

Reserved on 02.02.2023

Delivered on 14.02.2023

Court No. - 10

Case :- WRIT TAX No. - 427 of 2019

Petitioner :- M/S Radha Fragrance

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Murari Mohan Rai, Lokesh Mittal

Counsel for Respondent :- A.S.G.I., C.S.C., Krishna Ji Shukla

Hon'ble Rohit Ranjan Agarwal, J.

1. This writ petition under Article 226 of the Constitution of India has been filed assailing the order dated 02.03.2019 passed by First Appellate Authority/respondent No.4 and the order dated 14.02.2019 passed by respondent No.5 detaining the goods and the vehicle.

2. The petitioner before this Court is a registered dealer under the Haryana State Goods and Service Tax Act, 2017 (*hereinafter called as "GST Act of 2017"*). He is in the business of manufacturing and sale of Pan Masala and Chewing Tobacco.

3. The petitioner, who had received orders for supply of Pan Masala and Chewing Tobacco from two registered dealers of State of Jharkhand namely M/s ASP Enterprises and M/s Alliance Trading Company, Ranchi (Jharkhand) was sending the goods, as claimed, through four Tax Invoices. Through the Tax Invoice No.RFTB/18-19/9 dated 02.02.2019, 30 Cartons Chewing Tobacco for a sum of Rs.47,465/-, which included discount, Integrated G.S.T. and Cess and Tax Invoice No.RF/18-19/10 dated 02.02.2019, 30 Cartons Pan Masala for a sum of Rs.49,068/-, which included discount, Integrated G.S.T. and Cess in favour of M/s ASP Enterprises and Tax Invoice No.RFTB/18-19/8 dated 02.02.2019, 30 Cartons Chewing Tobacco for a sum of Rs.47,465/-, inclusive of discount, Integrated G.S.T. and Cess in favour of M/s Alliance Trading Company and Tax Invoice No.RF/18-19/11 dated 02.02.2019, 30 Cartons Pan Masala for a sum

of Rs.49,068/-, which included discount, Integrated G.S.T. and Cess in favour of M/s Alliance Trading Company were sent through the transporter M/s Shyam Freight Carrier along with Bilties.

4. The goods in transit from State of Haryana to Jharkhand were intercepted by mobile squad, respondent No.5 on 04.02.2019 near Sharkara Sansthan, Kanpur. The driver of the vehicle produced goods receipt No.413 and 414 and tax invoices No.RF18-19/10 and RF 18-19/11. During vehicle verification conducted on 05.02.2019, it was found that the vehicle was transporting 120 Cartoons of Pan Masala and tobacco in place of 60 Cartoons as was evident from tax invoices produced by the driver. The goods were not carrying E-Way Bill in view of Rule 138 as the value of goods were claimed to be below Rs.50,000/-. The Mobile Squad, on inspection, found that in each cartoons there were 200 boxes and in each boxes, 32 pouches were kept and on every pouch, MRP Rs.4/- was printed. The total value of 60 Cartoons came to Rs.15,36,000/- and after allowing discount of 25% and excluding tax and Cess, the basic value came to Rs.6,12,766 while the value on both the invoices was declared collectively Rs.69,600/-.

5. On 06.02.2019, a show cause notice in Form MOV 07 was issued. A detailed reply was filed on 13.02.2019 wherein it was mentioned that tax invoices in respect of tobacco were misplaced by the driver and could not be produced at the time of interception of goods. The value of 30 cartoons of tobacco was Rs.47,465/- each being sent to M/s Alliance Trading Co. and M/s ASP Enterprises. The question as to the jurisdiction of State of Uttar Pradesh in intercepting the goods and detaining the same was also raised. The dealer also submitted explanation that he has recently started the business and with a view to promote his business, he was charging price much below the MRP printed on the pack.

6. Respondent No.5 on 14.02.2019 passed the order under Section 129(3) of the Central GST Act, 2017 read with Section 20 of Integrated GST Act, 2017 rejecting the explanation submitted by the dealer and directed for deposit of integrated tax to the extent of Rs.7,27,235/- and the same amount of penalty totalling Rs.14,54,470/-. Aggrieved by the order, an appeal under Section 107 of the GST Act of 2017 was filed before the First Appellate Authority, respondent No.4. By order impugned dated 02.03.2019, the appeal has been dismissed confirming the order dated 14.02.2019 hence the present writ petition.

7. Sri M.M.Rai, learned counsel appearing for the petitioner submitted that Section 4 of Integrated GST Act, 2017 read with Section 2(91) of Central GST Act, 2017 provides for authorization of officers of State Tax or Union Territory Tax as Proper Officer, who have to perform function under the Act. According to him, no notification has been issued by the Central Government under Section 4 of the Integrated GST Act as a 'Proper Officer' exercising power contained under Section 129(3) of the Central GST Act, 2017. According to him, the State Taxing Officers were not empowered to detain and check the vehicle, and if there was any discrepancy, they should have reported the matter to the Assessing Officer of the State of Haryana where the matter could have been looked during the assessment proceedings.

8. According to him, the tax invoices for tobacco was generated along with tax invoices of Pan Masala on 02.02.2019 but due to the fault of the driver, the same was not produced before the detaining authority and was submitted at the time the reply given to the notice. According to him, the mandatory requirement of carrying E-Way bill as per Rule 138 is only when the goods are valued at Rs.50,000/- or more.

9. In the instant case, as the goods of Pan Masala and Tobacco, which were sent to two different consignees, were less than Rs.50,000/-, no necessity arose to download them.

10. He then contended that as the dealer had started his business only in the year 2018 and to compete in the Pan Masala segment, he was offering huge discount and the price disclosed in the Tax Invoices cannot be disbelieved looking to the competitiveness in the business.

11. Per contra, learned Standing Counsel submitted that in order to avoid E-Way bill and production and the sale being uploaded on the web-portal, the goods were deliberately undervalued by the petitioner. According to him, during transit, the driver of the vehicle was only carrying with him two tax invoices and bility for Pan Masala but no tax invoices for Tobacco was with him. The tax invoices were later on produced along with explanation furnished by the dealer. He then submitted that the price of one Cartoon, calculated on the basis of MRP of Rs.4/- per Pan Masala and after giving trade discounts of 25%, was fixed at Rs.10,240/- while the tax invoices reflect price of one Cartoon at Rs.1,160/-. This according to him was done so that after giving discount of 25% and adding IGST and Cess, the value of goods may come below Rs.50,000/- and there would be no need of downloading the E-Way bill mandated under Rule 138.

12. I have heard the respective counsels of the parties and perused the material on record.

13. It is not in dispute to both the parties that the goods were in movement from Haryana, which were intercepted by the Mobile Squad on 04.02.2019 at Sharkara Sansthan Kanpur. The goods were being carried alongwith the two bilities and tax invoices. Both the tax invoices were for Pan Masala of 30 Cartoons each. There was no tax invoice for 60 Cartoons of Tobacco, which were being transported.

Subsequently, the dealer has come with the case that driver had misplaced the documents and they were submitted at the time of furnishing an explanation.

14. From perusal of the tax invoices, appended alongwith writ petition, it transpires that price disclosed for each Cartoons of Pan Masala is Rs.1,160/- and total cost of 30 Cartoons sent to each of the dealers comes to Rs.34,800/- wherein 25% discount i.e. Rs.8,700/- has been given. Further, addition of IGST and Cess has been done at 28% and 60% respectively. Thus, the total cost comes to Rs.49,068/- for each of the tax invoices generated for a particular consignee for 30 Cartoons, which is well below the threshold limit of Rs.50,000/- necessitating downloading of E-Way bill.

15. Similarly, tax invoices of Chewing Tobacco reflect price of each Cartoon at Rs.348.49 and total collective cost of 30 Cartoons being 10,454.70. 25% discount have been given thereon and addition of NCCD, IGST and Cess has been done and the total cost of 30 Cartoons comes to Rs.47,465/-. This is also below the threshold limit requiring E-Way bill for transit of goods.

16. The question, which arises for consideration is, whether in the garb of certain protection given under Rule 138 dispensing requirement of E-Way bill for goods valuing below Rs.50,000/-, a dealer who is a manufacturer, can be allowed to send his goods to different consignees undervaluing the goods and the Tax Authorities not to proceed taking action under the Act.

17. This is a case where the petitioner, who is a manufacturer of Pan Masala and Tobacco, was sending goods as claimed by him to two dealers situated in the State of Jharkhand. The Pan Masala and Tobacco, which were sent to M/s ASP Enterprises and M/s Alliance Trading Company were in 120 Cartoons. 30 Cartoons each of Pan

Masala was sent to the two dealers while 60 Cartoons of Tobacco was sent to the two dealers. During interception of goods, the tax invoices produced was only for Pan Masala and not for Tobacco. During the verification of goods, it was found that value of each pouch of Pan Masala was Rs.4/- and each Cartoon contained 200 boxes and 1 box contain 32 pouches. On the total calculation done for each Cartoons, the value came to Rs.10,240/- after giving 25% discount. The disclosure by the dealer per Cartoon was only Rs.1,160/- and thus after giving trade discount and addition of taxes, the value was brought down to the threshold limit of Rs.50,000/-.

18. The Taxing Authorities, on fair valuation, found that the goods, which were in transit both Pan Masala and Tobacco accounted for Rs.7,12,766/- while the proper disclosure was not made by the dealer. It was on this undervaluation of goods that the authorities proceeded and imposed IGST and penalty.

19. The very purpose of downloading E-Way bill is that every goods, which are in transit, is recorded in the Web Portal and the Government has a clear picture of the goods which are manufactured and sold by the dealers either Inter-State or Intra-State.

20. It is only to protect small trade where the value is minimal that the necessity of downloading E-Way bill is dispensed with by the Government. The purpose of dispensing E-Way bill for the goods below Rs.50,000/- does not allow the dealer to undervalue his goods so as to escape it from bringing to the notice of the Government and the Taxing Authorities by uploading the same on the Web-Portal.

21. The dealer before this Court, who had started his business in the year 2018, prior to the interception of the goods had carried 11 transactions and none of the transactions were ever reported on the Web Portal and no E-Way bill was downloaded by him. Meaning

thereby that all the transactions made by him was below Rs.50,000/-. If such a conduct of a dealer is permitted, it will harm the business world and lead to a parallel economy and the very purpose of enactment of Goods and Service Tax Act would frustrate. The idea of 'One Nation One Tax' was to subsume all other taxes into one and bring transparency in the business world.

22. From the transaction carried out by the petitioner it is clear that huge amount of Pan Masala and Tobacco were being transported undervaluing the goods, without downloading the mandatory E-Way bill. In the garb of technicalities, no benefit can be given to a dealer who has intentionally undervalued his goods to escape from the eyes of law.

23. Reliance placed by petitioner on a decision of Chhattisgarh High Court in **K.P.Sugandh Ltd. Bilaspur vs. State of Chhattisgarh and others 2020 TLD 103**; decisions of Kerala High Court in **Alfa Group vs. The Assistant State Tax Officer and others 2020 UPTC (Vol.104)-74** and **Sameer Mat Industries vs. State of Kerala (2018) 36 VLJ 120 (Ker)** are distinguishable on the facts of the case and cannot be relied upon.

24. 60 Cartons of Pan Masala contained 3,84,000 pouches. The printed price on each pouch is Rs.4/-. Accordingly, the total value of goods is Rs.15,36,000/-. The detaining authority, after giving discount of 25% and deducting the tax and Cess, arrived at the basic value at Rs.6,12,766/-. If the argument of petitioner's counsel is taken to be correct that the dealer was new in the business and to survive and establish, he was giving heavy discount, then it cannot be assumed and expected that the value of Pan Masala for 60 Cartons, as disclosed by the dealer, would be Rs.69,600/- i.e. roughly one-tenth of the value arrived by the detaining authority on the basis of declaration made on the pouch of each Pan Masala.

25. This Court finds that it is a case of grossly undervaluing the 3,84,000 pouches of Pan Masala being sent by the dealer disclosing its price as Rs.69,600/-. The only conclusion, which can be drawn is that to avoid downloading E-Way bill and brining the transaction on record that the goods were undervalued to such an extent.

26. Moreover, the Taxing Authorities have also found that one of the consignee situated at Jharkhand was actually registered with the Taxing Authorities disclosing his nature of business as 'Works Contract and Suppliers of Services' and not in the business of trading. These actions of the dealer lead to the only conclusion that the transactions being not recorded with the Revenue so as to escape payment of due tax in the garb that E-Way bill is only required in case value of goods is more than Rs.50,000/-.

27. Thus, from the above, it can be safely said that the action of the State Authorities in detaining the goods and imposing tax and penalty, which have been affirmed by the first Appellate Authority, needs no interference of this Court as the dealer cannot be permitted to take shelter of the fact that no E-Way bill is required in case of goods valued less than Rs.50,000/-.

28. It is clear case of undervaluation of goods by the dealer who was transporting huge quantity of Pan Masala and Tobacco showing negligible value of goods.

29. In the result, writ petition fails and is hereby dismissed.

Order Date :- 14.2.2023

Kushal