

Court No. - 5

Case :- WRIT TAX No. - 837 of 2023

Petitioner :- M/S Sun Flag Iron And Steel Company Limited

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shubham Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Mr. Shubham Agarwal for the petitioner and Mr. Rishi Kumar, learned Additional Chief Standing Counsel for respondent-State.
2. The instant Writ Tax is being entertained by this Court in view of the fact that G.S.T. Tribunal is not functional in the State of Uttar Pradesh pursuant to the Gazette notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.
3. By means of present petition, the petitioner is assailing the order dated 9.6.2023 passed by respondent no. 4 and the order dated 17.6.2023 passed by respondent no. 3.
4. Brief facts of the case as stated in the writ petition, are that the petitioner is a registered company having GST No. 27AACCS3376C1ZH and engaged in the business of manufacturing & sale of basic iron and steel etc. In the normal course of business the petitioner dispatched the consignment of 30 ton of non-alloy steel in rolled round to M/s Hi-Tech Gears Limited, Bhiwadi, Rajasthan accompanying Invoice No. 232705612 dated 26.5.2023 as well as E-way Bill No. 281596024395 dated 26.5.2023 through Vehicle No. UP 94 T 6681 of Supersonic Carrier Private Limited. The said E-way was generated on 26.5.2023 and was valid up to 1.6.2023. During the onward journey from Maharastra to Rajasthan, the goods were passing through State of UP, on 28.5.2023 where at about 1:00-2:00 P.M. the vehicle was struck in mud at the side of road because of heavy load of

consignment and thereafter with the help of crane the vehicle could be pulled out and after removing the break down by the mechanic the vehicle could be moved for its onward journey. On the intervening night of 2/3.6.2023, at around 10:00 A.M. the vehicle was intercepted and show cause notice was issued on 4.6.2023 which was replied by the petitioner accompanying the affidavit of driver of the vehicle however being not satisfied with the reply, the impugned order has been passed demanding a sum of Rs. 8,43,456/- as penalty. Against the said order, the petitioner has preferred an appeal, which has been rejected by the impugned order dated 17.6.2023. Hence the present writ petition.

5. Learned counsel for the petitioner has submitted that goods in question was accompanying with the valid documents ie. e-tax invoice, e-way bill, G.R. and the validity of e-way bill was up to 1.6.2023 and the goods in question during its onward journey from Maharastra to Rajasthan was passing through the State of UP where the vehicle was got struck in mud on the road side due to heavy load of consignment and in spite of several efforts, the vehicle could not be pulled out but on 29.5.2023, the truck was pulled out with the help of crane and after pulling out the vehicle, when the engine could not start as some break down was caused, the driver had immediately contacted to the mechanic on 30.5.2023 and as various spare parts were not available in local market of Lalitpur, he went to Jhansi along with the mechanic for purchase of spare parts and within two days the vehicle could be repaired and thereafter was ready to move for its onward journey, however the same was intercepted in the night of 2/3-6.2023 and show cause notice was issued.

6. He submitted that while replying the show cause notice, the petitioner has annexed the affidavit of truck driver wherein the said incident was categorically mentioned in detail. He further submitted that while passing the impugned order dated 6.9.2023, the said contention was denied but without giving due weightage, the order was passed imposing penalty of Rs. 8,43,456/-, against which an appeal was preferred by the petitioner annexing all the documentary evidences such as e-tax invoice, spare part purchase receipts, mechanic charge payment receipt as well as other evidences but the first appellate authority had

rejected the appeal on the ground that these grounds were not filed before the lower authority. He further submitted that the authorities below have disbelieved the contention of the petitioner that vehicle got struck in mud and caused breakdown. He further submitted that none of the authorities below have recorded any finding in respect of evade of payment of tax, therefore, the penalty is not justified in the eyes of law and impugned order is liable to be set aside. He prays for allowing the writ petition.

7. *Per contra*, Mr. Rishi Kumar, learned A.C.S.C. has supported the impugned orders and submitted that proceedings have been initiated against the petitioner under Section 138 (1) of the GST Act. He further submitted that the goods in question was not accompanying with the proper documents as prescribed under the Act as well as Rules framed thereunder as at the time of inspection, e-way bill accompanying with the goods has already been expired on 1.6.2023. He submitted that the petitioner has failed to justify for not filing the documentary evidence at the time of detention. He further submitted that there is violation of the provisions of Rule, therefore, penalty proceeding is justified. He prays for dismissing the writ petition.

8. After hearing learned counsel for the parties, the Court has perused the records.

9. Admittedly, the goods in question were moved from Maharashtra to Rajasthan via U.P. and the goods in question were accompanying with e-tax invoice, G.R. and e-way bill valid up to 1.6.2023. It has been averred that the vehicle in question was struck in mud on the road side due to heavy load of consignment and with the help of crane the same could be pulled out and thereafter when the vehicle engine could not start the driver contacted the mechanic for removing the defect / breakdown but as some spare parts were not available in local market of Lalitpur, the driver went to Jhansi for purchase of spare parts and thereafter the vehicle could be repaired within two days. On the intervening night of 2/3.6.2023 at 1.04 A.M. the vehicle was intercepted and show cause notice was issued on the ground that the e-way bill accompanying with the goods in question, was expired on 1.6.2023. Thereafter, the petitioner

had replied the show cause notice annexing the affidavit of driver. The relevant part of the explanation given by the driver is quoted hereunder :-

"समक्ष- श्री मान असिस्टेंट कमिश्नर सचल दल द्वितीय इकाई (झांसी)

शपथकर्ता- पवन कुशवाहा पुत्र श्री बन्दु कुशवाहा उम्र 41 वर्ष निवासी 129, ग्राम पाली जिला ललितपुर शपथपूर्वक बयान करता हूँ कि

1. यह कि शपथ कर्ता द्वारा दिनांक 26/05/2023 को वाहन संख्या UP94T6681 से भडारा महाराष्ट्र से राजस्थान के लिए माल का परिवहन वाहन चालक के रूप में किया जा रहा था माल के साथ टैक्स इनवाइस जो ई इनवाइस के रूप में थी तथा ई वे बिल संख्या 281596024395 एवं बिलटी माल के साथ थे वाहन में लगभग 30 टन माल था तथा आयरन धातु के रूप में ठोस माल है।
2. यह कि शपथकर्ता दिनांक 28/05/2023 को मसूरा ललितपुर में वाहन को लेकर आ रहा था तथा सड़क पर साइड में रोड खुदाई होने के कारण वाहन तिरछा होकर रोड में फँस गया काफी प्रयास के बाद भी वाहन नहीं निकला, न ही वाहन स्टार्ट हो रहा था।
3. यह कि शपथकर्ता दूसरे दिन ललितपुर आकर क्रेन की व्यवस्था कर वाहन के पास पहुँचा तथा वाहन को जैसे तैसे गड्ढे से निकाल कर एक सी जगह पर खड़ा किया किन्तु वाहन चालू नहीं हो रहा था।
4. यह कि वाहन के स्टार्ट न होने पर वाहन चालक द्वारा ललितपुर से स्थानीय मिस्त्री से वाहन चेक कराया गया तथा वाहन में आयी खराबी को ठीक करने हेतु ललितपुर में पार्ट्स न मिलने पर, झांसी आकर स्पेयर्स पार्ट्स लेकर तथा झांसी से मिस्त्री लेकर वाहन को ठीक कराया एवं वाहन के ठीक हो जाने पर वाहन लेकर गंतव्य की ओर जा रहा था तभी रास्ते में वाहन को रोक दिया गया।
5. यह कि वाहन में खराबी होने एवं आर्थिक नुकसान होने के कारण वाहन चालक परेशान हो गया एवं परेशानी के कारण ई वेबिल की वैधता के सम्बन्ध में माल मालिक को नहीं बता सका।
6. यह कि शपथपत्र की धारा 1 से 5 तक के सभी तथ्य सच एवं सही हैं।

ह. शपथकर्ता"

10. In the said affidavit, it was clearly mentioned that as to why the vehicle could not be crossed the State of UP within time. It is also mentioned in the affidavit that the truck driver has not informed the petitioner about expiry of e-way bill but while passing the impugned order, the authorities have disbelieved the contention on the ground that the supporting documents with regard to the contention of the petitioner have not brought on record therefore impugned order has been passed imposing penalty upon the petitioner. The record reveals that while passing the impugned order, the authorities below have not rejected the ground taken by the petitioner that there was a breakdown as the vehicle got stuck in mud.

11. Under the G.S.T. regime, all the details are available on the G.S.T. portal and it is admitted that e-tax invoice was raised and e-way bill was generated and the same was not cancelled within 24 hours as provided under the Act. Once the

said fact is not disputed and the petitioner has not exercised its right either to withdraw the tax invoice or e-way bill in question, it was well within the knowledge of the department that movement of the goods in question has been undertaken by the petitioner. Merely on the technical ground that e-way bill accompanying with the goods in question was expired on 1.6.2023 whereas the vehicle had been intercepted in the intervening night of 2/3.6.2023.

12. The purpose of e-way bill is that the department should know the movement of goods. Once the e-way bill has been generated and same has not been cancelled by the petitioner within the time prescribed under the Act, the movement of goods as well as genuineness of transaction in question cannot be disputed. The goods in question could not reach to its destination due to the breakdown of vehicle as stated above and after repair, the vehicle was ready for its onward journey but the same was intercepted in the intervening night of 2/3.6.2023. Since the authorities below have not recorded a finding that there was any intention of the petitioner to evade the payment of tax, the penalty is not justified.

13. This Court in the case of **M/s Shyam Sel & Power Limited Vs. State of U.P. & 2 Others [Writ Tax No. 603/2023, decided on 05.10.2023]** has held as under:-

10. For invoking the proceeding under section 129(3) of the CGST Act, section 130 of the CGST Act was required to be read together, where the intent to evade payment of tax is mandatory, but while issuing notice or while passing the order of detention, seizure or demand of penalty, tax, no such intent of the petitioner was observed. Once the dealer has intimated the attending and mediating circumstances under which e-way bill of the purchasing dealer was cancelled, it was a minor breach. The authority could have initiated proceedings under section 122 of the CGST Act instead of proceedings under section 129 of the CGST Act. Section 129 of the CGST Act must be read with section 130 of the said Act, which mandate the intention to evade payment of tax. Once the authorities have not observed that there was intent to evade payment of tax, proceedings under section 129 of the CGST Act ought not to have been initiated, but it could be done under section 122 of the CGST Act in the facts & circumstances of the present case. It is also not in dispute that after release of the goods, the same were sold to P.L. Trading Company.

11. Section 129 of the CGST Act deals with detention, seizure and release of goods in case violation of the provisions of the CGST Act is found. Section 130 deals with confiscation of goods or conveyance and levy of penalty. Both the sections revolve around a similar issue and provide for the proceedings

available at the hands of the proper Officer upon him having found the goods in violation of the provisions of the Act, Rule 138 of the Rules framed under the CGST Act being one of them. Upon a purposive reading of the sections, it would suffice to state that the legislation makes intent to evade tax a sine qua non for initiation of the proceedings under sections 129 and 130 of the CGST Act.

12. This aspect is no more res integra and the same stands finalized in the judgement of the Apex Court in *M/s Satyam Shivam Papers Private Limited (supra)*; wherein, it has been categorically stated that:-

“As notices hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioners to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioners.”

13. Recently, the Division Bench of this Court in *Writ Tax No. 600 of 2022 (M/s Gobind Tobacco Manufacturing Company & Another Vs. State of U.P. & Others)* quashed the levy of penalty under section 129 of the GST Act with heavy costs upon the Revenue for abuse of their powers.

14. In view of the aforesaid facts & circumstances of the present case as well as the law laid down by the Apex Court and this Court, as aforesaid, the writ petition succeeds and is allowed. The impugned order dated 18.06.2022 passed by the respondent no. 2 as well as the impugned order dated 25.11.2021 passed by the respondent no. 3 are hereby quashed.

14. Further, the Division Bench of this Court in the case of **M/s Bhawani Traders Vs. State of U.P. & Another [Writ Tax No. 854/2023, decided on 24.07.2023]** has held as under:-

“He, however, could not dispute the fact that intention to evade tax is a pre-requisite for imposition of penalty under Section 129 of the Act. The E-way Bills being the documents of title to the goods were accompanying the goods hence, the conclusion of the revenue that the petitioner was not the owner of the goods is patently erroneous. Consequently, the penalty proceedings were liable to be initiated under Section 129(1)(a) and not 129(1)(b) as has been done in the present case.

In view of the above, expressing our full agreement with the view expressed by the Coordinate Bench of this Court in the case of M/s Sahil Traders (Supra) we set aside the impugned penalty order dated 17.06.2023 passed in Form MOU-09 under Section 129(1)(b) of the Goods and Services Tax Act, 2017. The writ petition is allowed.”

15. Punjab & Haryana High Court, in the case of **M/s Raghav Metals Vs. State of Haryana & Others [CWP No. 25057/2021, decided on 14.03.2022]** has held as under:-

“9. Keeping in view these circumstances, it cannot be said that the petitioner had any intent to evade the tax or the mismatch in the quantities is of such nature which shall entail proceedings under Section 129 of the Act. A person, who has already paid a tax of Rs.1276717.68/- on a consignment cannot be said to have an intent to evade tax amounting to Rs.11000/-. At

this stage, Mr. Goyal states that the petitioner is ready to pay even the tax and penalty imposed by the State-Authorities which comes to be around Rs.22000/-.

10. In light of the fair stand taken by the petitioner and the fact that the mismatch cannot be termed as contravention of the provisions of the Act, we deem it appropriate to allow the present writ petition. Proceedings against the petitioner under Section 129 of the Act are hereby quashed. Fine and penalty, if any, imposed against the petitioner and deposited by him, be refunded to him within a period of 15 days from the date of receipt of certified copy of this order. Since goods already stand released, no further order is required.”

16. The fact remains that vehicle could not reach its destination within the time mentioned in the e-way bill as the situation is beyond control of the petitioner as mentioned in the affidavit of driver of the vehicle and there was also no intention of the petitioner to evade the payment of tax, thus the impugned orders are not justified in the eyes of law and are liable to be quashed.

17. The writ petition is **allowed**. The impugned orders dated 9.6.2023 and 17.6.2023 are quashed.

18. The authorities below are directed to refund the amount, if any, deposited by the petitioner in pursuance of the impugned orders, within a period of one month from the date of production of certified copy of this order before the concerned authority.

Order Date :- 9.11.2023

Rahul Dwivedi/-