

Court No. - 32

Case :- WRIT TAX No. - 579 of 2018

Petitioner :- M/S Haryana Freight Carrier (P). Ltd.

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Murari Mohan Rai, Nitin Kesarwani

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

Hon'ble Krishna Murari, J.

Hon'ble Ashok Kumar, J.

Heard Sri Nitin Kesarwani, Sri M.M. Rai, learned counsel for the petitioner. Sri C.B. Tripathi, learned Special Counsel for the State and Sri Anant Kumar Tiwari, learned Standing Counsel for the Union of India.

The instant writ petition has been filed by the petitioner-M/S Haryana Freight Carrier (P). Ltd., which is a Transport Company, carrying on the business of transportation of goods from one place to another.

By means of the present writ petition, the petitioner challenges the seizure of goods and vehicle as well as initiation of the penalty proceedings initiated/issued under Sections 129(1) and 129(3) of the U.P. Goods & Service Tax Act, 2017 (hereinafter referred to as the 'GST, Act, 2017') respectively.

The brief facts of the case are that the goods loaded in the vehicle no. JH02L/9658 belongs to the various dealers situated at Delhi. It is submitted by the petitioner's counsel that the goods loaded in the vehicle are transported from Delhi to Jharkhand related to various registered dealers situated in the State of Jharkhand and are covered by goods receipts and tax invoices. It is further contended that the requisite G.R.(Goods Receipts) are issued by the petitioner which also accompanied with the goods while it started for transportation from Delhi.

Petitioner, however, downloaded the transit declaration Form-1 at the U.P. Border before the vehicle entered inside the State of U.P. for the purposes of Inter-State movements of goods, on 18.03.2018.

According to the petitioner, the goods loaded in vehicle started its journey from Delhi to Jharkhand and the same has been intercepted on 20.03.2018 at about 08-00 p.m. by the respondent no. 4, the Assistant Commissioner, State Tax, Mobile Squad Unit-II, District Mirzapur and the said respondent no. 4 has issued an interception memo No. 1 dated 20.03.2018 under Section 129(1) of the GST, Act, 2017. The said interception memo requires appearance of the petitioner on

the very next day i.e. on 21.03.2018 before the respondent no. 4. The respondent no. 4 however has seized 32 Nags (32 packets) estimating their value at Rs.3,59,220/- on the charge that the same were not verifiable from the invoices accompanying the goods as well as from the goods receipts issued by the petitioner's Transport Company. On the ground of aforesaid reasons, the goods and vehicle have been seized and a show cause notice No.91 dated 21.03.2018 has been issued under Section 129(3) of the GST, Act, 2017 by which the respondent no. 4 has directed the petitioner to appear before him on 28.03.2018 and to explain as to why a sum of Rs.67,010/- be not imposed as penalty apart Rs.67,010/-as tax.

Against the said seizure order and penalty notice, the instant writ petition has been filed.

After hearing the parties at length, it is clear that the goods were meant for one State to other and are being transported through the State of U.P. The petitioner being transporter has on wrong advice downloaded the transit declaration Form which was prescribed under the VAT Act and has no role so far as the transaction in question is concerned, which is covered by the provisions of the CGST, Act, 2017. The seizing authority arrived at the conclusion that after due physical verification of the goods, it transpired that the goods of Rs.3,59,220/- are found in excess as against the disclosed goods.

Since the petitioner is a Transport Company and is not registered as a dealer at any place, therefore, it would be appropriate to direct the petitioner to deposit a sum of Rs.67,010/-, which is estimated by the seizing authority as liability of tax, for release of the seized goods and vehicle.

Accordingly, the writ petition is finally disposed of by directing the respondent no. 4 to release the goods and vehicle on deposit of an amount of Rs.67,010/- in cash or through bank draft and further on furnishing of the indemnity bond by the petitioner to the extent of the penalty amount assessed in the show cause notice. The petitioner is directed to comply with the order and the respondent no. 4 is directed to release the goods forthwith without any delay on compliance of the directions indicated herein-above.

Order Date :- 4.4.2018

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