

**Court No. - 32****Case :-** WRIT TAX No. - 563 of 2018**Petitioner :-** M/S Shaurya Enterprises**Respondent :-** State Of U.P. And 02 Others**Counsel for Petitioner :-** Raghwendra Prasad Mishra, Vijay Babu**Counsel for Respondent :-** C.S.C.**Hon'ble Krishna Murari, J.****Hon'ble Ashok Kumar, J.**

Supplementary affidavit filed today, is taken on record.

We have heard Shri Raghwendra Prasad Mishra and Shri Vijay Babu, learned counsel for the petitioner and learned Standing Counsel appearing on behalf of the State-respondents.

The instant writ petition has been filed by which the petitioner has challenged the seizure order dated 25.3.2018 passed under Section 129 (1) of UPGST Act, 2017 (hereinafter referred to as the 'Act') and the show cause notice dated 25.3.2018 issued under Section 129 (3) of the Act for proposed penalty.

Learned counsel for the petitioner has submitted that the petitioner is a registered proprietorship firm and is carrying on the business of purchase and sale of iron and steel items. Certain goods have been purchased by the petitioner from one M/s. Hi Tec Power & Steel Limited, Raipur, Chattisgarh which were loaded at Raipur on 23.3.2018 in a truck for delivery from Raipur to Basti U.P. at the petitioner's place of business. The seller of Raipur has prepared the tax invoice as well as test certificate dated 23.3.2018 and the same were handed over to the transporter, namely, M/s Shah Transport Corporation, Raipur who has prepared the goods receipt (GR) dated 23.3.2018.

During movement of the vehicle from Raipur to Basti, the truck has been intercepted and checked at Sonbhadra, U.P., by respondent No. 2. Before the respondent No.2 the truck driver has placed all the records/documents which were handed over to him, however, the respondent No. 2 was not satisfied with the documents

accompanying the goods as such, has issued an interception memo dated 24.3.2018 mentioning therein the time of issuance at 6:10 PM. In the said interception memo, the respondent No. 2 has mentioned for verification of goods and documents while fixing the date for the same on 25.3.2018 at 11:00 AM.

The respondent No. 2 has prepared a report dated 25.3.2018 in which the details with regard to transaction has been noted.

Since, the respondent No. 2 was not satisfied with the documents, therefore, a seizure order has been passed on the same date, namely, on 25.3.2018 wherein the value of the goods has been estimated at Rs. 7,92,002/- excluding the IGST, which has been clearly mentioned in the tax invoice as well as in the GR issued by the transporter. Vide seizure order dated 25.3.2018, the respondent No. 2 has indicated that the goods and vehicle has been seized on the ground of non availability or non submission of E-way bill. Learned counsel for the petitioner has submitted that on account of some practical difficulties the necessity of the E-way bill has been waived of till 31<sup>st</sup> March, 2018 and the same has become mandatory with effect from 1<sup>st</sup> April, 2018. Learned counsel for the petitioner has submitted that since the respondent No. 2 has directed for furnishing/presentation of the E-way bill, the same has been downloaded from the official portal on 24.3.2018 at 7:30 PM i.e. just after half an hour from detention/interception of the vehicle. According to the learned counsel for the petitioner, the petitioner has complied with the requirement of submission of E-way bill and the same has been produced immediately after interception of the vehicle, therefore, there was no ill intention on the part of the petitioner nor the petitioner stands benefited in any manner whatsoever in not accompanying the E-way bill.

It is further submitted by the learned counsel for the petitioner that it may be a human error which has to be considered by the respondent No.2 when all other requirement were complied with by the petitioner and particularly the IGST has been charged at the prescribed rate of 18% which is self explanatory from the bare perusal of the tax invoice as well as good receipt which clearly

indicating the value and tax charged separately mentioning in the tax invoice.

Learned counsel for the petitioner has also challenged the show cause notice issued under Section 129 (3) of the Act by which the respondent No. 2 has proposed to impose the penalty to the extent of Rs. 1,42,560/- i.e. equal to the liability of tax which has been assessed at the rate of 18% on the value of the goods.

On the other hand, learned Standing Counsel has pointed out before us that E-way bill was admittedly not accompanying with the goods when the vehicle was intercepted and filing of the E-way bill subsequently has nothing but an after thought, therefore, the seizure proceedings and the show cause notice under Section 129 (3) are well within the domain of the authorities.

We have heard learned counsel for the respective parties and found that admittedly the goods were being purchased by a registered dealer and the same are sold by the registered dealer. While issuing the tax invoice which is enclosed as Annexure-1 to the writ petition clearly indicates the charge of IGST at the rate of 18% on value of the goods has been paid. We have also noticed that even the net value which includes the value of the goods as well as tax charged has been duly mentioned by the transporter while issuing the goods receipt. There is no other reason except of non submission of the E-way bill at the time of interception of the vehicle in question. We have also perused the E-way bill which has been generated by the person Incharge of the vehicle immediately within half an hour from the time of detention/interception of the vehicle mentioning therein all the requisite details and submitting the same before the authority. We failed to understand as to why the authority has not considered all the aforesaid relevant facts and has arrived to a conclusion that the transaction in question was not a bonafide transaction and has seized the goods and vehicle. Admittedly, till 31<sup>st</sup> March, 2018 it was not mandatory to download the E-way bill from the official portal. We find the substance in the submission of the learned counsel for the petitioner that only with effect from 1<sup>st</sup> April, 2018 the requirement of downloading of the E-way bill is compulsory. However, without

going into the said controversy at this stage, we find that the goods were bonafidely dispatched and are travelled from Raipur for the delivery at Basti are illegally and arbitrarily detained by the respondent No.2. We see no reason in seizing the goods and asking for the penalty.

In view of the aforesaid facts and the reasons given here-in-above, the order passed under Section 129 (1) of the Act passed on 25.3.2018 and the show cause notice issued under Section 129 (3) of the Act are hereby set aside.

The writ petition is allowed.

**Order Date :-** 5.4.2018  
Ravi Prakash

(Ashok Kumar, J.)

(Krishna Murari, J.)