Court No. - 21

Case :- WRIT TAX No. - 686 of 2018

Petitioner :- Super India (Global) Logistics Ltd
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Hari Nath Chaubey,Niraj Kumar Singh
Counsel for Respondent :- C.S.C.

Hon'ble Krishna Murari,J.
Hon'ble Ashok Kumar,J.

Heard Shri Niraj Kumar Singh, learned counsel for the petitioner and Sri A.C. Tripathi, learned Standing Counsel appearing for State-respondents.

Petioner-consignor is a registered dealer having GSTIN No. 23AAACJ1657R1Z9 and consignee is also a registered dealer having GSTIN No. 03AABCB2066P1ZP.

Petitioner has approached this Court seeking a writ of certiorari for quashing of seizure order passed by respondent no. 2-Assistant Commissioner, Commercial Tax, Mobile Squad-V, Agra under Section 129(1) of the U.P. GST Act, 2017 and consequential notice dated 24.03.2018 issued under Section 129(3) of the said Act.

Facts are that petitioner-consignor in pursuance of an order issued to it for supply of 1936 Units of Biscuits for the consignee booked the consignments through Ajay Road Lines, Gwalior (M.P.) which were being transported on vehicle No. HR-55 S-7077 and Challan No.6037 dated 21.03.2018 was generated. The consignments were duly accompanied by E-way Bill from the web portal of the Central Government containing the details of the consignor, consignee, challan number and other requisite documents having validity upto 28.03.2018. However, the Transaction Declaration Form (T.D.F.) was not attached with the consignments. The goods were being moved from Gwalior (M.P.) to Zirkpur (Punjab) and while the vehicle was passing through State of U.P. (Agra), it was intercepted by the respondent no. 2 on 23.03.2018 at around at 8-30 a.m. and an interception memo was drawn and the vehicle was seized on the ground that the goods loaded on the vehicle were being transported from the State of U.P. to outside the State of U.P. but while passing the vehicle outside the State of U.P. was without having any T.D.F. and thus, the consignment is needed physical verification. Physical verification of the consignment was carried out on the same date i.e. on 23.03.2018 at around 04-00 p.m. and when no irregularity was detected, only on the basis of the non-availability of T.D.F., the goods were seized and penalty notice under Section 129(3) of the U.P. Goods and Service Tax, Act, 2017 (hereinafter referred to as the 'Act, 2017') was issued.

Learned counsel for the petitioner contends that after amendment of C.G.S.T. Rules, 2017 on 30.08.2017, vide another notification dated 29.12.2017 containing the E-way Bill system which was to come into force w.e.f. 01.02.2018, the notification dated 29.12.2017 requiring T.D.F. to accompany with the consignor was rescinded and, therefore, no T.D.F. was required.

To support the contention, learned counsel for the petitioner relied upon a Division Bench judgment of this Court, at Lucknow, rendered in Misc. Bench No.5536 of 2018, Satyendra Goods Transport Corporation through Prop. Bhuwan

Kohli & another Vs. State of U.P. and others thru. Principal Secretary Tax & Registration & others, dated 13.04.2018 wherein it has been held as under :

" Furthermore, we find that alongwith the consignment of goods the driver was carrying an invoice which mentioned that the goods were being taken from the State of Uttarakhand to the State of West Bengal, therefore, as of now, it was an inter-State trade and there is nothing on record to show otherwise. The assertion that I.G.S.T. had already been paid, has also not been denied by the opposite parties nor that both the consignor and consignee are registered dealers. Moreover, the requisite details having been mentioned in the invoice etc. the same would be verified at the point of destination and accordingly the matter would be scrutinized as regards the liability of Tax. The notification dated 21.7.2017 issued by the State Government under Rule 138 of the U.P.G.S.T. Rules 2017 made under section 164 of the U.P.G.S.T. Act 2017 was clearly inapplicable for the reasons already mentioned earlier. There was no intent to evade tax."

Issue being settled by a Division Bench of this Court, at Lucknow with which we are in respectful agreement. The impugned seizure order dated 24.03.2018 passed by respondent no. 2 under Section 129(1) of the Act, 2017 and consequential notice issued under Section 129 (3) of the said Act are rendered illegal and are not liable to be sustained and are hereby quashed. The seized goods and vehicle shall be released forthwith on production of a certified copy of this order before him.

Writ petition stands allowed.

In the circumstances, we do not pass any order as to costs.

Order Date :- 24.4.2018
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