

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 2322/2022

Reserved on 15.12.2023.

Pronounced on 19.12.2023.

M/S K. Anil Jewellers, near Gurdwara Jain
Bazar, Jammu th. Prop. Anil Kumar Bhukhmaria
R/o H.No.178 Darbar Garh Panjtirthi, Jammu

.... Petitioner(s)

Through :- Ms. Garima Gupta Advocate

V/s

1 UT of J&K th. Commissioner State
Taxes State Tax Office Rail Head Comple
Panama Chowk Bahu Plaza Jammu
2. The Deputy Commissioner, State Taxes
Appeal-I (Appellate Authority) Jammu &
ors.

....Respondent(s)

Through :- Mr. D.C.Raina Advocate General with
Mr. K.D.S.Kotwal Dy.AG

**Coram: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

JUDGMENT

Per Moksha, J

1 By this writ petition, petitioner has challenged the order dated 07.01.2020 passed by the State Taxes Officer Enforcement (Central) Jammu ('STO' for short) and order dated 31.08.2022 passed by the Deputy Commissioner, State Taxes, Appeals-I, Jammu ('the appellate authority'). The petitioner is a firm, namely M/S K Anil Jewelers with GSTIN No. 01AHFPB6215Q1ZJ dealing in the jewellery business.

Factual matrix of the case

2 State Taxes Officer, Enforcement (Central) Jammu intercepted a vehicle bearing Registration No. JK02BK-1734 carrying the gold ornaments of the petitioner worth Rs.77,96,650.10/- under Section 68 (3) of the J&K Goods and Services Tax Act, 2017 ('the Act of 2017' for short) read with Section 68(3) of the Central Goods and Services Tax Act, 2017 ('CGST Act' for short) on 03.01.2020 at 1.30 at Civil Airport Road, Jammu. The said officer on

verification of the documents found that the gold ornaments were accompanied by delivery note which as per the respondents, was not a valid document for movement of goods. Accordingly, the officer detained the said vehicle along with the goods loaded therein and issued order of detention under Section 129 (1) of the Act of 2017 and CGST Act read with Section 68 (3) of the Act of 2017 in Form GST Mov-06 and the same was served on the petitioner-owner of the firm who caused his appearance along with his counsel for release of goods on 03.01.2020. Subsequently, a notice was issued in GST Mov-07 to show cause as to why tax and penalty be not levied on the said goods in terms of Section 129 (1) of the GST Act, 2017. In response to the said notice, the petitioner expressed his consent to pay applicable tax and penalty whichever is applicable stating that the goods were meant for sale on approval basis for which delivery challan was issued by the supplier and the goods were accompanied by the letter from the consignor wherein it was written that the goods are on approval basis. However, the copy of the same was misplaced by the courier agency.

3 The STO has recorded a finding in the impugned order that when the goods were intercepted, the person in charge of the goods could produce only a delivery note which was not a valid document for movement of goods as per the provisions of the Act of 2017. The STO has also recorded that the said delivery note was found to be untrue in respect of particulars recorded therein. The STO concluded that since the owner of the goods came forward for payment of tax and penalty, as such, provisions under Section 129(1)(a) of the Act were invoked. Accordingly, the STO vide order dated 07.01.2020 impugned before the appellate authority imposed tax to the tune of Rs. 116965.00 under State/UT Tax, Rs.116965.00 under the CGST Act and penalty of similar amount i.e Rs.116965.00+116965=2,33,930/-.

4 Against the said order, the petitioner herein preferred an appeal under Section 107 of the State/UT Goods and Services Act and the Central Goods and Service Tax Act, 2017. The said appeal was filed primarily on the ground that the order under Section 129 (3) of the J&K GST Act, 2017 was against the facts and circumstances of the case. It was pleaded before the appellate authority that the STO had not applied her mind judiciously while dealing with the present case. It was contended that the STO has failed to perform her duties in the course of inspection and seizure and also failed to adopt the procedure as per GST Circular dated 13.04.2018. It was submitted before the appellate authority that no proper and reasonable opportunity was afforded by the STO to the petitioner herein to pursue the case. It was submitted that the goods were detained in interstate movement and if there was supply then IGST will be levied instead of CGST and SGST as per Section 5 of IGST Act but there was no supply hence the penalty under Section 129 of the Act of 2017 is void and invalid. It was submitted that delivery note and delivery challan both are the same documents used for movement of goods and such is used only when there is only movement of goods instead of supply. The delivery note/challan is used for the purpose of movement of goods and not for supply, therefore, in the absence of supply, no penalty under Section 129 of the Act can be imposed. It was submitted that under the threat of dire consequences the STO obtained a cheque forcibly from the petitioner amounting to Rs.4,67,860.00 failing which the petitioner will have to face many problems at the hands of the STO.

5. The appellate authority, after hearing the parties vide order impugned dated 31.08.2022, dismissed the appeal. The relevant extract of the impugned order is reproduced hereunder:

“In the instant case, there was no prescribed delivery challan accompanying the goods but instead a self invented delivery note

accompanied the goods which is clear violation of the rule. Besides Circular No. 10/10/2017 GST nowhere provides any substitute for the prescribed delivery challan.

For the reasons discussed in above paras I am of the considered view that the proper officer was justified in passing the impugned order which does not suffer from any legal infirmity. Accordingly, I find no merit in the appeal which is accordingly dismissed”.

The petitioner herein has assailed order supra in the instant writ petition.

7 Heard learned counsel for the parties and perused the impugned orders and the original record produced by the respondents.

8 At the outset, it would be appropriate to have a look at the relevant provisions of the Act of 2017. Section 129 of the Act which provides for procedure for detention, seizure and release of goods and conveyances in transit reads thus:

"129. Detention, seizure and release of goods and conveyances in transit.—

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,--

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid

thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided under subsection (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of Section 130

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer”

9 From a perusal of subsection (1) of the aforesaid provisions, it is clear that where any person transports any goods or stores any goods while they

are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever ever is less, where the owner of the goods comes forward for payment of such tax and penalty. It is further provided that the goods shall be released on payment of applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and in case of exempted goods on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees whichever ever is less where the owner of the goods does not come forward for payment of such tax and penalty upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed.

10 In the present case, the STO found that gold ornaments under transport were accompanied only by a delivery note. According to STO, the delivery note is not the one as prescribed under Rule 55 of the J&K GST Rules, 2017/CST Rules, 2017 and, therefore, not a valid document. For facility of reference, Rule 55 of J&K GST Rules, 2017 is reproduced hereunder:

*“Rule 55. **Transportation of Goods without Issue of Invoice**
(1) For the purposes of :*

- a. supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,*
- b. transportation of goods for job work,*
- c. transportation of goods for reasons other than by way of supply, or*
- d. such other supplies as may be notified by the Board.*

the consigner may issue a delivery challan serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of

invoice at the time of removal of goods for transportation, containing the following details, namely:

(i) date and number of the delivery challan;(ii)name, address and Goods and Services Tax Identification Number of the consigner, if registered;(iii)name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered; (iv)Harmonised System of Nomenclature code and description of goods;(v)quantity (provisional, where the exact quantity being supplied is not known);(vi)taxable value(vii)tax rate and tax amount — central tax. State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee; (viii) place of supply, in case of inter-State movement; and (ix)signature”.

11 On the other hand, the petitioner has submitted that delivery note and delivery challan is one and the same thing. In order to answer this question, let us understand the meaning of the term 'delivery note' and 'delivery challan'. A delivery note is a mere document that accompanies a shipment of goods. Delivery challan, on the other hand, is issued while making a delivery of goods to the buyer and have an impact on the inventory levels since it decreases the inventory stock.

12 Rule 138 (A)(1) of the GST Act, 2017 provides that the person in charge of the conveyance shall carry (a) the invoice or bill of supply or delivery challan as the case may be and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded to the conveyance in such manner as may be notified by the Commissioner

13 From the perusal of aforesaid provisions as well as the literal meaning of 'delivery note' and 'delivery challan', we find that there is a lot of difference between delivery note and delivery challan.

14 From the perusal of the record, it is revealed that the only document the person in charge of the goods produced before the enforcement team at the

time of interception, was delivery note which is neither a prescribed document nor a mandatory document.

15 Learned counsel for the petitioner Ms. Garima Gupta has submitted that the goods in question were supported with the letter from the consignor certifying the sale on approval basis but the same was not produced by the person in charge of the courier agency at the time of interception. As per the statement made by Mr. Surinder the person in charge of the goods before the STO, the goods were accompanied by delivery note only and, therefore, the assertion that the said letter may had lost in transit by the courier agency was also denied by representative of the courier agency in terms of letter dated 04.01.2020 annexed with the record.

16 Learned counsel for the petitioner has relied upon a judgment of Kerala High Court rendered in case titled **M/S Hindustan Coca Cola private Ltd vs. Assistant State Tax Officer Squad No.1** (WP(C) No. 5384 of 2020, decided on 19.03.2020). We have gone through the judgment cited by the learned counsel for the petitioner in the aforesaid case. We are of the view that the said judgment is not applicable in the facts and circumstances of the instant case on the ground that in the present case, a declaration has been made by the petitioner to the effect that the goods transported in the vehicle No. JK02BK1734 from Civil Airport, Jammu to Jain Bazar, Jammu pertained to him and he was the owner of the said goods. Further, he was ready to pay tax and penalty whichever is applicable.

17 Clause (c) of sub-rule (1) of Rule 55 of the Central Goods and Services Tax Rules, 2017 (hereafter referred as “the Rules”) provides that the supplier shall issue a delivery challan for the initial transportation of goods where such transportation is for reasons other than by way of supply. Further, sub-rule (3) of the said rule also provides that the said delivery challan shall be

declared as specified in rule 138 of the said Rules. It is also seen that sub-rule (4) of rule 55 of the said Rules provides that “Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods”.

18 A combined reading of the above provisions indicates that the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.

19 The aforesaid provisions further clarified that all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of Section 5 of the Integrated Goods and Services Tax Act, 2017. It is also clarified that this clarification would be applicable to all goods supplied under similar situations.

20 From the perusal of aforesaid provisions, it is clear that the same does not provide for any substitute to the prescribed delivery challan. The Circular dated 18.10.2017 issued by the Department of Revenue, Central Board of Excise and Customs also indicates that there is no substitute for the prescribed delivery challan. Therefore, non-possession of prescribed delivery challan at the time of seizure of the goods weakens the case of the petitioner.

21 The record also reveals that after seizure of the goods, the owner of the goods appeared before STO seeking release of goods on the plea that the goods in question were for sale on approval basis and therefore accompanied by

a delivery note along with a letter from the consignor certifying that the goods were for sale on approval basis but the said letter was misplaced by the courier agency. In the absence of valid delivery challan as prescribed under the rules, tax and penalty was imposed upon the petitioner under Section 129 of the Act. Since the petitioner at the time of release of goods admitted that he did not possess valid document i.e memo dated 30.12.2019 which could have substantiated that the goods were only for approval basis and, accordingly, tax and penalty was imposed upon him, as such, at this stage, the petitioner cannot turn around and plead that he was forced or threatened to obtain cheque amounting to Rs.4,67,860 on the ground that he had made a declaration that the goods transported in vehicle in question pertained to him and he was the owner of the said goods. It was also declared that he was ready to pay tax and penalty whichever is applicable. For facility of reference, the declaration made by the petitioner before the STO reads thus:

DECLARATION

“I hereby declare that the goods transported in vehicle No. JK02BK 1734 from Civil Airport, Jammu to Jain Bazar, Jammu pertain to me and I am the owner of the said goods. Further I am ready to pay tax and penalty whichever is applicable.

Signature of owner/Authorised person”

22 The record further reveals that the petitioner had voluntarily agreed in writing to pay tax and penalty as is also evident from the perusal of order passed by the STO. Payment of tax and penalty by the petitioner clearly indicates that the person in charge of the goods was not having a valid delivery challan when the goods were intercepted by the State Taxes Officer. In so far as the contention of the learned counsel for the petitioner that the petitioner was made to sign on the blank papers under duress is concerned, the declaration supra indicates that same has not been signed under protest, as such, the plea of the learned counsel for the petitioner is only an afterthought. This contention was not raised by the petitioner before the Appellate Authority, therefore, it cannot be

allowed to be raised at this stage. Once the petitioner in terms of the declaration declared himself as an owner and accepted the liability of tax and penalty then he is estopped in raising such kind of allegations against the respondents that too without any reasonable justification.

23 For the foregoing reasons, we are of the considered opinion that the aforesaid two grounds viz. non possession of valid delivery challan along with document substantiating the stand of the petitioner that it was sent for approval at the time of seizure of the goods and payment of tax and penalty voluntarily deposited by the petitioner at the time of release of the goods are sufficient reasons to dismiss the case of the petitioner. Accordingly, finding no infirmity in the impugned orders, the present writ petition is dismissed being devoid of any merit.

(Moksha Khajuria Kazmi)
Judge

(N. Kotiswar Singh)
Chief Justice

Jammu:
19.12.2023.
Sanjeev

Whether order is reportable: Yes/No