

Court No. - 5

Case :- WRIT TAX No. - 410 of 2020

Petitioner :- M/S Meera Tent Cloth Supplies

Respondent :- Additional Commissioner And 2 Others

Counsel for Petitioner :- Ankur Agarwal, Suyash Agarwal

Counsel for Respondent :- A.S.G.I., A.S.G.I.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Suyash Agrawal for the petitioner and Mr. Rishi Kumar, learned ACSC for State/respondents.
2. The instant Writ Tax is being entertained by this Court in view of the fact that G.S.T. Tribunal is not functional in the State of Uttar Pradesh pursuant to the Gazette notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.
3. By means of this writ petition, the petitioner is assailing the order dated 22.11.2019 passed by respondent no. 1 in G.S.T. Appeal No. G.S.T. No. 142/2018 A.Y. 2018-19.
4. Brief facts of the case are that petitioner is a registered firm engaged in the business of wholesale supply of carpet, plastic chair, sofa etc. Earlier the petitioner has applied for grant of GSTIN on 29.7.2017 which was approved and GSTIN No. 09BUYPB2872C1ZE was issued on 3.8.2017 but the petitioner was unable to login with the provided credentials against which a complaint dated 16.8.2017 was raised. Consequently another GSTIN No. 09BUYPB2872C2ZD was allotted to the petitioner along with login credentials. Thereafter on the strength of said GSTIN number, in the normal course of business, the petitioner has purchased goods from M/s Dev Raj Silk Mills, Surat Gujrat vide invoice no. G/2863 dated 6.12.2018 with away bill no. 691059273769 and invoice no. G/2985 dated 11.12.2018 with

e way bill no. 691060509997.

5. The said goods on its onward journey from Surat to Agra, UP through Truck No. UP 80 CT 9887 had intercepted during transit on 19.12.2018 and thereafter respondent no. 2 on 20.12.2018 has detained the goods along with vehicle in question in Form GST MOV 06 on the ground that GSTIN NO. 09BUYPD2872C2ZD was not found on the website and same has been cancelled by the department on 30.11.2018, therefore the goods have been transported by the petitioner with intention to evade the tax. Thereafter notice under Form GST MOV 07 was issued and value of the goods were determined and imposed the tax liability of Rs. 3570.23/- along with penalty of Rs. 71,405/-. Thereafter GST MOV 09 was issued on 21.12.2018 against which the petitioner has preferred an appeal, which has been dismissed by the impugned order and tax as well as penalty has been confirmed. Hence the present petition.

6. Learned counsel for the petitioner has submitted that petitioner being a registered dealer has purchased the goods on the strength GSTIN number allotted to him and at the time of interception genuine tax invoices as well as e-way bills and G.R. were accompanying with the goods, however the goods have wrongly been detained and penalty have been levied on the ground that the GSTIN NO. 09BUYPD2872C2ZD was not found on the website and same has been cancelled by the department on 30.11.2018 and petitioner being unregistered dealer has transported the goods with intention to evade the tax.

7. He submitted that for cancellation of registration specific provision has been provided under the G.S.T. Rules which prescribed first for issuing notice in Form 17 and after the reply being submitted in Form 18 by the assessee the order of cancellation of registration could be passed in Form 19. He further submits that neither any due process has been adopted for cancellation of G.S.T. number nor any communication was ever made in this respect intimating the petitioner about cancellation of his GSTIN. He further submits that even assuming the fact that registration was cancelled then also e-way bill cannot be generated as after cancellation of registration, the website/portal automatically locks the process of generation of e-way bill and nobody can access the portal after cancelling the

GSTIN.

8. He further submits that on the one hand the petitioner has neither been communicated with regard to cancellation of registration and on the other hand e-way bill was generated from the official portal. He submits that the said two things cannot happen together. He submitted that even no benefit would accrue to the petitioner as input tax credit can not be claimed as the petitioner has opted for compounding and it is a matter of common knowledge that once a dealer opted for compounding, he cannot avail the benefit of input tax credit. Hence there is no question of any evasion of tax or wrong emoluments of input tax credit. He prays for allowing the writ petition.

9. *Per contra*, learned Additional Chief Standing Counsel supported the impugned order and submitted that once the GSTIN of the petitioner was cancelled on 30.11.2018, the petitioner cannot be permitted to give his GSTIN to the selling dealer, which has been mentioned in tax invoice of selling dealer. He further submitted that when the goods were intercepted the tax invoices have been matched from the official website where it has been found that GSTIN of the petitioner mentioned in the tax invoice has already been cancelled and the respondent authority has rightly imposed the tax along with penalty upon the petitioner as the petitioner has found in transporting the goods with intention to evade the tax. He prays for dismissal of this writ petition.

10. The Court has perused the records.

11. Admittedly, the goods were moving from Gujrat to Uttar Pradesh (Agra) through Truck No. UP 80 CT 9887, which was intercepted on 19.12.2018 and thereafter detention order was passed on 20.12.2018 on the ground that registration of the petitioner was cancelled on 30.11.2018. It is not in dispute that the petitioner has opted for composition which is specifically mentioned in para 3 of the writ petition and same has not been denied in para 12 of the counter affidavit. Once the petitioner has opted for composition, the benefit of input tax credit cannot be availed.

12. It is also not in dispute that two G.S.T. registration numbers were granted to the petitioner and since there was some technical glitch the first GSTIN No.

09BUYPB2872C1ZE could not be accessed with the login credentials provided therefore, subsequent GSTIN no. i.e. 09BUYPD2872C2ZD was allotted to the petitioner, which is alleged to have been cancelled. It is also not in dispute that from the GSTIN no. which is alleged to be cancelled, the petitioner has accessed the portal and downloaded all the relevant forms accompanying the goods in question at the relevant point of time. Once the GSTIN registration of the petitioner was cancelled, the access of the portal cannot be made. The genuineness of the e-way bill as well as tax invoice accompanying with the goods in question has not been disputed at any stage. The department found that registration number mentioned in the tax invoice as well as on the e-way bill has been cancelled on 30.11.2018 i.e. much prior to generation of e-way bill as well as tax invoice accompanying with the goods in question. On the said fact, the genuineness of the transaction cannot be disputed.

13. Moreover, the petitioner has opted for compounding under the Act. The said fact is also not disputed by the respondent up to the stage of writ petition. In para 3 of the writ petition, the petitioner has specifically mentioned that he had applied for composition scheme vide ARN: AA090717389721L. The said fact has not been disputed in para 12 of the counter affidavit. Once the fact of composition is not disputed and there could be no availment of input tax credit, intention to evade the payment of tax or wrong availment of input tax credit does not arise at any stage.

14. So far as the argument raised by the counsel for the petitioner that petitioner was neither intimated about the cancellation of registration or due process has not been followed in cancellation is concerned, the said argument has not been raised at any stage nor any pleading has been made in this respect in the writ petition. In view of the aforesaid fact, this Court does not permit the petitioner to raise the said argument for the first time in the present writ petition even without there being any pleading made in the writ petition in this respect, hence, the said argument is rejected.

15. The fact remains that if the petitioner is in compounding, the benefit of input tax credit cannot be availed, hence there cannot be any evasion of tax, if

the registration of the petitioner was cancelled on 30.11.2018, the generation of e-way bill, which has not been disputed to be genuine, the seizure cannot be made.

16. In view of above, the impugned order dated 22.11.2019 cannot be sustained in the eyes of law and is hereby quashed.

17. The writ petition succeeds and is **allowed** with all consequential benefits.

Order Date :- 3.10.2023

Rahul Dwivedi/-