therefore, we have no doubt in coming to the conclusion that the seized goods would fall within the definition of perishable goods. While taking such a view, we may observe that the notification issued by the department on 13th June, 2018 is otherwise not under challenge.

Learned counsel for the petitioner has vehemently urged that had the goods been perishable it ought to have sold in terms of rules 141 (2) within 15 days of the seizure and as it has not been sold, the goods ought to be treated as non-perishable. The contention raised in that regard is noticed only to be rejected. The determination of the goods being perishable or non-perishable would be in accordance with the applicable rules and the notifications and not upon any fortuitous circumstance whether the goods have been actually sold within 14 days or not. The

goods which are treated to be a perishable under the rules and notifications would not be converted into non-perishable goods only because the authorities have not acted in terms of Rule 141 (2).

Learned counsel for the State also submits that the deposit made by the petitioner under section 74 (5) of the GST Act cannot be of any help to the petitioner’s cause for the purposes to release of goods in terms of section 67 (8) of the Act.

In view of the above discussion, we find that the petitioner having not complied with the requirement of release of seized goods i.e. perishable goods, is not entitled to any direction by this court for release of such seized goods.

At this stage, learned counsel for the petitioner submits that the petitioner shall deposit the requisite amount which may be warranted treating the goods to be perishable and in such circumstance the department be directed to release the goods, forthwith. In the event petitioner complies with the requirement of law for release of perishable goods under the applicable provisions, such claim of the petitioner would be dealt with expeditiously and in accordance with law.

Subject to the observation made above, this petition is consigned to the record.

Order Date :- 17.3.2023 Shafique

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