

Court No. - 32

Case :- WRIT TAX No. - 552 of 2018

Petitioner :- Singh Tyres

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Amit Mahajan, Niraj Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Krishna Murari, J.

Hon'ble Ashok Kumar, J.

Heard Sri Amit Mahajan and Sri Niraj Kumar Singh, learned counsel for the petitioner and Sri C.B. Tripathi, learned Special counsel for the State respondents.

The petitioner is a registered proprietorship firm and is engaged in trading of various kind of tyres and tubes. The petitioner has purchased tyres and tubes from Apollo Tyres Ltd., Kanpur (U.P.).

The claim of the petitioner is that the petitioner, who is consignor, is a registered dealer under G.S.T. -Goods and Service Tax Act, 2017 (hereinafter referred to as the 'Act') and TIN number has been allotted by the assessing authority to the petitioner for the aforesaid business. The petitioner/consignor has received an order from a party, which is also registered, for supply of certain tyres and tubes. In pursuance of the purchase order received, the consignment was booked by the petitioner for transportation from Allahabad to Mirzapur. It is claimed by the petitioner that requisite documents were accompanied during the course of movements of the goods, however, the Assistant Commissioner (Incharge), Commercial Tax, Mobile Squad, Unit-1, Mirzapur, U.P. has intercepted the goods on 27.03.2018 and has issued a notice/detention memo under Section 129(1) of the Act. In the said notice while mentioning the date respondent no. 2 has also mentioned time being 7-30 a.m.

The petitioner was directed to appear before the respondent no. 2 on 28.03.2018 at 11-00 a.m. in his office. According to the petitioner, he was not aware about the requirement of E-Way Bill for the purposes of transportation of goods from one place to another place within the State of U.P..

The claim of the petitioner is that he has down loaded the E-Way Bill on 27.03.2018 from the official department portal. The said E-Way Bill has been down loaded on 27.03.2018 at 9-39 p.m. The claim of the petitioner is that the said E-Way Bill has been duly produced by the petitioner before the respondent no.

2, however, respondent no. 2 has illegally proceeded to pass impugned seizure order ignoring the relevant fact that he himself has directed the petitioner to appear and file his reply before him on 28.03.2018 at 11-00 a.m. whereas the impugned seizure order has been passed on 27.03.2018, hence the same is illegal and is liable to be quashed.

Having heard learned counsel for the parties and after going through the materials on record, we are of the opinion that the impugned seizure order cannot sustain in the eyes of law as the same has been passed ignoring the fact that the time and date has been given by the respondent no. 2 to the petitioner for appearance and for production of the relevant documents on 28.03.2018, whereas the order has been passed on a day before the date allowed by the respondent no. 2. We have also noticed that while passing the impugned order dated 27.03.2018 no time has been mentioned by the respondent no. 2 whereas while issuing notice/detention memo he has specifically mentioned the time. This clearly goes to show the ill intention on the part of the respondent no. 2.

From perusal of the record, we find that the goods were transported from one place to another within the State of U.P. and were accompanied by the requisite documents and requisite E-Way Bill has also been produced by the petitioner before the respondent no. 2 before the date fixed for reply. In view of the aforesaid fact, we have no other option but to allow the present writ petition and to quash the seizure order as well as consequential notice issued under Section 129(3) of the Act.

In view of above, the seizure order dated 27.03.2018 passed by the respondent no. 2 as well as consequential notice issued under Section 129(3) of the Act are quashed.

The respondent no. 2 is hereby directed to release the goods and the vehicle forthwith.

In the result, writ petition is allowed.

Order Date :- 2.4.2018

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