

Court No. - 32

Case :- WRIT TAX No. - 576 of 2018

Petitioner :- M/S Modern Traders

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Nishant Mishra, Vipin Kumar Kushwaha

Counsel for Respondent :- C.S.C.

Hon'ble Krishna Murari, J.

Hon'ble Ashok Kumar, J.

Heard Sri Nishant Mishra assisted by Sri Vipin Kumar Kushwaha, learned counsel for the petitioner and Sri C.B. Tripathi, learned Standing Counsel representing the State- respondents.

The petitioner being a proprietorship firm is engaged in trading of iron and steel as well as their products and is registered under the provisions of the UPGST Act, 2017 (*hereinafter referred to as 'the Act'*). The Assessing Authority has allotted GSTIN no. to the petitioner. The petitioner has sold 10.110 MT of Iron Scrap vide Invoice dated 24.03.2018 for the value of Rs. 1,67,017/- to M/s R.K. Enterprises of Delhi in which the petitioner has charged IGST (Integrated Goods and Services Tax) @ 18%. The petitioner's unit is situated at Sikandrabad Road, District Bulandshahr from where goods were transported to be delivered to the consignee situated at Delhi. Admittedly, there was no e-way bill during the movement of goods from Bulandshahr to Delhi and while vehicle was crossing Ghaziabad, the same was intercepted/detained by the Assistant Commissioner, Mobile Squad, IVth Unit, Ghaziabad on 24.03.2018 at 5.45 P.M. The objection of the respondent no.3, Assistant Commissioner, Mobile Squad was that since there was no e-way bill-02, which has been prescribed under UPGST Rules, hence the goods are liable to be seized.

The contention of learned counsel for the petitioner is that there is no requirement to carry the e-way bill during the Inter-state movement of the goods, therefore, the same has not been handed over to the transporter at the time of delivery of the goods. It is further contended that the entire seizure proceedings are not only illegal but clearly is abuse of process of law as well as misuse of power. Counsel for the petitioner has submitted that since the respondent no.3 was insisting for seizure on the ground of non-production of e-way bill, the petitioner has downloaded the e-way bill-02 on 24.3.2018 itself just after 15 minutes from the time of detention of the vehicle and has produced the same before the respondent no.3.

The contention of counsel for the petitioner is that without considering the e-way bill-02 which has been furnished immediately within 20 minutes from the time of the detention of the vehicle/goods, the respondent no.3 has illegally passed the seizure order after a gap of four days i.e. on 28.3.2018 by which he has seized the goods as well as vehicle in question. The seizure order indicates that the goods/vehicle has been solely seized on the ground that goods were being transported without e-way bill-02 which has been prescribed under the UPGST Rules, as such, it is a clear cut violation of provisions of UPGST Act/Rules framed thereunder.

Immediately after the seizure order passed under Section 129(1) of the Act, the respondent no.3 has issued the show cause notice under Section 129(3) of the Act dated 28.03.2018. The Seizing Authority directed the petitioner to appear on 04.04.2018 and explain as to why the tax @ 18% and equivalent amount of penalty may not be demanded.

The submission of counsel for the petitioner is that as admittedly the seized goods were in transit for outside the State the transaction would be covered by the Integrated Goods and Services Tax Act, 2017 (IGST) read with Central GST and that the provisions of the UPGST or its Rules or the notifications issued therein would not apply.

Sri Tripathi, has submitted that actually the order of seizure has been passed under Section 6 of the IGST read with Section 129(1) of the Central GST and therefore, mere wrong mention of the provision on the order of seizure would not invalidate the same.

The provisions of UPGST are applicable to transactions within the State of U.P. whereas IGST covers the interstate transactions.

Section 20 of the IGST makes applicable the provisions of Central GST in respect to matters relating to inspection, search and seizure under the said Act.

Rule 138 of the Rules framed under the Central GST provides that till such time e-way bill system is developed and approved by the Council, the Government by notification may specify the documents which are to be carried with the consignment of goods. In exercise of the said power a notification has been issued which provides for the carrying of e-way bill with the goods in transit but the same is applicable has been enforced

w.e.f. 1st February, 2018 and not before.

Simultaneously, UPGST also contains similar provisions and in exercise of the power under Rule 138 of the Rules framed under the UPGST by a notification dated 21.07.2017 has made e-way bill mandatory but that may apply only in respect of goods in transit within the State of U.P. and not for goods brought from outside the State.

Therefore, even if the seizure is treated to be under Section 129(1) of the Central GST, as there was no provision of e-way bill on the relevant date under the Central GST, therefore, the seizure appears to be illegal.

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

We have noticed that both the parties namely consignee and consignor are registered dealers and goods are being transported from Bulandshahr to Delhi during transshipment the same are detained and seized.

The sole ground of seizure of goods is non-production of e-way bill whereas there is no dispute with regard to issuance of invoice and charge of tax by the petitioner.

In view of aforesaid peculiar facts and since the petitioner is registered dealer, we have seen no error at the hands of the petitioner, and therefore, the order of seizure passed under Section 129(1) of the Act as well as the notice issued under Section 129(3) of the Act are hereby set aside. We are informed and it is not in dispute that the condition of accompanying the e-way bill with respect of Inter-state Transaction is mandatory with effect from 01.04.2018, whereas in the present case the transaction is much before the aforesaid date. In view of the aforesaid facts, we direct the respondent no.3, the Seizing Authority, to release the goods and vehicle forthwith.

With the aforesaid observation, the writ petition stands **disposed of**.

Order Date :- 3.4.2018

A.Kr.*

[Ashok Kumar, J.]

[Krishna Murari, J.]