

Court No. - 3

Case :- WRIT TAX No. - 87 of 2018

Petitioner :- Proactive Plast Pvt. Ltd.

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

Counsel for Petitioner :- Mr Nishant Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Mithal,J.

Hon'ble Saral Srivastava,J.

Heard Sri Nishant Mishra, learned counsel for the petitioner and Sri C.B. Tripathi, Special Counsel for the State of U.P.

The petitioner is aggrieved by the seizure of his goods vide impugned order dated 20.01.2018 passed under Section 129(1) of the U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as the U.P.G.S.T.).

The submission is that as admittedly the seized goods were in transit from outside the State the transaction would be covered by the Integrated Goods and Services Tax Act, 2017 (I.G.S.T.) read with Central G.S.T. and that the provisions of the U.P. G.S.T. 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 I.G.S.T. read with Section 129(1) of the Central G.S.T. and therefore, mere wrong mention of the provision on the order of seizure would not invalidate the same.

The provisions of U.P.G.S.T. are applicable to transactions within the State of U.P. whereas I.G.S.T. covers the interstate transactions.

Section 20 of the I.G.S.T. makes applicable the provisions of Central G.S.T. in respect to matters relating to inspection, search and seizure under the said Act.

Rule 138 of the Rules framed under the Central G.S.T. 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, U.P.G.S.T. also contains similar provisions and in exercise of the power under Rule 138 of the Rules framed under the U.P.G.S.T. 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 G.S.T., as there was no provision of E-Way bill on the relevant date under the Central G.S.T. *prima facie* the seizure appears to be illegal.

Sri Tripathi, may seek instructions and file counter affidavit within two weeks.

List for admission/final disposal after the filing of the counter affidavit.

In the meantime, as the goods seized are said to be perishable nature the same are directed to be released along with vehicle subject to the petitioner furnishing indemnity bond and security (other than cash and bank guarantee) in respect of the proposed tax and penalty on the value of the goods shown in the documents accompanying the same.

Order Date :- 1.2.2018

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