

Neutral Citation No. - 2023:AHC:163876

Reserved

Court No. - 5

Case :- WRIT TAX No. - 599 of 2023

Petitioner :- M/S Rateria Laminators Pvt.Ltd.

Respondent :- Additional Commissioner Grade 2 And Another

Counsel for Petitioner :- Suyash Agarwal,Nitin Kumar Kesarwani

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner and Sri Rishi Kumar, learned Additional Chief Standing Counsel.

Present writ petition has been filed with the following prayers:

“A. Issue a writ order or direction in the nature of scertiorari quashing order dated 18.4.2023 passed by Additional Commissioner Grade-2 (Appeal)-II, Commercial Tax/State Tax, Kanpur, respondent no.2 u/s 107 of the UPGST Act 2017 (Annexure No.14).

B. Issue a writ order or direction in the nature of scertiorari quashing order dated 27.3.2023 passed by Assistant Commissioner , Mobile Squad, Bhognipur, Ramabai Nagar, Kanpur Dehat, U.P. Respondent no.2 u/s 129(3) of the UPGST Act 2017 (Annexure No.11).

C. Issue a writ order or direction in the nature of mandamus directing, respondent no.2,Assistant Commissioner , Mobile Squad, Bhognipur, Ramabai Nagar, Kanpur Dehat U.P. To release goods and vehicle seized vide seizure memo dated 23.3.2023 passed in GST MOV-06 forth with.

D. Issue a writ order or direction in the nature of prohibition restraining the respondent no.2 from employing coercive measures to recovery penalty pursuant to order dated 27.3.2023 passed From GST MOV-09.”

2. Since the GST Tribunal has not yet been formed the present writ petition is being entertained against the aforementioned impugned orders.

3. Brief facts of the case are that petitioner is a Company registered under the Companies Act, 1956 having its business at 1,132, Cotton Street, Burrabazar, Kolkatta West Bengal. The

petitioner in its normal course of business made inward supply of B55HM0003NA G-LEX HDPE-2 HSN 3901.20.00 15 from GAIL, Auraiya U.P. The petitioner also made inward supply of similar item from GAIL Auraiya U.P. for which two invoices dated 6.3.2023 were prepared, copies of which have been annexed as Annexure 2 to the writ petition. For movement of goods from Auraiya Uttar Pradesh to Jalpaiguri, West Bengal two Eway Bills were generated having validity upto 12.3.2023, copies of which are annexed as Annexure 3 to the writ petition. A GR was also prepared on the same day i.e. 6.3.2023 in which invoice numbers and Eway bills have specifically been mentioned. It is stated that after completing the formalities goods were in transit from Auraiya U.P. to Jalpaiguri, W.B. and on way the Driver of the Vehicle No. UP-77-AN-6825 fell ill and there was also some break down of the vehicle, therefore onwards journey could not be continued to reach the destination before 12.3.2023.

4. The Vehicle was intercepted by respondent no.2 on 13.3.2023 and Form GST MOV04 was prepared on 14.3.2023. Thereafter Form GST MOV01 was prepared on 23.3.2023 and consequently an order was passed on the same day that the goods in question are being carried without proper documents as Eway bills have expired. Thereafter on the same day Form GST MOV 06 was prepared and subsequently respondent no.2 issued notice in Form GST MOV 07 under section 129(3) of the UPGST Act (hereinafter referred to as the Act) proposing to impose penalty of Rs. 11,18,624/- under section 129(1)(a) of the Act and Rs. 36,66,606/- under section 129(1)(b) of the Act which has been annexed as Annexure 9 to the writ petition. An order under section 129 (3) of the Act was passed directing the petitioner to deposit Rs. 11,18,624/- for release of goods.

5. Being aggrieved with the said order the petitioner preferred appeal before under section 20 of the Act before respondent no.1 which has been rejected vide order dated 18.4.2023. Hence the present writ petition.

6. Learned counsel for the petitioner submits that the petitioner is a registered dealer having GSTIN No. 19AABCR2147R1ZU and in its normal course of business made purchases from the said registered dealer (GAIL) which is Central Government undertaking for which two invoices were raised on 6.3.2023. Consequently for sending goods to its onward journey to West Bengal two Eway bills were generated on the same day but the goods could not reach its destination before expiry of the Eway bills which was valid upto 12.3.2023. The goods were intercepted by the respondent no.2 on 13.3.2023 and detained on the ground that Eway bills have expired. He further submits that on physical verification as well as from the perusal of the documents there was neither any discrepancy in the items so transited nor in the quality and quantity of the goods. He further submits that there was no intention of the petitioner to avoid payment of tax. He further submits that the goods have been detained on the technical fault as the Eway bills have expired.

7. He further submits that pursuant to the notice as to under what circumstances the vehicle could not reach its destination before expiry of Eway bills which was valid upto 12.3.2023, the petitioner submitted its reply explaining the reason that due to medical exigency the driver fell ill and due to some break down in the vehicle the goods could not reach its destination before 12.3.2023. He further submits that since the driver of the vehicle was not aware of GST law, he could not apply for extension of the Eway bills before its expiry.

8. He further submits that while passing the impugned order under section 129(3) of the Act only one line has been mentioned that the explanation submitted by the petitioner is not acceptable.

9. He further submits that against the said order an appeal was preferred before respondent no.1 which has been rejected without considering the material on record. He further submits that transit of goods could not reach its destination which was beyond the control of the petitioner as driver fell ill and break down in the vehicle. In support of his submission he has relied upon a Division Bench judgment of this Court in **Gobind Tobacco Manufacturing Co. vs. State of U.P.** (2022 (61) GSTL 385 (All.)) He has also relied upon a judgment of the Supreme Court in **Assistant Commissioner (ST) vs. Satyam Shivam Papers Pvt. Ltd.** (2022 (57) GSTL 97 (SC) in which while rejecting the claim of the revenue cost has also been enhanced by the Apex Court. He further submits that proceedings under section 129(1) of the Act could be initiated if the parties come forward and deposit the penalty of tax but once the party is not ready to deposit the tax under section 129(3) of the Act the respondents are duty bound to initiate proceedings by taking recourse to Sections 73,74 and 75 read with Section 122 of the Act. In support of his submission he has relied upon the judgment of this Court in **Bharti Airtel Ltd. vs. State of U.P.** (2022) 1 Centax 79 (All.). He further submits that the impugned order passed under section 129(3) of the Act could not be sustained for determining the tax and penalty in pursuance of the proceedings under section 129(3) of the Act. He further submits that in view of the submissions mentioned above the impugned orders deserve to be set aside and the detained goods deserve to be released without penalty.

10. Per contra, Sri Rishi Kumar, learned ACSC supports the

impugned orders passed by the respondents authorities and submits that goods were in transit after expiry of the Eway bills which was a clear contravention of the provisions of the Act. He further submits that the goods were transited after expiry of the Eway bills which shows that there was intention to evade payment of tax. He further submits that the explanation submitted by the petitioner is without any basis and the materials in support thereof that the driver fell ill and there was break down in the truck carrying the goods were exceptional in nature. He further submits that neither any material was brought on record to show that the driver was ill and was under medical care nor any material was brought on record about the break down of the truck and the same got repaired before the authorities below, therefore, the authorities were justified in passing the impugned orders. He prays for dismissal of the writ petition.

11. After hearing the learned counsel for the parties and perusing the records, it is admitted that goods of the petitioner transited from the State of Uttar Pradesh to the State of West Bengal and the goods were accompanied by requisite documents such as invoices, Eway bills, GR etc. as mentioned above. The Eway bills were valid upto 12.3.2023 whereas the goods have been intercepted on 14.3.2023. Thereafter proceedings were initiated only the ground that the goods were transited after expiry of the Eway bills. No other discrepancy has been found either in quality, quantity or goods as disclosed in the invoices, Eway bills or GR. While rejecting the claim of the dealer the assessing authority has observed as under:

उक्त जवाब का अवलोकन किया जवाब स्वीकार योग्य नहीं पाया गया क्योंकि जाँच के समय प्रपत्रों की जाँच करने पर विक्रेता फर्म सर्वश्री GAIL (INDIA) LIMITED, GSTIN No. 19AAACG1209J3ZS द्वारा जारी ई-वेबिल

संख्या 471319336625 एवं ई-वेबिल संख्या 471319336695 दिनांक 06-03-2023 की जॉच विभागीय पोर्टल पर करने पर उक्त दोनों ई-वेबिल **EXPIRED** पाया गया अतः उक्त के सम्बन्ध अर्थदण्ड की पुष्टि करते हुए उक्त अर्थदण्ड जमा करने का आदेश पारित किया जाता है।

12. From a perusal of the aforesaid order the reply submitted by the petitioner has been rejected by only saying that the reply is not found to be acceptable. No other reason has been assigned for rejecting the claim of the petitioner.

13. Further in appeal the appellate authority while rejecting the appeal has observed as under:

प्रश्नगत संव्यवहार हेतु जॉच के समय प्रस्तुत ई-वेबिल की वैधता अवधि 14 घंटे 26 मिनट पहले समाप्त हो गयी थी। वाहन चालक की बीमारी या वाहन खराब होने का कारण का Exceptional nature नहीं है।

14. On perusal of the aforesaid order it has been observed that the claim of the petitioner was not found on justifiable ground.

15. On the pointed query to the learned ACSC as to whether any finding has been recorded by any of the authorities with regard to evasion of payment of tax in any of the orders he failed to point out from the impugned orders. He only submits that the intention of the petitioner was not clear as he transited the goods after expiry of the Eway bills.

16. Learned counsel for the petitioner submits that since the Driver fell ill and there was break down of the vehicle it was beyond the control of the petitioner and goods could not be transported within the time mentioned in the Eway bills but has not brought any material or evidence before the respondent authorities or before this Court, therefore, the judgments of the Supreme Court in **Satyam Shivam Papers Pvt.Ltd.**(supra) and of this Court in **Govind Tobacco Manufacturing Co.** (supra)

placed by the learned counsel for the petitioner are of no avail.

17. In **Satyam Shivam Papers Pvt.Ltd.**(supra) the Apex Court in paragraph no.3 has recorded the finding of the High Court that there was traffic blockage at Basher Bagh due to the anti CAA and NRC agitation which prevented the movement of vehicle, due to which, the goods could not be delivered within the time. Considering those facts, the Apex Court not only dismissed the appeal of the Revenue but also enhanced the costs. Such facts are not in the present case. The stand taken by the petitioner is only that the driver of the vehicle fell ill and there was break down of the vehicle, without there being any supporting materials at any stage.

18. Similarly the Division Bench of this Court in **Govind Tobacco Manufacturing Co.** (supra) has quashed the proceedings on the facts of that case as at the time of movement of the goods Covid-19 was at peak and there was restrictions in the movement, therefore, the Division Bench of this Court had quashed the detention and directed for release of the goods and also imposed costs. The facts of the present case is entirely different as stated above. Therefore the arguments of the petitioner before this court that if the dealer does not come forward for depositing the penalty amount as determined under section 129(3) of the Act the proceedings ought to have been initiated under sections 73, 74 and 75 of the Act read with section 122 of the Act cannot be permitted to be raised at this stage as neither in the reply to the show cause notice nor before the appellate authority any submission was made. In view of the above, the judgment relied upon in the case of **Bharti Airtel Ltd.** (supra) has no aid to the petitioner.

19. Further since the petitioner has submitted its reply taking the stand that there was break down of the vehicle and the driver fell ill but no reason has been assigned by any of the authorities in the impugned orders for disbelieving the same.

20. In view of the facts and circumstances of the case and since the authorities below have not recorded any findings with regard to the submissions made by the petitioner the impugned orders dated 27.3.2023 and 18.4.2023 as well as seizure memo dated 23.7.2023 could not be sustained in the eye of law and are hereby quashed.

21. The writ petition succeeds and is allowed.

22. The matter is remitted back to the respondent no.2. The parties are at liberty to adduce evidence in support of their claim within a period of 15 days from the date of production of a certified copy of this order before the respondent no.2. The respondent is further directed to decide the case by passing a reasoned and speaking order after hearing all stake holders and considering the materials on record within a period of 30 days thereafter.

Order Date :- 16 .8.2023
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