

Court No. - 6

Case :- WRIT TAX No. - 1049 of 2018

Petitioner :- Corp Mediteche Private Limited

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Nishant Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ashok Kumar,J.

Learned counsel for the petitioner has prayed and is allowed to implead the Union of India and GST Council as respondent nos. 3 and 4 respectively.

Heard Sri Nishant Mishra, learned counsel for the petitioner and Sri B.K. Pandey, learned Standing Counsel.

As prayed by Sri B.K. Pandey, learned Standing Counsel, two weeks' time is allowed to file the reply/counter affidavit.

The contention of the learned counsel for the petitioner is that the entire seizure proceedings is invalid and without authority of law.

Learned counsel for the petitioner has placed reliance on Government Orders and forms which are necessary to be used while taking the seizure proceedings including the detention of the vehicle.

Learned counsel for the petitioner has submitted that admittedly it is an Inter- State transaction, therefore, the entire proceedings carried out under UP GST Act, by seizing authority, is illegal.

He has further submitted that the impugned order is appellable under Section 112 of the CGST Act, before the Tribunal, but since the Tribunal is not constituted so far, even after a lapse of more than one and half year, he has no option but to challenge the proceedings under Article 226 of the Constitution of India.

From the bare perusal of the pleadings and supportive documents, this Court finds substance in the submission of the learned counsel for the petitioner that it may be just an human error on the part of the transporter or the person in charge of the vehicle that the requisite part-B of E-way bill was not downloaded while admittedly the E-way bill was downloaded on 21st May, 2018. The fact reveals that when the vehicle in question was detained at 03:30 am on 22.05.2018, the tax invoice and other documents accompanying the goods were

produced by the person in charge/driver of the vehicle. The explanation was given by the driver that he was not aware about the required procedure that part-B of the E-way bill is also to be downloaded. However he has downloaded the same and placed it on the same day i.e. on 22.05.2018 at 10:56 am. The detaining authority, however has proceeded to seize the goods and to issue a notice under Section 129 (3) of the CGST Act.

The petitioner has furnished the reply to the show cause notice and explained therein that he was neither any ill intention nor the goods are meant for sale within the State of U.P. as such the goods are meant for to be supplied to the Medical Colleges, situated at Madhya Pradesh and all the details are duly incorporated in the documents, i.e. the details of the purchaser medical college being HLL Infra Tech Services Ltd. (Subsidiary of HLL Lifecare Ltd., A Govt. of India Enterprise) etc.

It is submitted by the counsel for the petitioner that no discrepancy was noticed nor is found by the detaining authority while proceeded to pass the order under Section 129 (3) of the Act, asking the petitioner to pay sum of Rs. 27,54,681/- plus a penalty of the same amount for releasing of the seized goods and vehicles in question.

It is submitted that initially the proceedings of seizure and penalty were challenged by the petitioner by way of Writ Petition No. 870 of 2018. However, the said writ petition was not be heard, hence the petitioner has no option but to file an appeal before the Additional Commissioner (Appeals), Mathura.

Now the Additional Commissioner (Appeal), Mathura has passed the impugned order, by which he has affirmed the order of seizure and demand of penalty.

Against the said order dated 17.07.2018, this writ petition has been filed.

On asking by this Court about the establishment of the Tribunal, learned Standing Counsel has informed that so far as no Tribunal is established.

This Court in fact has requested for forming of the Tribunal long back while entertaining the writ petitions against the seizure proceedings. Surprisingly, even after a specific order of this Court the concern authority has not acted upon and till date no Tribunal is established.

This issue is now serious as because of non establishment of the

Tribunal, the parties are unnecessarily approaching this Court whereas, in case of establishment of Tribunal they can easily file the appeal under Section 112 of the Act.

Issue notice to the newly added respondent nos. 3 and 4, Union of India and Goods & Service Tax Council to explain as to why the previous orders of this Court are not complied with and as to why the statutory Tribunal is not setup so far. This explanation must be furnished within two weeks by the respondents.

Section 113 of the CGST Act, provides the procedure to be applied by the Appellate Tribunal. Section 114 of the said Act provides the financial and administrative powers of President of the Appellate Tribunal. There is complete procedure provided in the Act as Section 117 of the Act provides that any person aggrieved by the order passed by the State Bench or area Benches of Appellate Tribunal may file an appeal to the High Court.

The High Court, therefore, will come in picture only when the appeals are decided by the Appellate Tribunal or any order is passed by the Appellate Tribunal.

In the instant case, on account of non establishment of the Appellate Tribunal, the dealers or the parties aggrieved are approaching the High Court. The respondents must proceed forthwith in this regard.

In this case, since the petitioner is a registered company and the purchaser is a Government of India Enterprise, this Court finds it proper and appropriate to protect the interest of parties to pass the following orders:-

1. The goods are directed to be released on furnishing an indemnity bond to the extent of the value of tax only and not the penalty amount, so as indicated in the impugned seizure order passed under Section 129 (3).
2. The goods seized along with vehicle be released forthwith.
3. The petitioner be permitted to download a fresh E-way bill immediately after release of the goods and vehicle.
4. The goods and vehicle be allowed to proceed to its onward journey and after delivery of the goods, the petitioner must furnish the certificate, as required under the law, showing the delivery of the goods at the purchaser's place.

List this petition on 16th August, 2018.

Copies of the writ petition be provided to the learned counsel representing the newly added respondents.

Order Date :- 31.7.2018

SK Srivastava