

Court No. - 3

Case :- WRIT TAX No. - 95 of 2018

Petitioner :- M/S Seth Prasad Agro Private Limited
Through Its Director

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Mr Aditya Bhushan Singhal, Mr
Aditya Pandey, Mr Bipin Kumar Pandey

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

Hon'ble Pankaj Mithal, J.

Hon'ble Saral Srivastava, J.

Heard Sri Aditya Pandey, learned counsel for the petitioner, Sri C.B. Tripathi, special counsel for the respondents no. 1, 3 and 4 and Sri Anant Kumar Tiwari, learned counsel for the respondent no. 2.

The petitioner is aggrieved by the order of seizure dated 11.01.2018 alleged to have been passed under Section 129(1) of the Uttar Pradesh Goods and Services Tax Act, 2017.

The petitioner is in the business of manufacturing and sale of 'Tasla' which is categorised as an agricultural implement. The petitioner was transporting a consignment of 'Taslas' from one State to another when the same were intercepted, detained and seized at Varanasi. The seizure order is impugned by means of this petition.

The first submission of Sri Pandey, learned counsel for the petitioner is that the goods were being transported from one State to another and as such the transaction was inter-state covered by the Integrated Goods and Services Tax Act, 2017. It is not liable to be seized under the U.P.G.S.T. Act.

Sri Tripathi, in response to the above argument submits that in the matters covered by Integrated Goods and Services Tax Act, 2017 (IGST) the provisions of Central G.S.T. Act apply mutatis mutandis. Since analogous provisions like Section 129(1) of the U.P.G.S.T. Act exist in the Central G.S.T. Act as well, the order of seizure is not illegal or without jurisdiction.

The U.P.G.S.T. Act makes provision for levy and collection of tax on intrastate supply of goods or services or both i.e. relating to transactions within the State, whereas IGST

Act covers interstate transactions. In this view of the matter, the transaction in question is treated to be covered by the IGST Act and the provisions of U.P. G.S.T. Act would not apply. However, a similar provision as Section 129 of the U.P. G.S.T. Act exists in the Central G.S.T. Act as well. Section 20 of the IGST Act provides that the provisions of Central G.S.T. Act would apply in respect of matters of inspection, search, seizure and arrest to the matters covered by the IGST Act.

In other words, in the matter of seizure under the provisions of IGST Act the provisions of Central G.S.T. Act such as Section 129 would apply mutatis mutandis.

In this way the power of seizure under the IGST Act read with Central G.S.T. Act is analogous to that under Section 129 of the U.P. G.S.T. Act.

In view of above, the impugned order of seizure cannot be held to be bad in law only for the reason that the wrong provision of Act has been mentioned while passing the same as the power of seizure is clearly traceable under the relevant Act as well.

Accordingly, we are of the view that the impugned order is to be treated to have been passed under IGST Act read with Section 129 of the Central G.S.T. Act rather than the one passed under U.P.G.S.T. Act.

The next submission of Sri Pandey, is that the consignment of goods has been seized by treating them to be 'Ghamella' rather than 'Tasla'. 'Tasla' was exempted from G.S.T. vide notification dated 29.06.2017 and 'Ghamella' has been included in the taxable goods vide notification dated 25.01.2018. Thus, on the relevant date 'Ghamella' was also an exempted item and the order of seizure is patently illegal.

In view of above, the question for consideration is whether the consignment of goods seized is that of 'Tasla' or 'Ghamella' and whether on the relevant date of seizure 'Ghamella' was exempted from taxation.

Sri Tripathi is directed to seek instructions and file counter affidavit within a month. Two weeks, thereafter, are allowed to the petitioner for filing rejoinder affidavit.

List for admission / final disposal immediately after expiry of the above period.

In the meantime, the goods and the vehicle seized are directed to be released on furnishing indemnity bond as well as security other than cash and bank guarantee of the taxable amount of the seized goods.

Order Date :- 29.1.2018/NS