



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 8892/2018

M/s. Shrimali Industries Pvt.ltd. Through Its Director Mr. Dinesh Vyas Son Of Shree Nand Kishore, Having Its Head Office At Gandhidham (Gujrat) Having Gstin 24Aasc7627Nizi And Registered Office At Basni, Ii Phase Jodhpur (Rajasthan) Having Gstin 08Aasc7627Nizc.

----Petitioner

Versus

1. State Of Rajasthan, Through Commissioner Of State Gst, Kar Bhavan,
2. The Assistant Commissioner Of State Tax, Anti-Evasion, Udaipur.

----Respondents



For Petitioner(s) : Mr. Sharad Kothari.
For Respondent(s) : Mr. Hemant Dutt.

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE KULDEEP MATHUR**

Order

18/08/2022

The petitioner herein has approached this Court through this writ petition for assailing the order whereby, the vehicle of the petitioner (GJ-09-Y-9808) was detained by the officials of the Assistant Commissioner of State Tax, Anti-Evasion, Udaipur and so also, the show cause notice dated 08.06.2018.

Shri Sharad Kothari, learned counsel representing the petitioner submitted that the vehicle/goods of the petitioner were illegally detained by the respondent authorities while in transit. Aluminum scrap was being transported in the vehicle and it was falsely shown to be Aluminum sections in the inspection/detention



memo. The action so taken is in gross contravention to the procedure provided under Section 68 read with Section 129 of the CGST Act and so also the guidelines/ procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances dated 13.04.2018 issued by the Government of India.

He placed reliance on the judgment rendered by the Kerala High Court in the case of **M/s. Podaran Foods India Private Limited vs. State of Kerala** reported in **2021 (1) TMI 552** and urged that a mere suspicion of mis-classification of goods cannot be the basis for detention under Section 129 of the CGST Act. On these submissions, learned counsel Shri Kothari implored the Court to accept the writ petition, quash and set aside the impugned vehicle/ goods detention order (Annexure-5) dated 06.06.2018 and the show cause notice (Annexure-5) dated 08.06.2018 issued in pursuance of the illegal detention procedure.

Per contra, Shri Hemant Dutt, learned counsel representing the respondent Commercial Taxes Department, urged that the detention of the petitioner's vehicle and goods were detained because on interception by the authorized officials, it was found that the documents, which were being carried in the vehicle, were with a patently fraudulent declaration that the goods under transit was Aluminum scrap whereas actually, brand new brand Aluminum Sections wrapped in protective plastic packaging material was being transported. The rate of the scrap as denoted in the E-Way Bill was mere Rs.6,42,600/- whereas, the rate of new Aluminum sections weighing 6300 Kgs. would be Rs.11,02,500/-. Shri Dutt relied upon the Supreme Court Judgment in the case of the **Assistant Commissioner of State Tax & Ors. vs. M/s.**



Commercial Steel Limited (Civil Appeal No.5121 of 2021)
decided on 03.09.2021 and urged that the questioned show
 cause notice is appealable under Section 107 of the CGST Act and
 as such, the instant writ petition is not maintainable.

We have heard and considered the submissions advanced by
 Shri Kothari and Shri Hemant Dutt and, have gone through the
 impugned order, impugned show cause notice and the judgments
 cited at bar.

At the outset, we may note that the situation under
 consideration of the learned Single Bench of the Kerala High in the
 case of **M/s. Podaran Foods India Pvt. Ltd. (supra)** was of a
 mere mis-classification of the goods under transit. Even the Kerala
 High Court held in the said judgment that it may be open to an
 inspecting authority to detain the goods if there is a patent mis-
 description thereof in the transportation documents, to such an
 extent that it can only be seen as referring to an entirely different
 commodity.

Considering the facts of the case at hand, it is clear that by
 portraying the goods in transit to be Aluminum scrap in the
 documents, the petitioner was indulging in blatant evasion of GST.
 By no stretch of imagination, can brand new Aluminum sections be
 placed on equivalence with Aluminum scrap. Apparently thus, the
 goods in question were fraudulently described as Aluminum scrap
 and hence, the respondent authorities were perfectly justified in
 detaining the petitioner's vehicle and the goods after noticing this
 blatant mis-description during interception. Otherwise also, the
 show cause notice dated 08.06.2018 is appealable under Section
 107 of the CGST Act and hence, viewed in light of the Supreme
 Court Judgment in the case of **Assistant Commissioner of**



State Tax & Ors. vs. M/s. Commercial Steel Limited (supra),

the instant writ petition is not maintainable.

As a consequence, the writ petition fails and is dismissed as being devoid of merit.

No order as to costs.

(KULDEEP MATHUR),J

(SANDEEP MEHTA),J

29-Tikam Daiya/-



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