

A.F.R.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:37625
Court No. 1

Present:

THE HON'BLE SHEKHAR B. SARAF, J.

WRIT TAX NO. - 1081 OF 2019

M/S JHANSI ENTERPRISES, NANDANPURA, JHANSI

V.

STATE OF U.P. AND OTHERS

For the Petitioner : Mr. Shubham Agrawal, Advocate

**For the Respondents : Mr. Ravi Shanakar Pandey,
Additional Chief Standing Counsel**

Last heard on February 20, 2024

Judgment on March 01, 2024

- 1.** This is a writ petition under article 226 of the Constitution of India wherein the petitioner has prayed for the issuance of a writ of certiorari quashing the appellate order dated August 30, 2019 passed by Additional Commissioner Grade-2 (Appeal), Commercial Tax, Jhansi/the respondent No. 3 and the penalty order dated March 14, 2019 passed by Assistant Commissioner, Commercial Tax, (Mobile Squad) Unit Jalaun, Agra/the respondent No.2. Further, a mandamus has been sought directing the respondent authorities to refund the amount of tax and penalty deposited by the petitioner.

Facts

2. Factual matrix of the present case is delineated below:

- a. The petitioner is a registered dealer under the provisions of Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act'). On March 10, 2019, the petitioner had sold a consignment of TMT Bars (sariya) to one M/s Sahai & sons, Orai vide Tax Invoice No. 167. A vehicle bearing No. MP 16H 1584 was mentioned in the tax invoice for the transportation of the goods.
- b. On the same day i.e. March 10, 2019 at 01:11 P.M., the respondent No.2 intercepted the vehicle at Galla Mandi, Orai and subsequently at 03:59 P.M. issued an order for physical verification/inspection of the conveyance, goods & documents under section 68(3) of the Act on the ground that neither e-way bill nor any other document such as tax invoice, bill of supply, challan or bill of entry related to the goods in transit were produced before him at the time of interception.
- c. After the issuance of order for physical verification/inspection of the conveyance, goods & documents, the documents related to the goods such as Tax Invoice and the e-way bill were produced before the respondent No. 2. The said e-way bill was not accepted by the respondent No. 2 because it was generated after the interception took place. As per the respondent authorities, the aforementioned e-way bill was generated with a delay of almost 4 hours after the commencement of transportation of the goods.
- d. The show cause notice was issued to the petitioner under Section 129(3) of the Act stating that the movement of the goods was in contravention to the provisions of the Act.
- e. In pursuance of the show cause notice, the petitioner appeared before the authority and duly submitted his written reply. In his reply, the petitioner stated that due to non availability of computer operator, the e-way bill related to the goods in transit could not be generated at proper time but the same was generated later at 2:45 P.M. on March 10, 2019. He also stated that the invoice related to

the goods could not be produced because it was handed over to the receiver firm before the interception took place.

- f. Being dissatisfied with the reply of the petitioner, respondent no. 2 rejected his reply and passed the order of demand of tax and penalty dated March 14, 2019.
- g. The petitioner thereafter deposited the amount of Rs.3,97,224/- towards tax and penalty, after which the respondent No. 2, released the goods in favor of the petitioner. Aggrieved by the order dated March 14, 2019 passed by the respondent No. 2, the petitioner preferred a statutory appeal before the respondent No. 3.
- h. The respondent No. 3, vide its order dated August 30, 2019, dismissed the appeal and upheld the order dated March 14, 2019, passed by the Respondent No. 2.
- i. Aggrieved by the order dated August 30, 2019 passed by the Respondent No. 3, the petitioner has preferred the instant writ petition before this Court.

CONTENTIONS OF THE PETITIONER

3. Sri Shubham Agrawal, learned counsel appearing on behalf of the petitioner has made the following submissions:

- a. At the time of interception at 01:11 pm on March 10, 2019, the vehicle was parked at the godown for unloading.
- b. The petitioner could not generate the e-way bill prior to the commencement of transportation because the computer operator, who was assigned the duty of generating the e-way bill, did not arrive earlier and the person looking after the dispatch inadvertently dispatched the goods on the belief that the e-way bill would be generated within a short while after the arrival of the computer operator who generates the e-way bill.
- c. The petitioner had downloaded the e-way bill on March 10, 2019 at 02:42 P.M. and the respondent No. 2 had issued the interception memo on the same day at 03:59 pm. In this situation, the e-way

bill had been generated prior to the issuance of interception memo and no intention to evade tax can be inferred in view of this fact.

- d. Section 129 of the Act is applicable only when the consignment of goods are in transit and it does not apply to the present case since the vehicle was parked and was not in transit when it was intercepted by the respondent no. 2.
- e. The petitioner had submitted all the documents relating to the consignment of goods before the authorities much prior to the passing of seizure order.
- f. Since the petitioner had already deposited the tax on the consignment of seized goods and the relevant transaction had also been disclosed in the returns furnished by him, hence there was no intention to evade tax on his part and thus the impugned orders passed by the authorities are liable to be set aside.
- g. It is a settled law that if the e-way bill is downloaded before seizure and tax is also charged then seizure and penalty are not justified. This position of law has been held by the Division Bench of this Court in **M/s Century Rayon V. Union of India** reported in **2018 UPTC 528**, **M/s Bhumika enterprises V. State of UP** reported in **2018 UPTC 536**, **M/s Singh Tyres V. State of UP** reported in **2018 UPTC 539**, **Mahaluxmi traders V. State of UP** reported in **2018 UPTC 545** and **M/s Shubham fertilizers and chemicals V. State of UP** reported in **2018 UPTC 546**.
- h. To buttress his argument, counsel for the petitioner further relies upon the judgment passed by the Division Bench of this court in **M/s Zebronics India pvt. Ltd. V. State of UP** reported in **2017 UPTC 1207** wherein it was held that seizure of goods and penalty is not sustainable under section 129 of the Act, unless satisfaction is recorded about the existence of intention to evade tax.

CONTENTIONS OF THE RESPONDENTS

4. Sri Ravi Shankar Pandey, counsel appearing on behalf of the respondent has made the following submissions:

- a. The provisions of Section 129 of the Act read with Rule 138 of the Uttar Pradesh Goods and Service Tax Rules, 2017 (hereinafter referred to as 'the Rules') required that where any person transports any goods or stores any goods, while they are in transit, in contravention of the provisions of the Act or Rules made there under, 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 every registered person who causes movement of goods of consignment valuing exceeding fifty thousand rupees (i) in relation to supply or (ii) for reasons other than supply or (iii) due to inward supply from an unregistered person, shall before commencement of such movement, furnish information relating to the said goods as specified in Part 'A' of the e-way bill electronically on the common portal along with other information as may be required on the common portal.
- b. In view of above provisions, the e-way bill is to be generated before the commencement of the transportation of goods, whether in respect of supply or otherwise. In the present case, the Assistant Commissioner, Commercial Tax, (Mobile Squad) Unit Jalaun, Agra has stopped the vehicle no. MP16H 1584 on 10.03.2019 at 01:11 P.M. At the time of interception of the vehicle, the documents such as e-way bill, invoice, bilty, etc. were not found regarding the goods loaded in the vehicle. In this way, the goods were being transported without valid documents.
- c. The petitioner has submitted a vague reply of non availability of computer operator. In this regard, it is submitted that the generation of e-way bill is required as mentioned in Rule 138 of the Rules and therefore, it was obligatory on the petitioner to have generated the e-way bill which was not done and therefore, the provisions were not followed by the petitioner. It is further submitted that the petitioner has generated the e-way bill on

10.03.2019 at 02:42 P.M., which was actually after the time of interception of the vehicle.

- d. As per language of Section 129 of the Act, the seizure and release of the goods depends on the infringement of the provisions and the word *mens rea* has not been specifically mentioned. The revenue has relied upon the judgment given by this Court in **M/s Hawkins Cookers Limited Vs State of U.P. and Others** (Writ Tax No. 739 of 2020 decided on 12.02.2024) where it has been held that “Now, such an intention to evade tax may be presumed by the department in cases where there is wholesome disregard of the Rules. For example, in the event the goods are not accompanied by the invoice or the e-way bill is completely absent, a presumption may be raised that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods.”
- e. The High Court of Calcutta in **Pushpa Devi Jain Vs Assistant Commissioner of Revenue** (WPA No. 178 of 2023 decided on 03.03.2023) and the Kerala High Court in **M/s EVM Passenger Cars India Pvt. Ltd. Vs State of Kerala** [W.P.(C) No. 10565 of 2018 decided on 23.08.2023] has held that the seizure and penalty order has been rightly upheld by the authority due to non-following of the provisions of the Act and Rules. In this regard, it may be submitted that such matter is related to year 2018-19. After 14th amendment of the Rule from 01.04.2018, a system has been well developed about e-way bill and it was obligatory on the part of the petitioner to have generated the e-way bill which was not complied with and the provisions were not followed by the petitioner. In view of these factual positions and legal provisions, the action taken by the Mobile Squad Authority and Appellate Authority is legally justified as the goods were not accompanied by the e-way bill which was regarded as a breach of the provisions

contained under Section 129 of the Act read with Rule 138 and 138(A) of the Rules.

ANALYSIS AND CONCLUSION

5. I have heard the learned counsel appearing for the parties and perused the materials on record.

6. Even though the petitioner failed to produce the e-way bill in time due to certain difficulties, the question which arises before me is whether or not there was any actual intention to evade tax on part of the petitioner.

7. It is a well settled position of law that if there is no intention to evade tax on the part of a person then imposition of tax and penalty is not proper and justified. But there must be some reasonable grounds to show that there was actually no intention to evade tax on the part of tax payer.

8. In the present case, it is an admitted fact that neither invoice nor e-way bill were accompanying the goods when it was intercepted by the authorities. This contravention of rules can not be treated as a mere common mistake. In this situation, burden of proof for establishing that there was no intention to evade tax shifts to the assessee.

9. This court in case of **M/s Akhilesh Traders V. State of U.P. and 3 others** (Writ Tax no. 1109 of 2019 decided on February 20, 2024) has held that in cases where the goods are not accompanied by the invoice and e-way bill, a presumption may be raised that there is an intention to evade tax. The relevant paragraphs of the aforesaid judgment read as under:

“7. This Court in umpteen cases where penalties were being imposed under Section 129 of the Act though held that an intention to evade tax should be present, however, in the event the goods are not accompanied by the invoice or the e-way bill, a presumption may be raised that there is an intention to evade tax. Such a presumption of evasion of tax

then becomes rebuttable by the materials to be provided by the owner/transporter of the goods.

8. In the present case, one comes to an inexorable conclusion that the petitioner has not been able to rebut the presumption of evasion of taxes, as he has not been able to explain the absence of invoice and the E-Way Bill. Production of these documents subsequent to the interception cannot absolve the petitioner from the liability of penalty as the very purpose of imposing penalty is to act as a deterrent to persons who intend to avoid paying taxes owed to the Government. It is clear that if the goods had not been intercepted, the Government would have been out of its pocket with respect to the GST payable on the said goods.”

10. The petitioner, in the present case, could not explain the absence of invoice and e-way bill with a proper and reasonable explanation. Ergo, he has not been able to rebut the presumption of evasion of tax.

11. Mere furnishing of the documents subsequent to the interception can not be a valid ground to show that there was no intention to evade tax. There must be some reasonable grounds to justify the non-production of documents at the proper time.

12. Furthermore, the judgments upon which the petitioner is relying are prior to April 2018, when there were actually some difficulties with the generation of e-way bill. But after April, 2018 those difficulties have been resolved and now there is no difficulty in generating and downloading the e-way bill.

13. The argument raised by the counsel appearing on behalf of the petitioner that the vehicle was parked at the godown for unloading is not supported by the facts. The interception of the vehicle was in a place away from the godown and this entire argument is obviously an afterthought. Accordingly, the application of Section 129(3) of the Act by the authorities is valid and just in law.

14. In light of the above, I am of the view that the petitioner herein has not complied with the provisions of law, hence the steps taken by

the respondent authorities are proper and in accordance with the law and require no interference by this court.

15. Accordingly the writ petition is dismissed.

Date: 01.03.2024

Kuldeep

(Shekhar B. Saraf, J.)