

**Court No. - 32**

**Case :-** WRIT TAX No. - 610 of 2018

**Petitioner :-** M/S Torque Pharmaceuticals Pvt. Ltd.

**Respondent :-** State Of Up And 2 Others

**Counsel for Petitioner :-** Vipin Kumar Kushwaha, Nishant Mishra

**Counsel for Respondent :-** C.S.C.

**Hon'ble Krishna Murari, J.**

**Hon'ble Ashok Kumar, J.**

Heard Sri Nishant Mishra, learned counsel for the petitioner and Sri C.B. Tripathi, learned Standing Counsel for the respondents.

The instant writ petition has been filed by the petitioner against the seizure order passed by the respondent no. 3 dated 30.03.2018 and the notice dated 30.03.2018 issued under Section 191(3) of the UPGST Act, 2017. The petitioner is having its registered office in Chandigarh and branch office at Gorakhpur in the State of Uttar Pradesh. The petitioner company is engaged in manufacturing of medicines and mineral water and its manufacturing unit is situated at Derabassi, Punjab and Baddi, Himanchal Pradesh. Certain stock has been transferred against the stock transfer invoices after paying the IGST @ 18% and the goods were being transported from Himanchal Pradesh and the E-Way Bill prescribed under the provision of CGST Rules was downloaded in which the vehicle number being HP12C-2297 as well as other details were duly mentioned.

The contention of the counsel for the petitioner is that on

account of activities of Transport Union, the transportation of goods with a vehicle provided by the transport union of Himanchal Pradesh is permitted to transport the goods from Himanchal Pradesh to Chandigarh and thereafter from Chandigarh to its onward journey another vehicle is required to be booked.

In the aforesaid background the goods booked and transported from Himanchal Pradesh under the stock transfer invoices were being transported from Chandigarh to Gorakhpur through another vehicle no. HR 46 B-9022.

Similarly another stock was transferred against the stock transfer invoice dated 21.3.2018 and 24.3.2018 and the same were booked after paying the IGST from Derabassi unit situated in Punjab and the goods are brought at transporters office at Chandigarh and thereafter E-Way Bill, prescribed under the CGST Rules, had been downloaded in which the vehicle number as well as other details were duly mentioned for the transportation of the goods from the manufacturing unit up to Chandigarh Transport Nagar. At Chandigarh the goods are loaded in another vehicle being Truck No. HR 46 B-9022 for the transportation from Chandigarh to Gorakhpur.

The contention of the petitioner is that the petitioner has also generated E-Way Bill prescribed under the UPGST Rules for all the three transactions, against the aforesaid three invoices, by mentioning all the relevant details with relation to the transactions in question.

The contention of the petitioner is that since the movement

of goods from Baddi to Gorakhpur and also from Derabassi to Gorakhpur, was on two different vehicles via Chandigarh, hence while uploading the details, the petitioner though tried to mention the numbers and details of both set of vehicles but since the portal was not accepting two vehicle numbers for one transaction, the petitioner has no option but to mention the subsequent vehicle number by hand.

The contention of the petitioner is that neither there was any wrong committed by the petitioner nor there was any error at the hands of the petitioner, however while crossing the District Mainpuri the respondent no. 3 intercepted the vehicle on the ground that in three E-Way Bills -01 relating to the petitioner, vehicle numbers are hand written whereas E-Way Bill-01 was not used in respect of other goods, which do not belongs to the petitioner.

Though the petitioner has placed all the relevant documents as also the explanation but the respondent no. 3 without considering the same has passed a seizure order for seizing the goods as well as vehicle. The sole ground for seizing the goods and vehicle is taken by the respondent no. 3 that the E-Way Bills -01 relating to the petitioner, the vehicle numbers are hand written whereas E-Way Bill -01 was not used in respect of other goods which is allegedly not related to the petitioner.

A show cause notice was also issued under Section 129(3) of the Act by which the respondent no. 3 has directed the petitioner and owner of the other goods to appear and file their explanation by 04.04.2018 and has indicated in the said notice that as to why there is a difference of IGST in two different

invoices.

The petitioner appeared and has filed reply, explaining the reasons for both ground namely as to why the vehicle numbers are hand written as well as with regard to objection of other item it is clearly stated that the petitioner is not at all related with the goods nor the same belongs to the petitioner.

The respondent no. 3 has not accepted the reply as such has insisted for bank guarantee for release of the goods vide its order dated 30.03.2018.

The present writ petition is against the said order dated 30.03.2018. From the perusal of the record, we find the substance in the submission of the learned counsel for the petitioner. It is not disputed by the learned Standing Counsel that in the some states, particularly the State of Himanchal Pradesh, Jammu & Kashmir etc. certain transport unions are operating and all the transport vehicles are governed by their dictation. One of the main object of the said transport unions is that they do not allow the outside transport vehicles to be plied without their consent and further that the movement of their vehicles (which are attached with the said transport union) are only permitted to ply with their consent and on particular routes.

In the present case, *prima facie*, it appears that on account of resistance by the transport unions the vehicles belonging to the State of Himanchal Pradesh were not permitted to transport the goods beyond Chandigarh and therefore the goods were firstly unloaded from the vehicles at Chandigarh and were loaded in another vehicle at Chandigarh for their onwards journey.

In the said background the E-Way Bill which has been issued initially when the goods/vehicle started its journey from Himanchal Pradesh/Punjab by mentioning the vehicle number in the E-Way Bill but after reloading in another vehicle at Chandigarh since the official portal was not permitting to mention the details of two transport vehicles, the registration number of the second transport vehicle has been mentioned by hand.

We find no irregularity at the hands of the petitioner or the transport company and in such peculiar circumstances the petitioner has no option but to mention the details of the subsequent vehicle by hand. We further noticed that the tax has been charged while issuing the stock transfer invoices at the prescribed rate, however, if there is any short fall of the tax, it would be open to the concern GST Authority to realise the same from the petitioner, in accordance with law, after providing due opportunity of being heard to the petitioner.

In view of the aforesaid facts, we direct the respondent no. 3 to release the seized goods and the vehicle forthwith in favour of the petitioner.

With the aforesaid observations, the writ petition is disposed of.

**Order Date :- 10.4.2018**

SK Srivastava

**(Ashok Kumar,J.)**

**(Krishna Murari,J.)**