

Court No. - 5

Case :- WRIT TAX No. - 784 of 2023

Petitioner :- M/S Balaji Traders And Another

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

Counsel for Petitioner :- Pratik Srivastava, Abhishek Bhushan

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Abhishek Bhushan, learned counsel for the petitioner and Shri Rishi Kumar, learned Additional Chief Standing Counsel for the State – respondents.
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 25.11.2022 affirming the penalty order under section 129(1) of the UPGST Act passed by the respondent no. 2 as well as the impugned order dated 24.03.2023 passed by the respondent no. 3 rejecting the appeal of the petitioner. A further prayer has also been made for a direction to refund the entire penalty amount of Rs. 5,58,286/- to the petitioner along with interest at the rate of 8% per month.
4. Brief facts of the case are that the petitioner no. 1 is a registered firm having GSTN No. 09AIPPJ5474K1ZX. The petitioner – firm is engaged in the business of trading cigarette, pan-masala & food spices. In its normal course of business, the petitioner received an order of supply from one Vaishya Distributors, Nashik (Maharashtra). In pursuance thereof, invoice no. 1406 dated 18.11.2022 was generated. The goods were supposed to be sent through railway. The goods were intercepted on 18.11.2022

outside the railway station, which were loaded in e-rickshaw and confiscated by the GST officials. Thereafter, on 19.11.2022, a show cause notice was issued to the petitioner – firm imposing a penalty of Rs. 5,58,286/-. The petitioner submitted reply to the show cause notice and also deposited a penalty amount; whereupon, the goods were released. The Assistant Commissioner passed the impugned order dated 25.11.2022 confirming the penalty under section 129(1) of the SGST Act. Aggrieved by the said order, the petitioner preferred an appeal, which was also dismissed vide order dated 24.03.2023 confirming the order dated 25.11.2022. Hence, this writ petition.

5. Learned counsel for the petitioners submits that on receipt of the purchase order form Nashik, Maharashtra, tax invoice was raised, but the e-way bill could not be generated as there was some technical glitch. He further submits that for filling up the e-way bill, Railway Receipt number was required and therefore, on 18.11.2022, in the evening, the petitioner went to the Kanpur Railway Station for arranging the entire booking process and to obtain Railway Receipt number for generating the e-way bill and asked the e-rickshaw driver to wait outside the railway station itself. When the goods were intercepted, the e-rickshaw driver duly informed to the GST authorities that the owner of the goods, along with paper, is inside the railway station for getting the Railway Receipt prepared, but without waiting or cross-checking the said fact, the respondent – authorities not only confiscated the goods, but also issued show cause notice on 24.11.2022. He further submits that a detailed reply was given by the petitioners narrating the said facts, but without considering the same, the impugned penalty order has been passed. He further submits that there was no intention of the petitioner to evade payment of tax and the authorities could have released the goods as there was no intention of the petitioner to evade payment of tax. He further submits that while issuing the show cause notice or passing the

impugned order, no observation has been made about the intention of the petitioner to evade payment of tax, but still the impugned orders have been passed imposing the penalty and confirming the penalty upon the petitioner. He further submits that since there was a technical glitch, e-way bill was not generated, but after coming to know that the goods have been confiscated, e-way bill, along with necessary tax invoices, were shown to the authorities, but the same have not been considered. In support of his submissions, learned counsel for the petitioners has placed reliance upon the judgement of the Apex Court in *Special Leave to Appeal (C) No. 21132/2021 (Assistant Commissioner (ST) & Others Vs. M/s Satyam Shivam Papers Private Limited & Another)* decided on 12.01.2022, the judgement of the Division Bench of this Court in *M/s Bhawani Traders Vs. State of U.P. & Another* [Writ Tax No. 854/2023, decided on 24.07.2023], *M/s Gobind Tobacco Manufacturing Company & Another Vs. State of U.P. & 2 Others* [Writ Tax No. 600/2022, decided on 17.05.2022] and *M/s Shyam Sel & Power Limited Vs. State of U.P. & 2 Others* [Writ Tax No. 603/2023, decided on 05.10.2023] as well as the judgement of the Punjab & Haryana High Court in *M/s Raghav Metals Vs. State of Haryana & Others* [CWP No. 25057/2021, decided on 14.03.2022]. He prays for allowing the writ petition.

6. Per contra, learned ACSC supports the impugned order and submits that at the time of interception of the goods outside the railway station, no documents were produced and therefore, the goods were rightly confiscated and thereafter, show cause notice was issued and impugned orders have been passed as there was a contravention of the provisions of the SGST Act and the Rules framed there-under. Therefore, the proceedings have rightly been initiated against the petitioners. He further submits that the case-laws cited by the petitioners are on the fact of those case where the intention to evade payment of tax has been noticed. He

further submits that in those cases, the goods were accompanied with proper documents, but in the case in hand, at the time of interception, no document, whatsoever, has been produced. In the event the goods were not intercepted or confiscated, the petitioners would have succeeded in its motive of not entering the transaction in question in its books of account. He prays for dismissal of the writ petition.

7. After hearing the learned counsel for the parties, the Court has perused the records.
8. Admittedly, the goods were intercepted and confiscated outside the railway station. The goods were loaded in e-rickshaw and the driver of the e-rickshaw had duly informed the authorities that the owner of the goods, along with documents, is inside the railway station and requested for waiting, but the respondents, in their wisdom, have neither cross-checked the said fact nor waited for the Proprietor of the petitioner – firm to come out. On the contrary, the goods have been confiscated and show cause notice was issued. When the petitioner came to know about this fact he tried to show the documents, but in vain. The petitioner on the very day, i.e., on 24.11.2022, submitted a detailed reply narrating the following averments:-

“Since the Eway bill portal was not running due to technical reason so I went to Central railway station for arranging the booking of my goods and taking RR No. of the central railway goods for making complete Eway bill and ask my E Rickshaw puller to stay with the goods outside the railway station.

When I went inside the Railway station for booking arrangement and taking RR No. so that e-way bill could be generated through Mobile (Cell Phone), the invoice was along with me and not with the E-rickshaw puller and the same time, the MS – 2 SGST officer enquired my E-Rickshaw puller and detained my goods and confiscated it.

When I came back outside the railway station, My E-rickshaw was not there, when I called my E-Rickshaw puller then I came to my goods has been detained and sending to Lakhanpur SGST Office.

I like to inform you that my Invoice was duly made and was along with the goods, but in the meantime, when I was arranging the booking and arranging RR No. , goods was detained as without invoice and without eway bill.

I like to further inform you in the case of transporting goods through railways, RR No. is mandatory for making complete eway bill, without RR No., eway bill would be incomplete.

Respected Sir, I have paid the challan as per your notice Mov 7 dated 24.11.2022 of Rs. 558286 vide CPN No. 22110900470510 dated 24.11.2022.”

9. The petitioner also deposited the penalty as mentioned in the notice on 24.11.2022 itself, but the authorities have passed the order under section 129(3) of SGST Act on 25.11.2022 confirming the demand and penalty. The record further reveals that at the time of issuing notice or passing the order under section 129(3) of the SGST Act, not a word has been whispered with regard to intention to evade payment of tax.
10. Against the order passed under section 129(3) of the SGST Act, an appeal was preferred before the Additional Commissioner, but by the impugned order, a fact has been noticed at internal page no. 4 that the owner of the goods, along with documents, were inside the railway station for getting the Railway Receipt as the number of the Railway Receipt is to be mentioned in the e-way bill, Part – B. Once this fact was brought, from the date of interception till the passing of the impugned order, not a word has been whispered by either of the authorities below that there was any intention of the petitioner to evade payment of tax.
11. It is also not in dispute that the petitioner, after getting the knowledge of the goods being intercepted and confiscated before passing the seizure order, has informed the authorities about the attending circumstances, but without considering the same, the impugned order under section 129(3) of the SGST Act has been passed.
12. This Court in the case of ***M/s Shyam Sel & Power Limited*** (supra) has held as under:-

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.

- 13.** Further, the Division Bench of this Court in the case of **M/s Bhawani Traders** (supra) has held as under:-

“He, however, could not dispute the fact that intention to evade tax is a per-requisite for imposition of penalty under Section 129 of the Act. The E-way Bills being the documents of title to the goods were accompanying the goods hence, the conclusion of the revenue that the petitioner was not the owner of the goods is patently erroneous. Consequently, the penalty proceedings were liable to be initiated under Section 129(1)(a) and not 129(1)(b) as has been done in the present case.

In view of the above, expressing our full agreement with the view expressed by the Coordinate Bench of this Court in the case of M/s Sahil Traders (Supra) we set aside the impugned penalty order dated 17.06.2023 passed in Form MOU-09 under Section 129(1)(b) of the Goods and Services Tax Act, 2017. The writ petition is allowed.”

- 14.** The Punjab & Haryana High Court, in **M/s Raghav Metals** (supra) has held as under:-

“9. Keeping in view these circumstances, it cannot be said that the

petitioner had any intent to evade the tax or the mismatch in the quantities is

of such nature which shall entail proceedings under Section 129 of the Act.

A person, who has already paid a tax of Rs.1276717.68/- on a consignment

cannot be said to have an intent to evade tax amounting to Rs.11000/-. At

this stage, Mr. Goyal states that the petitioner is ready to pay even the tax

and penalty imposed by the State-Authorities which comes to be around

Rs.22000/-.

10. In light of the fair stand taken by the petitioner and the fact that

the mismatch cannot be termed as contravention of the provisions of the Act, we deem it appropriate to allow the present writ petition. Proceedings against the petitioner under Section 129 of the Act are hereby quashed. Fine

and penalty, if any, imposed against the petitioner and deposited by him, be

refunded to him within a period of 15 days from the date of receipt of

certified copy of this order. Since goods already stand released, no further

order is required.”

- 15.** In view of the facts & circumstances stated above as well as the law laid down by the Apex Court as well as this Court, as cited above, the impugned orders cannot be sustained in the eyes of law.
- 16.** The impugned order 25.11.2022 passed by the respondent no. 2 as well as the impugned order dated 24.03.2023 passed by the respondent no. 3 are hereby quashed.
- 17.** The writ petition is allowed with a cost of Rs. 1,000/-, which shall be paid to the petitioners by the respondents – Authorities within a period of 15 days from today.
- 18.** The fine/penalty, if any, deposited by the petitioners pursuant to the impugned order shall be refunded to the petitioners within a period of 15 days from the date of receipt of a certified copy of this order, failing which the petitioners shall be entitled to interest @ 9% per annum from the date of deposit of the amount till the actual payment made to the petitioner.
- 19.** The respondents - Authorities are at liberty to recover the cost from the erring Officer concerned.
- 20.** List the matter after a month in Chamber, by which time an affidavit of compliance of deposit of cost shall be filed.

Order Date :-06/10/2023

Amit Mishra