

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8941/2019
(@Petition for Special Leave to Appeal (C) No. 25291/2019)

THE STATE OF UTTAR PRADESH & ORS.

Appellant(s)

VERSUS

M/S KAY PAN FRAGRANCE PVT. LTD.

Respondent(s)

WITH

CIVIL APPEAL NO.8942/2019
(@SLP(C) No. 25292/2019)

CIVIL APPEAL NO.8944/2019
(@SLP(C) No. 27609/2019)

O R D E R

Leave granted.

Heard the learned counsels appearing for the parties.

These appeals throw up common issues for consideration. The first set of appeals is filed by the State of U.P., questioning the interim order passed by the High Court directing the State to release the seized goods, subject to deposit of security other than cash or bank guarantee or in the alternative, indemnity bond equal to the value of tax and penalty to the satisfaction of the Assessing Authority. It has come on record that similar orders came to be passed in several other writ petitions by the High Court, details whereof have been mentioned in the affidavit filed by the State in this Court. It was brought to our notice that the High Court, after passing the said interim order would then dispose of

the main Writ Petition as having become infructuous, consequent to release of goods by the appropriate authority in terms of the interim order of the High Court. In the context of that grievance, this Court had to pass an order on 16.9.2019 which reads thus:-

"Applications for exemption from filing certified copy of the impugned order and official translation are allowed.

Issue notice on the special leave petition as also on the prayer for interim relief.

Dasti allowed.

Tag with Special Leave Petition (C) Diary No.24795 of 2019.

Considering the fact that in the present case goods have already been released pursuant to the impugned order, no interim relief can be granted.

However, our attention was invited to an order dated 31.01.2019 passed by the High Court in a similar matter i.e. Writ Tax No.141 of 2019 and couple of other case(s), wherein the High Court allowed the writ petitioner(s) to withdraw writ petition(s) after release of goods pursuant to the interim order, despite the fact that the interim order passed by it directing release of goods was subject matter of challenge pending before this Court. That cannot be countenanced. For, the claim of the State cannot be made faitaccompli in this manner.

In future, if such occasion arises including in the case of writ petitioners in this case, it will be open to the petitioner(s) (Department) to invite the attention of High Court regarding the pending special leave petition before this Court. We are certain that the High Court will consider the request for withdrawal of writ petition appropriately."

(emphasis in italics supplied)

It is now brought to our notice that after the afore-mentioned order of this Court, the High Court is disposing of Writ Petitions

by referring to Section 67 (8) of the Central Goods and Services Act, 2017 (for short, 'the Act') and Rule 141 of the relevant Rules. We deem it proper to advert to one such order passed by the High Court, which is assailed by the assessee in the second set of appeal filed before this Court. The said order reads thus:-

"Heard learned counsel for the petitioner and learned Additional Advocate General for the State.

It has been brought to notice of the Court that the goods are perishable and hazardous in nature.

Sri Manish Goyal, learned Addl. Advocate General has submitted that the Central Goods and Services Tax Act, 2017 provides a complete procedure for release of such goods, as contained in Section 67(8) of the Act read with Rule 141 of the relevant Rules, which are quoted herein below:-

"Section 67(8). The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be, after its seizure under sub-section (2), be disposed of by the proper officer in such a manner, as may be prescribed.

Rule 141. Procedure in respect of seized goods.-(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment."

Subject to compliance of the above provisions of law, the goods so seized may be considered for release within next one week.

The writ petition is, accordingly, disposed of."

In the first place, we find force in the submission canvassed by the State that a complete mechanism is predicated in the Act and the Rules for release and disposal of the seized goods and for which reason, 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.

In the second set of appeal filed by the assessee, the relief claimed by way of Writ Petitions before the High Court is as under:-

(a) issue a suitable writ, order or direction in the nature of certiorari quashing the seizure order dated 25.7.2019 passed by the respondent No.2 and 3 under Section 67(2) of the Act and the panchnamas dated 19.7.2019 (Annexure - 2 & 3) to the writ petition respectively.

(b) issue a writ, order or direction in the nature of mandamus/prohibition declaring the search and seizure proceedings dated 25.7.2019, to be void and restraining the respondent authorities from taking any coercive action against the petitioner.

(c) issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to release the goods of the petitioner forthwith without demanding any security.

(d) issue any such order and further orders which this Court may deem fit and proper in the facts and circumstances of the case.

(e) Award the cost of the Writ Petition to the petitioner.

It is broadly agreed that similar relief has been claimed in all the writ petitions filed before the High Court, including the

one disposed of by the High Court as infructuous or by passing order which is impugned by the assessee in the second set of appeal referred to above.

For the sake of consistency, we have no hesitation in observing that the High Court in all such cases ought to have relegated the assessees before the appropriate Authority for complying with the procedure prescribed in Section 67 of the Act read with Rules as applicable for release (including provisional release) of seized goods.

Section 67 of the Act reads thus:

"Section 67 - Power of inspection, search and seizure

67. (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorize in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall

be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorize in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorized under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) *The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.*

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under subsection (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under subsection (8), have been seized by a proper officer, or any officer authorized by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorized by him may cause purchase of any goods or services or both by any person authorized by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."

(emphasis in italics supplied)

The relevant rules for release of seized goods are Rules 140 and 141 and the same read thus:-

"Rule 140 – Bond and security for release of seized goods

(1) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INR-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

Explanation.- For the purposes of the rules under the provisions of this Chapter, the "applicable tax" shall include Central Tax and State Tax or Central Tax and the Union Territory Tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017)

(2) in case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.

Rule 141 – Procedure in respect of seized goods

(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.

(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the Commissioner may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things."

There is no reason why any other indulgence need be shown to the assesseees, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even upto the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67 (6) of the Act. In the interim orders passed by the High Court which are subject-matter of assail before this Court, the High Court has erroneously extricated the assesseees concerned from paying the applicable tax amount in cash, which is contrary to the said provision.

In our opinion, therefore, the orders passed by the High Court which are contrary to the stated provisions shall not be given effect to by the authorities. Instead, the authorities shall process the claims of the concerned assessee afresh as per the express stipulations in Section 67 of the Act read with the relevant rules in that regard. In terms of this order, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances. That be done within four weeks without any exception.

We reiterate that any order passed by the High Court which is contrary to the stated provisions need not be given effect to in respect of all the cases referred in the affidavit by the State Government before this Court and fresh cases which may have been filed or likely to be filed before the High Court in connection with the subject matter of these appeals, by all concerned and are deemed to have been set aside/modified in terms of this order.

In view of this order, all the Writ Petitions pending before the High Court, list whereof has been furnished in the affidavit are deemed to have been disposed of accordingly. We have passed this common order to cover all cases of seizure during the relevant period, to obviate inconsistency in application of Law and also to do away with multiple appeals required to be filed by the State/ assessee to assail the unstatable orders/directions passed by the High Court in subject writ petition(s) referred to in the affidavit filed by the State before this Court.

Accordingly, the appeals are disposed of in the afore-stated terms. All pending applications are also disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

NEW DELHI;
NOVEMBER 22, 2019.

ITEM NO.299

COURT NO.7

SECTION XI

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

RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No.25291/2019

(Arising out of impugned final judgment and order dated 01-08-2019 in WT No. 866/2019 passed by the High Court of Judicature at Allahabad)

THE STATE OF UTTAR PRADESH & ORS.

Petitioner(s)

VERSUS

M/S KAY PAN FRAGRANCE PVT. LTD.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.162462/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.162463/2019-EXEMPTION FROM FILING O.T.[TO BE TAKEN UP AT THE BOTTOM OF THE LIST])

WITH

SLP(C) No. 25292/2019 (XI)

(FOR ADMISSION and I.R. and IA No.162499/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.162500/2019-EXEMPTION FROM FILING O.T.)

SLP(C) No. 27609/2019 (XI)

(FOR ADMISSION and IA No.178047/2019-EXEMPTION FROM FILING O.T.)

Date : 22-11-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s)

Mr. S.K. Bagaria, Sr. Adv.

Mr. Rupesh Kumar, AOR

Mrs. Pankhuri Shrivastava, Adv.

Mr. Aditya Kumar, Adv.

Ms. Neelam Sharma, Adv.

Mr. Pravesh Bahuguna, Adv.

Ms. Vizokenuo Shua, Adv.

Ms. Vasvi Nagar, Adv.

Ms. Aishwarya Bhati, Sr. Adv.

Mr. Bhakti Vardhan Singh, AOR

Ms. Megha Agrawal, Adv.

Mr. Surjit Singh, Adv.

Mr. Nitin, Adv.

Ms. Chitrangda R., Adv.

Mr. Nithin P., Adv.

For Respondent(s)

Ms. Anubha Agrawal, AOR

UPON hearing the counsel the Court made the following

O R D E R

Special Leave Petition (C) No.25291 of 2019, Special Leave Petition (C) No.25292 of 2019 and Special Leave Petition (C) No.27609 of 2019:-

Leave granted.

The Appeals are disposed of in terms of the signed order.

All pending applications are also disposed of.

(VISHAL ANAND)

COURT MASTER (SH)

(VIDYA NEGI)

COURT MASTER (NSH)

(Signed Order is placed on the file)

