

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.13392 of 2020

ORDER: (per Hon'ble Sri Justice M.S.Ramachandra Rao)

The petitioner is engaged in the business of manufacture and sales of tractors and their spares. Its Corporate Office is located in Tamil Nadu State and it has got Depots at different places in the country.

2. Registration certificate issued to the petitioner by the State of Telangana shows that its principal place of business is Hayathnagar and it has also additional place of business at Bongalur village, Ibrahimpatnam Mandal.

3. The petitioner dispatched 4 tractors to its Depot at Hyderabad under consignment dt.03-03-2020 and also issued e.way bill bearing No.541172396402 on the same day. The name of the consignor and consignee is the same and the address of the consignee is shown at Hayathnagar.

4. The 3rd respondent, however, detained the lorry bearing No.TN52W9857 on 05.03.2020 at 8.20 a.m. on the ground that there was mismatch between the goods in movement and documents tendered and that there is also mismatch between e.way bill and goods in movement. He also endorsed in the order of detention that

the goods were being transported from Ranipet, Tamil Nadu to Bongulur village, Ibrahimpatnam Mandal, Hyderabad, but as per e.way bill, the goods have to be transported from Ranipet, State of Tamil Nadu to Hayathnagar in the State of Telangana and so there is mismatch with the invoice and e.way bill.

5. The 3rd respondent then issued a show cause notice dt.05.03.2000 under Section 129(3) of the CGST Act,2017 and TSGST Act,2017 calling upon the petitioner to show cause within seven days why the proposed tax and penalty should not be payable. The tax proposed was Rs.1,67,612/- towards CGST and equal amount towards State GST along with equal penalty, totaling to Rs.6,70,448/-.

6. Being under the apprehension that the goods would be confiscated and there would be arrest of the Company's officials under the Act, the petitioner paid the said amount and got the detained goods released on 05-03-2000 by paying Rs.6,17,448/-.

7. Petitioner then filed this Writ Petition contending that the detention of the goods and recovery of GST and penalty by 3rd respondent is unsustainable and illegal.

8. According to the petitioner, there was only a stock transfer from it's factory in Ranipet in the the State of Tamil Nadu to its Depot at Bongulur village, Ibrahimpatnam Mandal in the State of Telangana, that there is no element of sale of goods or services in it, and mere

transfer of goods inter-State would not attract the provisions of the Act because there is no taxable event in it.

9. It is contended that the deviation pointed by the 3rd respondent in the detention order is unsustainable because the GST registration of the petitioner in the State of Telangana itself shows its principal place of business at Hayathnagar and additional place at Bongulur village, Ibrahimpatnam Mandal and therefore the 3rd respondent acted illegally in recovering tax and penalty from the petitioner by detaining the goods referred to above.

10. The 3rd respondent filed counter stating that he was not aware that the petitioner had got depots at different places in the country. He also stated that it was not reflected in the invoice or the e.way bill. He contended that when he issued show cause notice, the petitioner did not avail of the opportunity of responding to the show cause notice, and immediately paid the entire assessment and penalty without any objection and so the Writ Petition ought not to have entertained and it is an abuse of process of Court. He alleged that unlike VAT regime Branch transfer is taxable under the GST Regime, though he did not quote any provision of law in respect of the said plea.

11. A reading of the counter-affidavit indicates that 3rd respondent does not dispute that petitioner's registration certificate in the State of Telangana itself would disclose that its principal place of business is Hayathnagar and its additional place of business is at

Bongulur village, Ibrahimpatnam Mandal. The 3rd respondent could have simply verified this fact in GST portal of the Government of India.

12. We do not accept the plea of the respondents that at the time of detention of the goods, the transporter/driver of vehicle did not tell them that at Bongulur village, Ibrahimpatnam Mandal, the petitioner has an additional place of business. No reasonable person when asked to pay GST and penalty of more than Rs.6 lakhs, would keep quiet and meekly pay up without bringing the said facts to the notice of the detaining authority.

13. The payment by the petitioner of the tax and penalty demanded by 3rd respondent was obviously under economic duress apprehending that the 3rd respondent was likely to confiscate the goods and arrest its officials under the Act.

14. Once it is clear that petitioner has additional place of business in the State of Telangana in Bongulur village, Ibrahimpatnam Mandal and the goods were being transported to that address from its Corporate office at Ranipet, Tamil Nadu State, it cannot be said that the petitioner was indulging in any illegal activity when the tax invoice shows that the supplier is the petitioner's Corporate office in Ranipet, Tamil Nadu State and that it was shipped to its Depot in Bongulur village in Ibrahimpatnam Mandal.

15. There was no occasion for the 3rd respondent to collect tax and penalty from the petitioner on the pretext that there is illegality in

the transport of goods as it would merely amount to stock transfer and there is no element of sale of goods or services in it.

16. In any event, now that 3rd respondent is made aware that petitioner has the principal Office at Tamil Nadu and principal place of business at Hayatnagar and additional place of business at Bongulur village, Ibrahimpatnam Mandal, the tax and penalty collected from the petitioner cannot be allowed to be retained by respondents.

17. Accordingly, the Writ Petition is allowed; and respondents are directed to refund within four (04) weeks the sum of Rs.6,70,448/- collected towards CGST and State GST and penalty from the petitioner with interest @ 9% p.a. from 05-03-2020 till date of payment to petitioner by the respondents. The 3rd respondent shall also pay costs of Rs.1,500/- (Rupees One Thousand and Five Hundred only) to the petitioner.

18. Consequently, miscellaneous petitions, pending if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

T. AMARNATH GOUD, J

Date : 23 -09-2020
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