

GIB/ASM/Md. Tajal Hussain/25-11-2019/HC-94

High Court Category : Others

State : Assam

Order No.: GIB/ASM/Md. Tajal Hussain/25-11-2019/HC-94

Name of Entry :

MD Tajal Hussain Vs. State Of Assam And ORS

Date : 25-11-2019

Breif Issue :

Facts & Issue of the case

The petitioner Md. Tajal carrying on the business of areca nuts. On 21.08.2019, the police officials of the Jalukbari Police Station upon receiving certain information that trucks carrying areca nuts from Cachar district were moving without proper documents, had detained 25 Nos. of trucks. Subsequently one more truck was detained.

On 22.08.2019, a team of police officials proceeded to Cachar and Karimganj districts to enquire about the details of the trucks. But upon enquiry, the identity of the consignors could not be ascertained and some of the consignor firms were also found to be fictitious. According to the police officials, their investigation revealed certain manipulation of records and forgery of documents in the entire process.

In the resultant situation, the ejahar dated 03.09.2019 was lodged by Sanjit Kumar Roy, Inspector and Officer-in-Charge of the Jalukbari Police Station. The ejahar stated in detail as regards the particulars of the various owners of the seized trucks and centered around the aspect that in respect of most of the truck owners' certain discrepancies were found. One of the core allegations made in the ejahar was that the documents pertaining to payment of goods and service tax (GST) were not found in order and, therefore a view was formed that the appellants were involved in evasion of GST dues. Another allegation in the ejahar was that the documents submitted by them were not genuine and were forged with fake signatures. The allegations made in the ejahar dated 03.09.2019 if taken at its face value, would entail a proceeding against the appellants under the GST laws for the purported evasion of the GST dues and with regard to the allegation that the documents were not genuine and were forged with fake signatures, it would entail a prosecution under the Code of Criminal Procedure (for short CrPC) for having committed an offence under the Indian Penal Code (for short IPC)

The petitioner took the stand that under Section 67 of the Assam Goods and Services Tax Act, 2017 (for short, AGST Act 2017), the search and seizure can be made only upon the proper officer, being not below the rank of Joint Commissioner, having reason to believe that tax input credit has been claimed in excess of the entitlement under the Act or there has been an evasion of tax payable under

the Act. Accordingly, it was the contention that the search and seizure made by the police officials of the Jalukbari Police Station and then go ahead with the investigation and thereafter lodge an ejahar alleging evasion of GST dues, would be an aberration of the established procedure of law.

Decision of Advance Ruling Authority :**Decision:**

It was held/decided that:

Provisions of Section 67 of the AGST Act contains a clear provision that prior to any inspection, or as a matter prior to any search and seizure, a recording of reasons by the proper officer for such belief is a requirement of the law and only thereupon the process for search, seizure or confiscation can be undertaken - A reading of Sections 100 and 101 of the Customs Act shows that if the proper officer or the empowered officer has reasons to believe that a person to whom the provision applies has secreted about his person any goods or documents liable for confiscation, a search may be conducted and pursuant thereto the subsequent actions be taken which may result in arrest, seizure or confiscation.

From the provisions of Section 67 of the AGST Act and 100 and 101 of the Customs Act, a process for search, seizure, confiscation etc for violating any of the provisions of the AGST Act or the Customs Act can only be initiated upon having reasons to believe by the proper or appropriate officer that a person concerned was involved in violation of any of the provisions of the GST Acts or the Customs Act.

In the instant case, the documents made available on record so far as it relates to violation of the provisions of the AGST Act are not being relied upon by the respondents to indicate any such violation of the provisions of the AGST Act. What is contended is that some such documents are either fraudulent or it contains forged signatures resulting in offences under Sections 120(B)/420/467/471 of the IPC - we are of the view that if the authorities under the AGST Act of the State of Assam are of the view that the appellants are required to be proceeded with or prosecuted under the AGST Act, it would be appropriate to invoke the provisions of Section 67 of the AGST Act and proceed accordingly. But without invoking the provisions of Section 67 of the AGST Act and following the procedure prescribed therein, it would be inappropriate to allow the police authorities of Assam to continue with the detention and the seizure of the trucks containing the areca nuts on the plea that the appellants have violated some or any of the provisions under the AGST Act.

By taking note of the report of the Ministry of Agriculture and Farmers Welfare, Government of India as regards the bio-security aspects of the areca nuts and also the stand of the Customs department that the areca nuts may have been smuggled in from across the Myanmar border in violation of the provisions of the Customs Act, we are of the view that if the proper officer or the empowered officer has reasons to so believe, it would be appropriate to initiate proceedings under Section 100/101 of the Customs Act and thereafter follow the procedures prescribed in the Act as regards search, arrest, seizure or confiscation.

The detained/seized goods be retained by the police authorities of Assam for a period of seven days from today. In the meantime, the GST authorities of the Government of Assam, the police authorities of the Government of Assam and the Customs authority of the Customs Department, Government of India shall take their respective decisions on how to proceed with the matter of the detained/seized trucks of areca nuts within the period of seven days. If any such decision is taken to proceeded against

the appellants, the same be done by the respective authorities strictly as per the provisions of the GST Acts, the CrPC/IPC or the Customs Act, as the case may be - petition disposed off.