(2020) 01 CHH CK 0183

In the Chhattisgarh High Court

Case No : Writ Petition (T) No. 29 Of 2020

Shankar Yadav APPELLANT

Vs

State Of Chhattisgarh And Ors RESPONDENT

Date of Decision : 27-01-2020

Acts Referred:
Central Goods And Services Tax Rules, 2017 — Section 138A

Citation : (2020) 01 CHH CK 0183

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Harsh Wardhan, Jitendrra Pali, B. Gopa Kumar

Final Decision : Disposed Of

Judgement

@JUDGMENT-JUDGMENT

1. Challenge in the present Writ Petition is to the impugned demand notice dated 17.01.2020 (Annexure P/4) which is an order of demand of tax and

penalty issued by the respondent No.5.

2. The brief facts, which led to the filing of the present writ petition is that, the respondent department had intercepted a Truck bearing registration

No.C.G.04-ME-3494 on 14.01.2020. In the course of interception of Truck, the authorities concerned found that the vehicle was carrying large

quantity of Pan Masala and on an enquiry it was found that there was large number of discrepancy in the valuation of goods leading to revenue loss.

The vehicle was initially detained and the product loaded in the vehicle has been seized. Finally a notice dated 14.01.2020 (Annexure P/2) was issued

to the Driver, the person in charge of the vehicle. To the said notice, it is said that the owner of the said goods i.e. M/s Kay Pan Sugandh Masala Pvt.

Ltd. and M/s K.P. Sugandh Ltd. had submitted their reply.

3. It is noteworthy that according to the counsel, the petitioner herein happens to be only a Driver of the Truck which was intercepted i.e. Truck

bearing registration No.CG-04-ME-3494. It is also worthwhile to take note of the notice which was issued to the Driver of the vehicle and the reply

furnished by the aforesaid two owners of the goods. Initially the respondents have issued Annexure P/4 on 17.01.2020 by way of FORM GST MOV-

09 regarding demand of tax and penalty. The said order of demand has been issued again in the name of the person in charge of the conveyance

namely Shankar Yadav, who according learned counsel is only a Driver of the Truck in which the goods were being transported.

4. According to learned counsel, the Driver has got nothing to do with the aforesaid demand of tax and penalty. He referred to proviso of Rule 138A

of The Central Goods and Services Tax Rules, 2017 (in short, the Rules, 2017) which provides for the documents which the person in charge of the

conveyance shall carry. According to counsel for the petitioner, the petitioner infact was carrying both these documents as envisaged under Rule

138A of the Rules, 2017, and therefore, there is no illegality on the part of the petitioner/driver so far as the requirement of law is concerend. The

counsel for the petitioner further submits that if at all if the respondent department intends for confiscation proceeding or to initiate appropriate

proceedings, that would be under Sections 129 and 130 of the Rules, 2017, which may be against the owner of the goods and not against the

petitioner/driver.

5. Learned counsel appearing for the Union of India as well State would submit that the demand notice under challenge is only a formate as is

required under the guidelines framed under the rules. They also submitted that infact the proceeding would only be drawn against the owner of the

goods and that the petitioner has been served only in the capacity of being the person in charge of the vehicle at the relevant time of interception. He

otherwise may not be the person against whom the tax liability or penalty may fall. Learned counsel for the Union of India submits that infact

subsequently the owner has entered appearance before the competent authority and is contesting the case by submitting his response to the

proceedings and any further order would as such be passed only against the owner of the goods.

6. Given the said submissions made by the learned counsel for the respondents-departments, this court is of the opinion that the petitioner as such as of

now would not have any grievance so far as demand notice dated 17.01.2020 (Annexure P/4) is concerned in view of the fact that the owner has

subsequently entered appearance in the same proceeding and is contesting the case on merits.

7. The writ petition accordingly stands disposed of.