

Court No. - 32

Case :- WRIT TAX No. - 564 of 2018

Petitioner :- M/S Bhumika Enterprises

Respondent :- State Of U.P. 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 and Sri M.M. Rai, learned counsels for the petitioner, Sri Vinay Kumar Pandey, learned counsel for respondent no.2 and Sri C.B. Tripathi, learned special counsel for the State.

By means of the present writ petition the petitioner has challenged the seizure order dated 27.3.2018 passed under Section 129(1) of the U.P. G.S.T. Act, 2017 as well as the show cause notice issued under Section 129(3) of the said Act dated 27.3.2018 respectively.

The brief facts of the case are that the petitioner is a registered dealer and has been allotted TIN by the Assessing Authority for carrying on the business for purchase and sale of Iron and Steel. The petitioner has effected the sale of Iron and Steel weighing 20 M.Ton for a sum of Rs.6,00,000/- to one M/s Ram Naresh Ramakant, Bindiki, Fatehpur. The purchaser situated at Bindiki, Fatehpur is also a registered dealer to whom the petitioner has raised tax invoice No.60 dated 25.3.2018. The invoice aforesaid indicates that the goods worth of Rs.6,00,000/- are sold on which the petitioner has charged the Central G.S.T. @ 9% to the tune of Rs.54,000/- as also the State G.S.T. @ 9% to the tune of Rs.54,000/- and the grand total therefore has been charged to the tune of Rs.7,08,000/-. The said goods were being transported from Varanasi to Bindiki, Fatehpur and on bypass road Nawabganj at Allahabad respondent no.4 has intercepted the vehicle on 26.3.2018 at 9 a.m. and has detained the vehicle for verification of the goods and documents accompanying the goods.

The contention of the learned counsel for the petitioner is that no opportunity of being heard has been afforded to the petitioner before passing the seizure order dated 27.3.2018 under Section 129(1) of the Act by which the respondent no.4/seizing authority has seized the goods on the ground that the tax invoice was kept in a sealed envelope, the goods was being transported without E-way bill-02, the GSTIN number

written on the tax invoice belongs to another dealer situated at Allahabad and not the consignee situated at Bindiki, Fatehpur as also the mobile number.

The submission of the learned counsel for the petitioner is that while issuing the show cause notice dated 27.3.2018 the Mobile Squad Authority had indicated for submission of the defence reply before him on 2.4.2018 and to explain as to why tax being not realized as also the penalty be imposed. The contention of the learned counsel for the petitioner is that that due to technical fault of the State Web-site E-way bill-02 could not be generated on 25.3.2018 before the movement of the goods from Varanasi to Fatehpur, however, the same was generated on 26.3.2018 in the morning which was much before the date of seizure order which has been admittedly passed on 27.3.2018 at 6 p.m. The counsel for the petitioner has also submitted that since both the consignor and consignee are registered with the respective Assessing Authority and are allotted requisite GSTIN number therefore there was no reason to disbelieve the contention of the petitioner. So far as the ground no.3 related to mentioning of the GSTIN number of dealer of Allahabad instead of Fatehpur, the counsel for the petitioner has submitted that the said mistake was a *bona fide* mistake as such in fact a clerical error and the same was rectified while downloading E-way bill-02 in which the correct registration number of consignor M/s Ram Naresh Ramakant, Bindki, Fatehpur was mentioned. He has further submitted that there was no occasion to evade the payment of tax as the tax amounting to the tune of Rs.1,08,000/- as C.G.S.T. and S.G.S.T. was charged by the petitioner himself and the same was duly mentioned in the tax invoice separately.

On the other hand, learned counsel for the State has submitted that there was no occasion to mention the G.S.Tin number of different dealer in the invoice, though he has accepted that the same has been correctly mentioned in the E-way bill. The learned counsel for the State has further submitted that admittedly at the time of inspection/detention of the vehicle there was no E-way bill available with the driver of the vehicle.

We have heard learned counsel for the parties and perused the record.

From perusal of the record we have noticed that the vehicle has been detained and the goods/vehicle was seized by the respondent no.4 on 27.3.2018 whereas the time has been granted for submission of reply and appearance of the person concerned before the respondent no.4 on the later date. There is no dispute with regard to quality and quantity of the goods and further that the invoice issued clearly indicates of charge of

C.G.S.T. and S.G.S.T by the petitioner. We further noticed that there is no dispute with regard to registration of the seller (the petitioner) and the purchaser as also that the goods were being transported from Varanasi to Fatehpur which are detained in between the aforesaid two places. From perusal of the record we noticed that the E-way bill-02 has been downloaded/issued in favour of the petitioner on 26.3.2018 at 11.50 a.m. and admittedly seizure order has been passed on 27.3.2018 at 6 p.m. before which the E-way bill-02 has been produced by the petitioner. The submission of the learned counsel for the State is that the transaction has been made with one unknown person therefore there were some lacuna noticed by the seizing authority. We find no substance in the submission of the learned counsel for the State. The tax invoice was raised in favour of the consignee namely M/s Ram Narsh Ramakant, Bindki, Fatehpur and the same was available with the seizing authority and we see no reason as to why the seizing authority has not made any effort to make inquiry from the said dealer/consignee whose TIN number was mentioned in the tax invoice. We see that the seizing authority though has mentioned the GSTIN number of some dealer situated at Allahabad but no details of the said dealer has been given in the impugned seizure order nor the details of the mobile number holder.

Since the tax invoice indicating the tax charged and the same admittedly found during the course of inspection/detention and E-way bill-02 has been downloaded much before the seizure order, we see no justification in the impugned seizure order and therefore, we have no option but to allow the present writ petition and to set aside the seizure order dated 27.3.2018 as well as the show cause notice issued under Section 129(3) of the Act for imposition of penalty.

In view of the aforesaid facts, the present writ petition is allowed. The seizure order dated 27.3.2018 (Annexure-2 to the writ petition) is quashed as well as the show cause notice dated 27.3.2018 issued under Section 129(3) of the Act is also quashed. The respondent no.4 is hereby directed to release the goods immediately in favour of the petitioner permitting the petitioner to deliver the same to the consignee.

Order Date :- 3.4.2018
S.S.

(Ashok Kumar, J.)

(Krishna Murari, J.)