Sr. No. 61

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No.1741/2023
CM No.4051/2023

M/s Jammu Pigments Limited ….Petitioner(s)/Appellant(s)

Through :- Mr. Jatin Mahajan, Advocate.

V/s

Deputy Commissioner, State Taxes Department and others ….Respondent(s)

Through :- Mr. K.D.S Kotwal, Dy. AG.

Coram: **HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE**
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
12.07.2023

1. Instant petition has been filed by the petitioner seeking quashment of the order dated 17.06.2023 passed by respondent No.1 whereby the penalty under Section 129(1)(A) of the Jammu and Kashmir Goods and Service Tax Act, 2017 (hereinafter referred to as '*the Act*') was imposed upon the petitioner firm.

2. Mr. K.D.S Kotwal, learned Dy. AG who is present in the Court enters appearance and submits that the petition in hand is not maintainable in light of Section 107 of the Act which provides efficacious remedy for filing appeal and revision before the appellate authority.

3. Learned counsel appearing for the petitioner has brought attention of the Court to Section 129 of the Act. For facilty of reference, the said Section is reproduced hereunder:

"129. Detention, seizure and release of goods and conveyances in transit.—

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and

conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b)in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in terms of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer."

4. We have heard learned counsel for the parties and perused the annexures appended with the petition.

5. Since the remedy is available to the petitioner under Section 107 of the Act, therefore, we are not inclined to entertain this petition and accordingly, the same is **dismissed**. The petitioner shall be at liberty to avail the appropriate remedy available to him in terms of the provisions admissible to the field. On receipt of the appeal, to be filed by the petitioner herein, the appropriate authority shall consider the same at the earliest having regard to Section 129 of the Jammu and Kashmir Goods and Service Tax Act, 2017.

(Wasim Sadiq Nargal)
Judge

(Tashi Rabstan)
Judge

Jammu:
12.07.2023
Surinder

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No