

Court No. - 35

Case :- WRIT TAX No. - 718 of 2017

Petitioner :- M/S Sapna Goods Carrier & Another

Respondent :- Union Of India Thru' Its Secy. & 6 Others

Counsel for Petitioner :- Rahul Agarwal

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

Hon'ble Bharati Sapru,J.

Hon'ble Saumitra Dayal Singh,J.

Heard Sri Rahul Agarwal learned counsel for the petitioner and Sri C.B. Tripathi learned special counsel for the revenue.

The affidavit of service dated 19.12.2017 filed on behalf of respondent no.6 by the learned Special Counsel Sri C.B. Tripathi today in court, is taken on record.

After the amendment made in the writ petition, the petitioner seeks to challenge the penalty order dated 28.10.2017 as also the order dated 15.10.2017 by which certain goods which the petitioner was transporting from Kanpur to Delhi had been seized.

At the time of detention of goods, admittedly, the same were not accompanied with proper documents. However the petitioner contends that all proper documents were furnished by it to the proper officer in response to the show cause notice.

The revenue however disputes this position of fact. At the same time, copies of documents that the petitioner claims to have been produced by it, had been annexed with the writ petition. These are supported by the averments in this regard made in para 19 and 20 of the writ petition.

Consequently the goods had been seized on 15.10.2017 and on that date itself penalty notice was issued under

section 129 (3) of the U.P. G.S.T. Act, 2017. Ultimately the date fixed in the matter was 27.10.2017 and the impugned order appears to have been passed on 28.10.2017 imposing penalty equal to 100% of the value of goods seized together five per cent tax thereon.

It is in the above background, the challenge has been raised both seizure as also to the penalty order. In so far as the penalty order is concerned, it is disputed by the petitioner that the same was ever served on it.

Upon instructions received, Sri C.B. Tripathi learned counsel for the revenue states that there appears that the penalty order was passed *ex parte* and there are some defects in the same.

In view of such statement, we do not consider it necessary to consider the matter of penalty any further. The penalty order dated 28.10.2017 is therefore set aside and the matter is remitted to decide those proceedings afresh.

The petitioner is allowed a week's time to file final reply to the final notice as also the charges that have been mentioned in the penalty order dated 28.10.2017 treating the same to be the part of the penalty notice itself. Upon the reply being furnished by the petitioner, the proper officer may pass a fresh and reasoned order within a period of one week thereafter.

In so far as the seizure of goods is concerned, we find that the petitioner is a registered dealer inside the State of U.P. and certain documents i.e. original tax invoices, goods receipts etc. are being claimed to have been issued to cover the transactions.

Since the revenue disputes the existence of those documents, an enquiry may be required to be conducted in that regard. However *prima facie* the petitioner being a

registered dealer inside the State of U.P.,no useful purpose would be served in allowing the goods to continue under detention.

Accordingly it is provided that subject to the petitioner's furnishing an adequate security in the shape of indemnity bond to the satisfaction of the proper officer for the value of goods seized, the goods as well as the vehicle so seized pursuant to the impugned notice, shall be released forthwith. It is also stated that the tax had already been paid by the petitioner as the transactions were performed in Oct., 2017.

The writ petition is disposed of as above. No costs.

Order Date :- 21.12.2017

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