Court No. - 29

Case :- WRIT TAX No. - 1471 of 2018

Petitioner :- M/S Timexo Fasteners India Private Ltd. And Another
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Rajan Tripathi
Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Mithal,J.
Hon'ble Ashok Kumar,J.

The petitioner no. 1 is a registered dealer of Kanpur in U.P. It purchased fencing wire 5.11.2018 from the Sharp Engineers, Delhi. The delivery of the fencing wire so purchased by it was to be delivered at Kanpur. Accordingly, the invoice/builty was generated on 5.11.2018 wherein GST @ 18% was charged and paid. The goods were dispatched from Delhi through transport on 5.11.2018 along with e-way bill which was valid upto 12 p.m. of 10.11.2018.

It is alleged that the Truck Vehicle No. UP 78/ CN 5278 carrying the said consignment had left Delhi on 5.11.2018 and had reached Kanpur along with all documents including e-way bill well within time by 8 p.m. of 10.11.2018 despite traffic congestion, jams on road due to massive construction work all through. On reaching Kanpur due to traffic congestion normal route was little deviated but the fact remains that the vehicle was in Kanpur much before mid night of 10.11.2018.

The vehicle and the goods were intercepted at Kanpur during the intervening night of 10/11.11.2018 and after the statement of the person incharge of the vehicle was recorded at 11:36 a.m., on the next date ie. 11.11.2018 a seizure order under Section 129 (1) of the Goods and Service Tax Act, 2017 (in short of the Act) was passed solely on the ground that the e-way bill accompanying the goods had expired. Thereafter, on the next date an order for release of the goods was passed on 12.11.2018 under Section 129 (3) of the Act subject to deposit of applicable tax and penalty as provided under Clause (a) and (b) of Sub-section (1) of Section 129 of the Act.

The petitioners aggrieved by the aforesaid order have preferred this petition contending that the very basis of the seizure of the goods is non existing as at the time of interception of the goods e-way bill accompanying the goods was very much valid and that only on account of delay in the issue of the memo of seizure, the time mentioned in the e-way bill expired. The seizure memo incorrectly mentions the time of interception of the goods.

In view of the above, to test and ascertain as to when actually the goods were intercepted, Sri C.B. Tripathi, Special counsel appearing for the respondents was given time on 20.8.2018 to seek instructions as to the time when the vehicle in question had entered Kanpur and was actually intercepted notwithstanding the issuance of the seizure memo on 11.11.2018.

Sri C.B. Tripathi has obtained instructions in the matter from the Assistant Commissioner (Commercial Tax) Incharge MS-XI, Kanpur. The instructions disclose that the e-way bill accompanying the goods was valid upto mid night of 10.11.2018. The vehicle was checked at 12:30 in the night of 10/11.11.2018 at Jarib Chowki, Kanpur by which time the e-way bill had expired. The vehicle was brought to the office at 1:30 a.m. on 11.11.2018 whereupon memo of seizure was issued at 11:30 a.m., on 11.11.2018 itself whereas the release order was issued on 12.11.2018.

The aforesaid instructions clearly reveal that the vehicle had entered Kanpur atleast by 12:30 in the night of 10.11.2018 when it was checked/intercepted at Jarib Chowki, Kanpur ie., hardly 30 minutes after the time prescribed in the e-way bill had expired.

The petitioners in paragraph 8 have categorically state that the vehicle had reached Kanpur Nagar around 8 p.m., on 10.11.2018 much before the expiry of the period mentioned in the e-way bill. It is also stated that it was intercepted at 8 p.m., on 10.11.2018 at the Jarib Chowki, outpost Kanpur Nagar.

The instructions received from the Assistant Commissioner, Commercial Tax Incharge MS-IX, Kanpur do not match with the documents which has been produced by none other than the Assistant Commissioner which clearly states that the vehicle was intercepted at 8:23 am on 11.11.2018 at Jarib Chowki Kanpur. The instructions states that the interception/checking was done at 12.30 in the night of 10.11.2018.

The averments regarding the entry of vehicle in Kanpur and the intercepting of goods as made in the writ petition have not been countered by the official of the department through the above instructions. It only states that the vehicle was checked at 12:30 in the night of 10.11.2018 at Jarib Chowki, Kanpur without uttering a single word as to when the vehicle is said to have been entered Kanpur Nagar despite fact that the specific direction was issued to the respondent to seek instructions about it.

In view of the above scenario, it can not be said that the allegation of the petitioners that the vehicle had entered Kanpur much before expiry of time mentioned in the e-way bill is false and the interception has been deliberately and incorrectly shown after 30 minutes of the expiry of time.

It may be pertinent to point out that the Act and the Rules do not provide any time period within which a seizure memo of the intercepted goods and the vehicle has to be prepared by the Tax Authorities and is to be issued to the person incharge of the vehicle. This gives an ample handle to the Officers not to enter the actual time of interception and to prepare the seizure memo at leisure making the dealer of the goods to suffer and more particularly the transporter whose vehicle unnecessarily for no fault of his remains seized depriving him of his business of transport being carried through the said vehicle.

In the above circumstances and the fact that the petitioners alleged that the vehicle with the goods had entered Kanpur at 8.00 p.m. on 10.11.2018 much before the period mentioned in the e-way bill had expired which fact remains unanswered in the instructions, we are of the opinion that the seizure of the goods on the ground that accompanying e-way bill had expired is not justified rather it was allowed to expire after the detention of the goods by incorrectly recording the time of interception.

Accordingly, the order of seizure dated 11.11.2018 issued under Section 129(1) of the Act (Annexure-1) to the writ petition is quashed and the seized goods along with the vehicle are directed to be released forthwith in favour of petitioner No.2.

The Writ Petition is allowed. A copy of this order may be sent to the Commissioner, Commercial Tax U.P. at Lucknow.

Order Date :- 22.11.2018
SKS