

Court No. - 2

Case :- WRIT TAX No. - 1420 of 2022

Petitioner :- M/S Samira Enterprises

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Harsh Chachra

Counsel for Respondent :- C.S.C. Ravi Shanker Pandey, ACSC

Hon'ble Piyush Agrawal,J.

1. Heard Ms. Harsh Chachra, learned counsel for the petitioner and Mr. Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the State-respondents.

2. By means of present petition, the petitioner is, *inter alia*, praying for the following reliefs:-

"i) issue a writ, order or direction in the nature of Certiorari and set aside the order passed by the Appellate Authority vide order no. 0151 dated 09-12-2021 and release the amount of Rs. 5,02,890.00, deposited as tax and penalty by the petitioner, along with interest as well as detained goods may kindly be refunded to the petitioner. The relief as per the submissions and legal citation may be accorded in favour of the petitioner in the interest of justice."

3. Learned counsel for the petitioner submits that the petitioner is a registered dealer in MS scrape based at Delhi having GST No. GSTIN07BWDPK4547C1ZQ and make sales the MS scrape to Steel Rolling Mills based in the northern India. She submits that in the normal course of business, the petitioner sold MS scrape to M/s Himgiri Ispat Pvt. Ltd., 39, 40 Asodpur Industrial Area, Kotdwar, Uttarakhand in lorry No. UP 20 AT 5786. The said goods was

accompanying with proper documents i.e. tax invoice no. 0183 dated 16.11.2021 as well as E-way Bill no. 7112 2331 1139 dated 16.11.2021 of the consignor dealer M/s Samira Enterprises Delhi. The goods were with G.R. No. 810 dated 16.11.2021 issued by M/s Supreme Roadlines, Ghaziabad 201001, UP. She submits that the goods, during its onward journey was intercepted on 17.11.2021 at Muzaffarnagar, UP by the respondent no. 3 and thereafter GST MOV- 1 and 2 was issued and the goods were detained, thereafter the petitioner submitted reply in which, it was clearly stated that there is no contravention of the provisions of GST Act and the goods may be released but GST MOV -4, MOV-6 and MOV-7 was issued on 19.11.2021 quantifying the tax and penalty and also detained the goods in question. She further submits that detailed reply was submitted by the petitioner on 20.11.2021 however being not satisfied with the same the order dated 30.11.2021 was passed imposing tax as well as penalty upon the petitioner. Feeling aggrieved to the said order, the petitioner filed an appeal which was also dismissed by the impugned order without considering the matter in proper perspective.

4. Learned counsel for the petitioner submits that it is not in dispute that the proper documents were accompanying with the goods in question. She further submits that the goods in question was purchased through Tax invoice no. 133 dated 16.11.2021 of M/s Impex World Corporation, Shop No. 6, Plot no. 431, Azim Market, Hindon Vihar, Ghaziabad UP and E-way Bill dated 16.11.2021 was also prepared of which due entries were made in the books of account of the petitioner.

5. She further submits that in view of clause 6 of the notification no. 76/50/2018 -GST dated 31.12.2018, if the invoice or any other specific document is accompanying the

consignment then the consignee should be deemed to be the owner of the goods in question. The petitioner had appeared before the respondent authority but still the impugned order has been passed.

6. She further submits that Circular no. 64/38/2018-GST dated 14.9.2018 contemplates that the goods can be detained only if tax invoice or any other specified document and the E-way Bill is not accompanying with the goods then the proceedings under Section 129 may be initiated, however in the present case, all the required documents, as prescribed under the Act as well as the Rules framed thereunder, are accompanying with the goods in question, still the proceedings has illegally been initiated.

7. In support of his submission, she relied upon the judgement of of this Court in the case of **Riya Traders Vs. State of UP (Writ Tax No. 28 of 2023) Neutral Citation No. 2023:AHC:13179-DB, M/s Margo Brush India and others Vs. State of UPnother (Writ Tax No. 1580 of 2022), Neutral Citation No. 2023: AHC:12933-DB** as well as the judgement of Punjab and Haryana High Court in the case of **M/s Shiv Enterprises Vs. State of Punjab and others (CWP 18392 - 2021 date of decision 04.02.2022)**. She prays for allowing the present writ petition.

8. *Per contra*, Mr. Ravi Shanker Pandey, learned ACSC supports the impugned order and submits that proceedings has rightly been initiated against the petitioner. He submits that stand taken by the petitioner is self contradictory. Once the E-way bill has been issued which shows that goods had moved from the originating place i.e. from Ghaziabad to Delhi then it shows that the goods were moving from Delhi to Uttarakhand but it was

averred that the goods has been loaded from Ghaziabad for its onward journey to Uttarakhand which shows that in the event the goods were not intercepted, the petitioner would have been succeeded to avoid the payment of legitimate tax, therefore, the proceedings have rightly been initiated.

9. After hearing learned counsel for the parties, the Court has perused the record.

10. The record shows that the goods in question were accompanying with the documents i.e. Tax invoice, GR and E-way Bills. In the E-way bill, the dispatch place is specifically mentioned as Ghaziabad UP. Further the records shows that after detention of the goods, a reply was submitted by the petitioner wherein, in para 3, it was specifically mentioned that purchase was made from Ghaziabad dealer and therefore due entries has been made in its purchase account. This fact has not been denied at any stage. Merely because that the E-way bill was issued by the Ghaziabad dealer on the purchase made by the petitioner, this will not make that the goods was purchased from non bonafied dealer.

11. The State respondent has failed to bring on record any material to show that the goods were purchased from non bona fied dealer. The movement of the goods in question is shown by the petitioner of which tax invoice and E-way bill was issued in which in the place of dispatch, it was specifically mentioned as Ghaziabad. The GR has also been issued. The record further reveals that no discrepancy whatsoever with regard to quality, quantity or specification i.e. MS scrap, was found otherwise.

12. Further there is no mention at any stage that there was any intention to avoid the payment of tax. Even before this Court,

nothing has been brought on record by the respondent-State in this respect. Therefore, on this ground, the impugned order cannot be sustained.

13. Further, on perusal of the Circulars as referred by the counsel for the petitioner, it shows that if the documents are not accompanying with the goods, then the proceedings under Section 129 of the Act may be initiated. It is not the case of the respondent -State that proper document was not accompanying with the goods.

14. The relevant portion of the Circular no. 76/50/2018-GST dated 31.12.2018 is quoted hereunder:

6.	<u>Who will be considered as the 'owner of the goods' for the purpose of section 129 (1) of the CGST Act?</u>	<u>It is hereby clarified that if the invoice or any other specified documents is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.</u>
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15. On perusal of the said circular, it appears that if the tax invoice or any specific document is accompanying the consignment of the goods then either the consigner or the consignee should be deemed to be the owner of the goods.

16. Further an argument has been raised that the orders have been passed against the petitioner under Section 129 (1) (b) instead of Section 129 (1)(a) of the Act.

17. In the present case, the petitioner was present before the respondent authority, therefore, the proceedings ought not to be initiated under Section 129 (1) (b) of the Act.

18. This Court in the case of **M/s Margo Brush India and others (supra)** has held as under:

6. In view of the aforesaid fact and also the clarification given by the Board vide its Circular dated 31, 2018, in our opinion, levy of penalty under Section 129(1)(b) of the Act was not called for and could not be justified as Section 129(1)(a) of the Act provides that where owner of the goods comes forward for payment of penalty, the amount has to be two hundred per cent of the tax payable, whereas, in the case in hand, the penalty has been levied to the tune of hundred per cent of the value of the goods.

19. Again this Court in the case of **M/s Riya Trader (supra)** has held as under:

4. Once the documents clearly establish the name of the consignor, who is a registered dealer in the State, the proceedings should have been initiated against the owner of the firm instead of the driver, so as to enable him to respond to the notice. In any case, once from the facts on record, which have gone undisputed, the petitioner, who is consignor in the invoice and e-Way Bill, claims himself to be the owner of the goods, the provisions of Section 129(1)(b) of the Act could not be invoked for imposing penalty.

20. On perusal of the aforesaid judgements, it is clear that when consignor with the tax invoice and e-way bill claim himself to be the owner of the goods, the provisions of Section 129 (1) (b) of the Act could not be invoked.

21. In view of the facts and circumstances of the case as well as law laid down by this Court, the impugned orders cannot be sustained in the eyes of law and same are hereby quashed.

22. The writ petition succeeds and is **allowed**.

23. The authority concerned is directed to refund any amount deposited by the petitioner either pursuant to the impugned orders or in pursuance of the direction made by this Court, within a period of one month from the date of production of a certified copy of this order.

Order Date :- 11.9.2024

Rahul Dwivedi/-