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Sd3 2018

W.P. 6633 (W) of 2018
Gati-Kintetsu Express Private Limited.
Versus
Assistant Commissioner of State Tax,
Kharagpur Range & Ors.

Mr. Rajarshi Chatterjee
...for the petitioner

Mr. Abhrotosh Majumder, Ld. A.A.G.
Mr. P. Dudhoria
Mr. Debasish Ghosh
...for the State

An order of seizure passed under Section 129(1) of the Central Goods and Services Tax Act, 2017 is under challenge in the present writ petition. The order is appealable under Section 107 of the Act of 2017.

Learned advocate for the petitioner submits that, the order comes within the purview of Section 121 of the Act of 2017. He submits that, Section 121 of the Act of 2017 carves out an exception of non-appealable decisions and orders and that the impugned order comes within the purview of such Section. Therefore, the writ petition is not maintainable. In support of such contention he relies upon a judgment and order dated February 1, 2018 passed **Writ Tax No.111 of 2018 (M/s. R.K. Overseas – Versus- Union of India & Ors.)** by the Allahabad High court.

Learned Additional Advocate General appearing for the respondents submits that, the writ petitioner proceeds on the basis of that the appellant authority has not been constituted. He submits on instructions that, appellate authority has since been constituted. He refers to Section 121 of the Act of 2017 and submits that, the exception is in relation to books of accounts, registers and other

documents that may be seized and retained by the authorities. An order of seizure or retention of books of account, register and other documents may not be appealable. In such circumstances, he submits that, the writ petitioner should be required to prefer the statutory appeal.

Learned advocate for the petitioner submits that, the Goods and Service Tax Act portal does not have provision for filing an appeal.

In response, learned Additional Advocate General submits that, Rule 109 of the West Bengal Goods and Services Tax Rules, 2017 allows an appeal to be filed either electronically or otherwise. He submits that, the petitioner may file the appeal either electronically or otherwise.

The petitioner is aggrieved by an order of seizure of vehicle passed by the authorities exercising jurisdiction under Section 129(3) of the Central Goods and Services Tax Act, 2017. Such an order is appealable under Section 107 of the Act of 2017. Section 107 of the Act of 2017 is as follows :-

“107. Appeals to Appellate Authority.

(1) Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

.....”

Section 107 of the Act of 2017 allows any person aggrieved by any decision or order passed under the Act of 2017 or the State Goods and Services Tax Act to file an appeal before the appellate authority as may be prescribed. It appears that, the State has prescribed the appellate authority who is the senior Joint Commissioner (Appeals) as the appellate authority.

Section 121 of the Act of 2017 craves out an exception to the appellate orders and decisions. It is as follows :-

“121. Non-appealable decisions and orders.

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of State tax if such decision taken or order passed relates to any one or more of the following matters, namely :-

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or*
- (b) an order pertaining to the seizure or retention of books of account register and other documents; or*
- (c) an order sanctioning prosecution under this Act; or*
- (d) an order passed under section 80.”*

Section 121 is an exception to Section 107 of the Act of 2017. While Section 107 of the Act of 2017 makes every decision or order passed under the Act of 2017 to be appealable, Section 121 makes an exception thereto and states that, few which are recognized in Sub-section (a) to

(d) would not be appealable.

In the facts of the present case, the petitioner relies upon Section 121(b) and submits that, an order of seizure is not appealable. With respect, Sub-section (b) relates to an order of seizure of books of account, register and other documents. Any other reading of the Sub-section would do violence to the Sub-section itself. If the contention of the petitioner is upheld, any order of seizure, irrespective of the fact as to whether the seizure relates to an immovable property or any other object, apart from books of account, register and other documents would become appealable. That in my view, is not what Sub-section (b) of Section 121 specifies. Consequently, I am unable to concur with the view expressed in M/s. R K Overseas (Supra).

The petitioner has a statutory alternative remedy available. It would be appropriate to permit the petitioner to prefer an appeal from the impugned order before the designated appellate authority, either electronically or otherwise, in terms of Rule 109 of the West Bengal Goods and Services Tax Act, 2017. In the event, such appeal is filed within a period of ten days from date, the appellate authority will treat the same to be within the time period stipulated for the purpose of preferring an appeal and, will proceed to hear such appeal and dispose of the same, in accordance with law.

Learned Additional Advocate General appearing for the respondents submits that, an order of imposition of penalty is also under challenge. More is the reason that the petitioner should be asked to file a statutory

alternative appeal.

W.P. 6633(W) of 2018 is disposed of accordingly.

No order as to costs.

Urgent certified Website copy of this order, if applied, be supplied to the parties, upon compliance of all requisite formalities.

(Debangsu Basak, J.)