

Court No. - 21

Case :- WRIT TAX No. - 718 of 2018

Petitioner :- M/S Delhi Gujrat Fleet Carrier Pvt. Ltd

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Anand Kumar Singh

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

Hon'ble Krishna Murari,J.

Hon'ble Ashok Kumar,J.

Heard Sri Anand Kumar Singh, learned counsel for the petitioner and Sri A.C. Tripathi, learned Standing Counsel.

Petitioner is a transporter and is challenging the seizure order dated 19.03.2018 and the consequential notice for levied of penalty dated 29.03.2018 issued under Section 129(3) of the UPGST Act, 2017.

Brief facts of the case are that the goods and vehicle was intercepted by the respondent no. 4 in District Agra, while the same was passing through the State of U.P. on its journey from Nashik, Maharashtra to Fareedabad, Haryana.

According to the learned counsel for the petitioner the goods are duly covered against the IGST invoice, GR (Goods Receipts) as well as E-way bill which was downloaded by the vehicle in-charge from the Government portal. In the aforesaid documents all the requisite details were duly mentioned including the IGST charge @ 18% and 28% respectively.

The Assistant Commissioner Mobile Squad, Unit-10, Agra, who has intercepted the vehicle on 19.03.2018, has proceeded to pass the seizure order under Section 129(1) of UPGST Act on the ground that during the course of verification, the vehicle in-charge failed to produce the Transit Declaration Form-I.

Learned counsel for the petitioner has submitted that though the transit declaration form is not required for the transportation of goods under the inter-state transaction but on insistence by the respondent no. 4 the person in-charge of the vehicle has downloaded the TDF-I on 22.03.2018 i.e. before the seizure proceedings are completed. However the penalty notice is also issued.

Against the seizure order an appeal was filed by the petitioner before the Additional Commissioner Grade-2 (Appeal)-III State Tax, Agra. The Additional Commissioner has affirmed the order of seizure while dismissing the appeal vide order dated 13.04.2018.

The contention of the learned counsel for the petitioner is that till date the GST council has not taken any step for establishment of the GST Tribunal, hence, the petitioner has no other option but to approach this Court under Article 226 of the Constitution of India.

We have heard learned counsel for the petitioner and Sri A.C. Tripathi, learned Standing Counsel.

Almost in identical set of facts this Court has decided a Writ Petition No. 583 of 2018 (M/s Ramesh Chand Kannu Mal Vs. State of UP and 2 Others) in which it is held that on account of absence of any notification by the Central Government under Rule 138 of CGST Rules, 2017 and in view of incorrect application of notification issued by the State Government under Rule, 138 of UPGST Rules, on the date of incident Form TDF-I or any other Form was not required in the case of inter-state movements of goods.

Since the facts of the present case are identical of the aforesaid Writ Petition No. 583 of 2018 M/s Ramesh Chand Kannu Mal Vs. State of UP (supra), we follow the said decision.

The writ petition is allowed.

The goods and vehicle, which are seized, are directed to be released forthwith and the consequential penalty proceedings are also set aside.

Order Date :- 1.5.2018
SK Srivastava

(Ashok Kumar,J.) (Krishna Murari,J.)