

Case :- WRIT TAX No. - 1138 of 2022

Petitioner :- M/S Ganpati Battery Traders

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

Counsel for Petitioner :- Anil Prakash Mathur

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

Heard Sri Anil Prakash Mathur, learned counsel for the petitioner and Sri Rishi Kumar, learned Standing Counsel for the State.

This writ petition has been filed challenging the order dated 30.4.2022 passed by the Additional Commissioner, Grade-2 (Appeal) Second, Commercial Tax Department, Kanpur.

The petitioner is engaged in the business of sale and purchase of old batteries. On 18.2.2022, 793 pieces of large damaged battery and 7538 pieces of small damaged battery were sold to M/s Shanti Prakash Power Private Limited at Gwalior through tax invoice. The goods were being sent through Truck No.UP79-T-5059, and were enroute to its destination, when it was intercepted by Mobile Squad near Unnao on 23.2.2022. The truck was detained for verification under Section 20 of the Integrated Goods and Service Tax Act, 2017 read with Section 68(3) of the Central Goods and Service Tax Act, 2017. The physical verification and inspection was conducted on 26.2.2022. On 26.2.2022, a notice was served upon the driver of the truck under Section 20 of the IGST Act, 2017 read with Section 129(3) of CGST Act, 2017, granting five days time to file reply. A reply was submitted by the petitioner. The Assistant Commissioner (Mobile Squad), Unnao vide order dated 1.3.2002 imposed a penalty of Rs.9,70,542/- and directed for deposit of the amount in terms of Section 129(1)(a) or 129(1)(b) of GST Act, 2017. The petitioner deposited the entire amount of penalty, and the truck along with goods were released on 1.3.2022. Against the order of the Assistant Commissioner, an appeal was preferred by the petitioner before the Additional Commissioner, Grade-2 (Appeal) Second, Commercial Tax Department, Kanpur. The said appeal was rejected vide order dated 30.4.2022, served on 6.6.2022.

Sri Mathur, learned counsel for the petitioner submitted that the Appellate Authority was not correct to uphold the detention order and the order of penalty passed by the Assistant Commissioner on the ground that the goods sold were on the

basis of number of pieces and not according to the weight. He contended that it was old and damaged batteries which the petitioner had purchased only by pieces and not by weight, and was further sold according to battery per piece. He further submitted that the batteries were completely redundant and cannot be re-sold after repair. According to him, there was no concealment on the part of the petitioner/assessee as correct description was given in the truck invoice differentiating the goods between large damaged battery and small damaged battery.

Sri Rishi Kumar, learned Standing Counsel while defending the order of Adjudicating Authority as well as the First Appellate Authority submitted that the petitioner was trying to evade payment of tax and the battery was sold in terms of per piece and not according to the weight. He contended that Rule 46 of the Central Goods and Service Tax Rules, 2017 would be applicable in the present case.

Having heard respective counsels for the parties and from the perusal of material on record, I find that the petitioner/assessee is dealing in the business of sale and purchase of old batteries, and tax invoice dt 18.2.2022 gives a complete detail of the batteries which were sold to M/s Shanti Prakash Power Private Limited at Gwalior. The description of the batteries given in the tax invoice is under two headings, i.e., large damaged battery and small damaged battery. In the reply furnished by the petitioner in paragraph 3, it has been stated that the battery is purchased and sold on the basis of per piece and not on the basis of weight. The Adjudicating Authority while passing the order dated 1.3.2022 has not recorded any finding as to how the explanation accorded by the petitioner cannot be accepted and the trade practice of purchase and sale of battery is according to weight and not per piece.

Similarly, the First Appellate Authority has failed to record any finding as to how it has arrived to the conclusion that the trade practice required the battery to be sold is according to the weight and not per piece, when the specific case of the petitioner was that he was purchasing and selling the battery on the basis of per piece and was maintaining the Books of Account, which has not been denied by the Taxing Authority.

Moreover, the description in the tax invoice, and consignment note also clearly mentions damaged batteries, large and small, which were being transported to Gwalior. Further, this Court finds that Rule 46 of CGST Rules, 2017, which has been relied heavily by the State, also does not provide for the stand taken by the State, and it only provides the description which the

seller is to give while the goods are sold, which, in the present case, has been done by the petitioner.

Considering the facts and circumstances of the case, I find that the Assistant Commissioner had wrongly detained the truck along with the goods of the petitioner and imposed a penalty of Rs.9,70,542/- and the adjudication order dated 1.3.2022 and the appellate order dated 30.4.2022 have no legs to stand as no reasoning has been accorded by either of the authorities in consonance with the law so as to hold that the old and damaged batteries are to be sold according to the weight and not per piece. Both the orders dated 1.3.2022 and 30.4.2022 are hereby set aside.

The writ petition stands **allowed**.

The authorities are directed to refund the amount of penalty charged from the petitioner within a period of one month from today.

Order Date :- 6.12.2022

SP