

Neutral Citation No. - 2023:AHC:191074

RESERVED

Court No. - 5

Case :- WRIT TAX No. - 603 of 2023

Petitioner :- M/S Shyam Sel And Power Limited

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Jitendra Kumar Singh, Srijan Pandey

Counsel for Respondent :- CSC

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Srijan Pandey, learned counsel for the petitioner and Shri Rishi Kumar, learned Additional Chief Standing Counsel for the State – opposite party.
2. The instant Writ Tax is being entertained in view of the fact that no GST Tribunal has been constituted in the State of Uttar Pradesh pursuant to the notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.
3. The present writ petition has been filed assailing the impugned order dated 18.06.2022 passed by the respondent no. 2 dismissing the appeal of the petitioner as well as the impugned order dated 25.11.2021 passed by the respondent no. 3 confirming the demand/penalty of Rs. 5,51,602/- on the petitioner.
4. The brief facts of the case are that the petitioner is having GSTIN No. 19AAECS9421J1ZZ having its registered Office at 2nd Floor, 5 SS Chamber, Chittaranjan Avenue, Jamuria, West Bengal and engaged in the business of manufacture and sale of industrial grade steel components, i.e., channel, beams, etc. The petitioner through tax invoice dated 17.11.2021 transported 4 MT, 10.800 MT and 6.970 MT of steel channels of different dimensions and 4 MT each of steel beams of different dimensions to M/s Maa Ambey Steels. The said goods were accompanied with tax invoices, e-way bill and GR's. The goods were intercepted on

19.11.2021 at Maharajpur, Kanpur and on verification, it was found that e-way bill no. 8211 9011 4043 had been cancelled by the purchasing dealer; whereupon, form GST MOV 06 dated 22.11.2021 was prepared and the goods were seized. Subsequently, GST MOV 07 dated 22.11.2021 was prepared seeking response from the petitioner. The petitioner submitted the response that all e-way bills were duly filled up and the petitioner was not aware about the cancellation of e-way bills by the purchasing dealer, but the petitioner submitted that the goods in question were sold by the registered dealer to a registered purchasing dealer and were accompanied along with genuine documents. Dissatisfied with the reply, the impugned order dated 25.11.2021 was passed under section 129(3) of the CGST Act imposing penalty. Feeling aggrieved by the aforesaid order, the petitioner preferred appeal, which has also been dismissed by the impugned order dated 18.06.2022. Hence, the present writ petition.

5. Learned counsel for the petitioner submits that after receiving the purchase order from Maa Ambey, a tax invoice was raised and e-way bill was generated with unique identity no. 821190114043 reflecting all relevant details as per rule 138 of the CGST Rules, including part A & B, which was valid upto 22.11.2021. The transporter, namely, Shiv Om Logistics, issued consignment note SO 401 in favour the petitioner with recipient's details as the consignee of goods and further reflecting the destination as Fazalganj, Kanpur. The said document along with goods was on its journey to its destination, when it was intercepted by the respondent no. 3 and the driver of the truck provided all documents, i.e., tax invoice, e-way bill, consignment note, etc. On intimation that the e-way bill, which was accompanying the goods have already been cancelled by the purchaser itself, the petitioner inquired and got to know as to why the recipient has cancelled the e-way bill due to certain discrepancies in the valuation of goods

and the said factum was informed to the respondents – authorities, but the respondent no. 3 passed the detention order on 22.11.2021 with the remark that e-way bill was not OK, but no observation with regard to intention to evade payment of tax was made against the petitioner. The petitioner submitted its response. Not being satisfied, demand in MOV 09 under section 129(3) of the CGST Act was passed. He further submits that while passing the said order, no intention to evade tax has been observed against the petitioner. The petitioner deposited the penalty and got the goods released and thereafter, sold to one P.L. Trading Company through tax invoice and e-way bill, which is dully shown in the books of account specifically in Ledger. He further submits that the appeal was filed on the ground that the purchaser & seller were bona fide registered dealers. There was no intention to evade payment of tax. The penalty ought to have levied under section 122(ix) of the CGST Act, but not under section 129(3) of the CGST Act. While dismissing the appeal by the impugned order dated 18.06.2022, it was observed that the goods in question were not accompanied with e-way bill, which is in violation of section 138 of the CGST Act.

6. Learned counsel for the petitioner further submits that section 68 of the CGST Act empowers to inspect the goods by the GST authorities. Section 126 of the CGST Act applies for general discipline relating to penalty. He further submits that section 129 of the CGST Act empowers for seizure and release of goods and section 130 of the CGST Act empowers for levy of penalty. He further submits that since there was no intention to evade payment of tax, the penalty ought to have been levied under section 122 (ix) of the CGST Act. In support of his contention, he has relied upon the judgement of the Apex Court in the case of ***Assistant Commissioner (ST) & Others Vs. M/s Satyam Shivam Papers Private Limited & Another*** [SLP (C) No. 21132/2021, decided on 12.01.2022]. He prays for allowing the writ petition.

7. Per contra, learned ACSC supports the impugned orders by submitting that at the time of interception, the e-way bill was cancelled by the purchaser and the petitioner has failed to bring on record any other e-way bill showing accompanying the goods. Once the dealer has failed to show genuine e-way bill accompanying the goods, the proceedings cannot be said to be illegal. He further submits that the petitioner was well aware of the fact that the e-way bill has been cancelled by the purchaser and therefore, he ought to have generated another e-way bill for transporting the said goods. Once the goods were not accompanied with proper documents, the impugned orders are justified. He further submits that the proceedings under section 129 of the CGST Act have rightly been initiated as the opening sentence of section 129 of the CGST Act says “*notwithstanding anything contained in this Act*”. He further submits that section 129 of the CGST Act has overriding effect over all other sections of the Act and therefore, he tries to justify the initiation of the proceedings under section 129 of the CGST Act. He further submits that section 130 of the CGST Act cannot be read in the facts & circumstances of the present case as no genuine documents were accompanying the goods and therefore, the action taken against the petitioner is in accordance with law. He prays for dismissal of the writ petition.
8. After hearing the learned counsel for the parties, the Court has perused the records.
9. Admittedly, the goods in question were coming from West Bengal to Kanpur, along with tax invoice of the petitioner, consignment note of the transporter and e-way bill of the purchaser. Though the e-way bill was cancelled by the purchaser, but it is stated that the same has not been intimated to the petitioner. Once the goods were seized and the petitioner, after inquiring the fact from the purchaser about the attending fact which led to cancellation of e-

way bill by the purchaser, it was communicated to the respondents, but not being satisfied, the goods were detained and the seizure order was passed. While issuing notice or seizing or passing the demand order under section 129(3) of the CGST Act, no observation had been made with regard to intent to evade payment of tax. Section 68 of the CGST Act requires the person in-charge of the vehicle carrying certain documents accompanying the consignment of goods above Rs. 50,000/- such as, tax invoice and e-way bill. On inspection of the vehicle, e-way bill of the purchaser was not found OK and therefore, proceedings have been initiated under section 129(3) of the CGST Act.

- 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.

Order Date :-05/10/2023

Amit Mishra