

Petitioner :- M/S Zebronics India Private Limited

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

Counsel for Petitioner :- Shubham Agrawal, Lokesh Mittal

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

**Hon'ble Bharati Sapru, J.**

**Hon'ble Saumitra Dayal Singh, J.**

Heard Shri Shubham Agrawal along with Shri Lokesh Mittal, learned counsel for the petitioner and Shri C.B.Tripathi, learned Standing Counsel for the department.

This writ petition has been filed by the petitioner to challenge the seizure order dated 16.11.2017 passed by the respondent no.4, Assistant Commissioner, State Tax/State Tax Authority, Mobile Squad-10, Agra under Section 129(1) of the U.P. GST Act(hereinafter referred to as the 'Act) and the penalty order dated 23.11.2017 passed under Section 129(3) of the Act.

The petitioner is a trader in computer parts. It claims to be registered both at Chennai in the State of Tamil Nadu and Dehradun in the State of Uttarakhand.

In respect to present dispute, the petitioner had disclosed that it was transporting computer parts from Chennai to Dehradun by way of stock transfer. These goods were being transported on a truck bearing registration no. HR-38-U-9095 against tax invoice, Bilty and goods receipts. The said goods entered the State of U.P. on 15.11.2017 when the same were detained by the respondent no.4 on the solitary allegation of absence of Transit Declaration Form (hereinafter referred to as the 'TDF'). However, no defect was

noticed or alleged with respect to the Tax Invoice and the Goods Receipt and the facts disclosed therein.

The petitioner further alleges that it downloaded the TDF on the same day i.e. on 15.11.2017 (A copy of the same has also been annexed with the writ petition) and filed its reply along with the TDF but the goods were seized on 16.11.2017. Subsequently, a penalty notice was also issued to the petitioner in response to which the petitioner again reiterated his stand of the goods being transported from Chennai to Dehradun by way of stock transfer against valid Tax Invoice, Goods Receipt and also it relied on the TDF downloaded by it.

By the impugned penalty order dated 23.11.2017, the penalty has been imposed solely for reason of absence of TDF. However, the penalty order does not record any defect either in the document found accompanying the goods nor does it establish any allegation or intention to evade payment of tax by the petitioner. Only in the printed proforma of the order a sentence appears as to the existence of intention to evade tax.

In the above facts, learned counsel for the petitioner submits that the seizure has been made and the penalty has been imposed on a mere technical breach and not upon the authority being satisfied as to the intention of the petitioner to evade tax. Even otherwise it is submitted that this being a transaction of inter-state trade, and there being no requirement under the CGST Act for the goods to be accompanied with the TDF, the breach alleged is mere technical.

Opposing the aforesaid prayer Shri C.B. Tripathi,

learned Standing Counsel submits that in the first place the TDF had not been submitted by the petitioner at the stage of seizure but only at the stage of penalty in reply to the penalty notice. However, learned Standing Counsel does not dispute the fact that the TDF was downloaded by the petitioner on 15.11.2017 at 10.39 pm. Also he is unable to show from the penalty order how the respondent no.4 has inferred the intention to evade tax.

It is clear that the goods have been detained, seized and penalty has been imposed merely because of TDF was absent and the proper officer was himself not satisfied as to the intention to evade tax being present in the facts of the case.

There is nothing to dispute the claim made by the assessee that it was effecting the stock transfer of goods from Chennai to Dehradun and therefore, the goods were only passing through the State of U.P.. There is no allegation or intention on the part of the assessee to unload the goods within the State of U.P.

In view of facts, we find that the seizure order as also the penalty order are wholly unsustainable and are hereby quashed. The goods along with the truck may be released forthwith without furnishing any security. Writ petition is allowed. No order as to costs.

Order Date :- 4.12.2017  
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