

Court No. - 21

Case :- WRIT TAX No. - 648 of 2018

Petitioner :- M/S Ankur Carrier Express Cargo Service

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Naveen Chandra Gupta

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

Hon'ble Krishna Murari,J.

Hon'ble Ashok Kumar,J.

Heard Sri Naveen Chandra Gupta, learned counsel for the petitioner and Sri A.C. Tripathi, learned counsel for the respondent.

The instant writ petition has been filed against the seizure order dated 30.03.2018 passed by respondent no.4, Assistant Commissioner, State Tax, Mobile Squad (Unit-6), Gautambudh Nagar, who has seized the goods and the vehicle of the petitioner who is the owner of the vehicle no. U.P.-13T-9197.

The facts of the case are that the petitioner is a proprietor and is engaged to transport the goods belongs to one M/s Ahuja Radio, 215 Okhla Industrial Estate, Phase-III, New Delhi. The said consignment having total 131 boxes was to be delivered at M/s R.B. Electronics, Harsh Vardhan Arcade, Fraser Road, Patna, Bihar and another consignment of 81 boxes was to be delivered at the branch office situated at Ranchi, Jharkhand. The consignor M/s Ahuja Radio has issued two invoices bearing Invoices no.2652 and Invoice no. 2653 dated 27.03.2018 against the aforesaid 131 and 81 boxes for delivery at Patna, Bihar and Ranchi, Jharkhand. The aforesaid invoices issued by the consignor clearly indicates the charge of IGST @ 18% on the value of the goods sold. The petitioner being the transporter company has prepared the GR indicating therein all the details including the details of invoice. The goods were transported

from New Delhi and at the office/godown of the petitioner situated at Ghaziabad, U.P., the same were loaded in two vehicles being vehicle Nos.U.P.13-T-9197 and HR 38W-2581.

The contention of learned counsel for the petitioner is that due to mistake by the office of the petitioner at Ghaziabad, the bill and invoice of M/s Ahuja Radio for delivery at Ranchi, Jharkhand of branch M/s R.B. Electronics has been enclosed with the documents related to the goods to be delivered at Patna, Bihar.

The contention of the learned counsel for the petitioner is that it is nothing but bonafide mistake at the hands of the office personnel of the petitioner's company and due to the said error/mistake in the Transit Declaration Form-I (TDF-I) the details are similarly mentioned, however, the bilty no.226158 dated 27.03.2018 was correctly found for the transportation of 131 boxes to be delivered at Patna, Bihar.

The respondent no.4 has detained the goods of M/s Ahuja Radio and has passed the seizure order on 30.03.2018, under Section 129(1) of UPGST Act (hereinafter referred as 'the Act') on the ground that the goods against the bilty no. 226158 dated 27.03.2018 related to 131 boxes also accompanying the documents related to 81 boxes of the same party M/s Ahuja Radio which are to be delivered at Ranchi, Jharkhand and that the e-way bill has been generated on 27.02.2018 for delivery through other vehicle no. HR-38W-2581.

We have heard the learned counsel for the petitioner, learned Standing Counsel and perused the documents which are enclosed along with the writ petition.

We have noticed that two invoices have been prepared by M/s

Ahuja Radio, New Delhi being Invoice No.226158 and Invoice No. 226159 respectively. The details of goods as well as details of buyers were mentioned being R.B. Electrons, Harsh Vardhan Arcade, Fraser Road, Patna, Bihar and M/s R.B. Electronics plot no. H80 and H81 Harmu Housing Colony, Harmu, Ranchi, Jharkhand. In both the invoices the IGST @ 18 % has been charged. The assessing authority has proceeded to pass the seizure order under Section 129 (1) of the Act on the ground that during the course of inspection of the goods, there were 11 bilties prepared by the transport company and against the said transaction 11 invoices were produced for verification as well as a Transit Declaration Form (TDF-1), whereas on inspection, it is noticed that the bill no. 226158 dated 27.03.2018 has been prepared for 131 boxes to be transported from Delhi to Patna, whereas the invoice enclosed along with the said goods related to 81 boxes also.

Based on the aforesaid reasoning, the impugned seizure order is passed.

We find substance in the submission of learned counsel for the petitioner that it is on account of human error, the invoice related to goods to be transported from Delhi to Jharkhand related to 81 boxes has been mistakenly handed over to the goods transported from Delhi to Patna. There is no finding recorded by the seizing authority that except the said mistake the transaction in question was not found bonafide. There is no requirement of TDF Form-I for the purpose of movement of goods through the State of U.P. The requirement of TDF-I is not essential after the introduction of UPGST/CGST laws. The petitioner is a transport company but we noticed that he is registered for transportation of goods and having the national permit and since the mistake has been committed by the staff of

the transporter, therefore, the petitioner came forward to participate in the proceedings and since the proceedings are being carried out in the name of the petitioner as well as the seller situated at Delhi and both are the genuine persons/dealer.

In view of above, we direct the respondent no.4 to release the goods in favour of the petitioner on furnishing of the indemnity bond to the extent of tax assessed by the respondent no.4. We further direct the respondent no.4 to release the goods and the vehicle forthwith in favour of the petitioner related to invoice No. 226158 seized on 27.03.2018 after compliance of this order.

The writ petition stands **disposed of**.

Order Date :- 23.4.2018

A.Kr.*

[Ashok Kumar, J.]

[Krishna Murari, J.]