

Court No. - 21

Case :- WRIT TAX No. - 689 of 2018

Petitioner :- Rivigo Services Pvt. Ltd.

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Suyash Agarwal

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

Hon'ble Krishna Murari,J.

Hon'ble Ashok Kumar,J.

(Per: Hon'ble Ashok Kumar, J.)

We have heard learned counsel for the petitioner and Sri Avinash Chandra Tripathi, learned Standing Counsel for the State.

The instant writ petition has been filed by the petitioner challenging the seizure order dated 16.04.2018 and the consequential penalty notice dated 16.04.2018 passed/issued under Section 129(1) and 129(3) of the Act respectively.

Brief facts of the case are that the petitioner is a registered company having its registered office at Gurugram, Haryana. The petitioner company is also registered under the GST Act, 2017 and is carrying on business of transportation of goods from one place to another. The Branch of petitioner's company is also declared in the State of U.P. which situates at Plot No.68, Ecotech-12, Greater Noida, U.P. The said Branch has been leased out to the petitioner by one M/s Paras Agro Tech Pvt. Ltd., New Delhi for the purpose of loading and unloading of goods which are brought from the Delhi for transportation and re-loading in different vehicles to be booked for transportation of goods outside Delhi. One M/s Paharpur 3P, Sahibabad, Ghaziabad, the consignor has dispatched Flexible Laminates, which are covered by invoices dated 15.04.2018, for the supply to the consignee M/s Bayer Bioscience Pvt. Ltd., Medak,

Telangana, who is also a registered dealer. Apart from the aforesaid item, the said consignor M/s Paharpur 3P has also dispatched Flexible Laminates which too are covered against the tax invoice dated 15.04.2018 to be supplied to the consignee M/s Saife Vetmed Pvt. Ltd. Dehradun, Uttarakhand which is also a registered firm. For the dispatch of the aforesaid two consignments namely for Telangana and for Deharadun, the consignor of Ghaziabad has booked the goods to be delivered both at Telangana as well as Deharadun against the Goods Receipt (GR) which has been prepared on 15.04.2018. The aforesaid consignment was loaded in Truck No. U.P.-14FT-0643 from the premises of the consignor in small vehicle and the same are brought for transshipment Branch which is situated at Greater Noida, U.P. and the goods were reloaded in two different trucks for transportation for Telangana and Deharadun. The distance between the business place of consignor and the Greater Noida Branch of Transporter is approximately 25-30 KM.

Learned counsel for the petitioner has placed the notification No.12 of 2018 dated 07.03.2018. By this notification, the Central Government has amended CGST Rules, 2017 by CGST (second amendment) Rules, 2018, by which new Rule 138 was substituted.

By another notification no.15 of 2018 issued on 23.03.2018, the Central Government with effect from 01.04.2018 has enforced the notification no.12 of 2018 dated 07.03.2018 by which amended e-way bill Rules was enforced.

In exercise of powers under Section 164 of UPGST Act, U.P. Goods and Service (Fourteenth Amendment), Rules 2018 was framed vide notification no.487 dated 26.03.2019. Clause three of the Fourteen Amendment Rules of Rule 138 was amended

paving way for national e-way bill.

The Amended Rule 138 of GST Rules provides that before dispatching of goods for outward supply from the premises of the consignor, it was incumbent to download national e-way bill, which according to the counsel, the petitioner has downloaded two national e-way bills, one for Telangana and another for Deharadun. He has further submitted that the consignor has duly filled the part of the aforesaid national e-way bill which contains the details of consignor as well as consignee and further the details and description of goods to be supplied. 'Part B' which pertains to details of truck/vehicle number was left blank to be filled by the transporter (in the present case the petitioner) when the goods will be reloaded in respective trucks at transshipment branch at Greater Noida for further journey upto Telangana and Deharadun respectively.

The counsel for the petitioner has submitted that on 15.04.2018 at late evening, that too after opening of no entry when the goods related to Telangana and Deharadun are loaded in Truck No. U.P.14-FT-0643 at the premises of the consignor for journey from Sahibabad, District Ghaziabad for the transshipment branch of the transport company situated at Greater Noida, and from where the aforesaid goods were required to be reloaded in respective vehicles for their individual destination, the respondent no.4 namely Assistant Commissioner, Sales Tax, Mobile Squad, Unit-III, Ghaziabad has intercepted the vehicle at 11.35 P.M. on 15.04.2018 and has issued the detention notice in the name of the truck driver on the ground that 'Part B' of national e-way bills, which is not filled and since the movement of goods is from inside the State of U.P. to outside the State of U.P., as such, it is incumbent upon the petitioner to carry out and to scrutiny the documents

namely 'Part B' of e-way bill. According to the respondent no.4, since the details of the vehicle are not found in 'Part B' of the e-way bill, therefore, the petitioner has committed an illegality and accordingly he has passed the seizure order dated 16.04.2018 by which the petitioner was directed to pay the proposed tax at the rate of 18% of the value of goods to the tune of Rs.1,54,792/-.

The respondent no.4 has also issued a notice under Section 129(3) of the Act determining therein both the tax liability as well as penalty and directed the petitioner to deposit the such tax and penalty by way of bank guarantee for release of seized goods as well as the truck.

According to the learned counsel for the petitioner, the notification no.12 of 2018 dated 07.03.2018 issued by CGST as well as the notification no. 487 dated 26.03.2018 issued under the UPGST Act, it is apparent that both the aforesaid notification are pari-materia and third proviso of Sub-Rule 3 of Rule 138 provides that where goods are transported for a distance upto 50 Km within the State from place of business of consignor to place of transporter for further transportation, the transporter may not furnish the details of conveyance in 'Part B' of GST e-way bill-01.

According to the learned counsel for the petitioner, the distance was much below within the prescribed limit of 50 km in between the consignors place of business and transport company from where the goods were required to be reloaded in different transport vehicles for their onward journey. He has further submitted that since the department itself has issued the notification, therefore, the entire seizure proceeding is wholly illegal as also consequential penalty proceedings.

On the other hand, learned counsel for the department has supported the order of seizure passed by respondent no.4 and consequential penalty proceedings.

We have heard the learned counsel for the respective parties and we find substances in the argument of the counsel for the petitioner.

In support of his contention, learned counsel for the petitioner has placed before us a Press Information Bureau, Government of India, Ministry of Finance, clarification with respect of e-way bill system dated 31st March, 2018. This clarification clearly provides the procedure with regard to the inter-state movement of goods across the country as e-way bill system has been introduced with effect from 1st April, 2018. For perusal, the said clarification is placed hereinbelow;

*Press Information Bureau
Government of India*

Ministry of Finance

31-March-2018 18: 30 IST

Clarification with respect to the E-way Bill System.

The e-way Bill System for Inter-State movement of goods across the country is being introduced from 01st April, 2018. Few clarifications regarding the new e-way bill system are as follows:

1. Situation:- Consider a situation where a consignor is required to move goods from City X to City Z. He appoints Transporter A for movement of his goods. Transporter A moves the goods from City X to City Y. For completing the movement of goods i.e. from City Y to City Z, Transporter A now hands over the goods to Transporter B. Thereafter, the goods are moved to the destination i.e. from City Y to City Z by Transporter B. How would the e-way bill be generated in such situations?

Clarification:- It is clarified that in such a scenario, only one e-way bill would be required. PART A of FORMGST EWB-01 can be filled by the consignor and then the e-way bill will be assigned by the consignor to Transporter A. Transporter A will fill the vehicle details, etc. in PART B of FORMGST EWB-01 and will move the goods from City X to City Y.

On reaching City Y, Transporter A will assign the said e-way bill to the Transporter B. Thereafter, Transporter B will be able to update the details of PART B of FORMGST EWB-01. Transporter B will fill the details of his vehicle and move the goods from City Y to City Z.

2. Situation : - Consider a situation where a Consignor hands over his goods for transportation on Friday to transporter. But, the assigned transporter starts the

movement of goods on Monday. How would the validity of e-way bill be calculated in such situations?

Clarification: -It is clarified that the validity period of e-way bill starts only after the details in PART B of FORMGST EWB-01 are updated by the transporter for the first time.

In the given situation, Consignor can fill the details in PART A of FORMGST EWB-01 on Friday and handover his goods to the transporter. When the transporter is ready to move the goods, he can fill the PART B of FORMGST EWB-01 i.e. the assigned transporter can fill the details in PART B of FORMGST EWB-01 on Monday and the validity period of the e-way bill will start from Monday.

The aforesaid clarification issued by the Government of India, Ministry of Finance stipulates the functioning of use of e-way bill system. In this clarification, it is clearly provided that on reaching city Y, transporter A will assign the said e-way bill to the transporter B. Thereafter the transporter B will be able to update the details of 'Part-B' of Form GST e-way bill-01 and transporter B will fill details of his vehicle and will move the goods thereafter.

In the instant case, there is no dispute with regard to downloading of e-way bill, which was downloaded on 15.04.2018. The vehicle proceeded from consignor's place of business to the transporter's godown and from there the goods were supposed to reload in other vehicles and then to proceed to its ultimate destination namely Telangana and Deharadun. Until and unless the goods/vehicle reached at the place of transport company from where it was required to be transported to its ultimate destination, how can one fill up the details of vehicle when admittedly the details are not known or available to the consignor or the Driver.

We have also seen other objections of the authority and we find that there is no reason to disbelieve the contention of the petitioner which has been furnished at the time of inspection of the vehicle before the respondent no.4.

In view of the aforesaid facts, since the consignor and consignee both are registered dealers as well as the present petitioner who is a transport company, there is no basis or

reason not to accept the contention of the learned counsel for the petitioner and further once the Government itself has clarified the situation by allowing the transporter/dealer to fill up 'Part B' of the e-way bill when the goods are reloaded in a vehicle which is meant for delivery to the consignee, there remain no reasons to seized the goods and the vehicle.

In view of the aforesaid facts and circumstances of the present case, we set aside the order of seizure dated 16.04.2018 passed under Section 129(1) of the Act and the consequential penalty notice dated 16.04.2018 issued under Section 129(3) of the Act. We accordingly order for release of the goods and the vehicle upon furnishing of the Indemnity Bond to the extent of proposed tax and penalty.

The writ petition stands **allowed**. No orders as to costs.

Order Date :- 24.4.2018

A.Kr.*

[Ashok Kumar, J.]

[Krishna Murari, J.]