

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11221 of 2019

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Ram Charitra Ram Harihar Prasad through its authorized representative Mr. Vijay Kumar Modi aged about 32 years, (Male), Son of Shri Gopal Prasad Modi, Resident of Bari Dariyapur, Jamalpur, Post Office- Jamalpur, Police Station- Jamalpur, District- Munger, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner of State Tax, Bihar Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. The Joint Commissioner of State Tax, Kishanganj Circle, Kishanganj.
3. The Deputy Commissioner of State Tax, Kishanganj Circle, Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jayanta Ray Chaudhury, Adv. Mr. Binay Kumar, Adv.
For the Respondent/s	:	Mr. Vikash Kumar, SC-11.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 06-08-2019

Heard Mr. Jayanta Ray Chaudhary, learned counsel appearing for the petitioner and Mr. Vikash Kumar, learned SC-11 for the State.

The petitioner is aggrieved by the order dated 07.05.2019 passed by the respondent no. 3, the Deputy Commissioner of State Tax, Kishanganj Circle, Kishanganj in purported exercise of power vested in him under Section 68(3) read alongside Section 129(1) and 129(3) of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act') read with the Bihar Goods and Services Tax Rules, 2017 and the rules



framed thereunder, whereby a tax liability of Rs. 2,30,722/- together with equal penalty of Rs. 2,30,722/- the total amounting to Rs. 4,61,444/- has been imposed against the petitioner leading to issuance of demand notice for alleged violation of the provisions of Section 68 read with Section 129 of 'the Act' which mandates that any transportaiton of goods in contravention of the provisions of 'the Act' or the Rules framed thereunder, would be liable to detention, seizure and release only upon discharge of obligation created thereunder.

Facts of the case lie in a very narrow compass. The goods in question was being transported from the district of Vaishali to the district of Kishanganj and E-WAY BILLS to such effect under the provision of Section 138 of 'the Act' was generated on 18.04.2019 which had a validity until 22.04.2019. The goods are tax paid goods and the documents accompanying the consignment have been enclosed at Annexure-1 series to the writ petition which confirms to the position.

As per the respondent authorities in the Commercial Taxes Department stationed at Kishanganj though the consignment reached its destination on 22.04.2019, yet the vehicle was found in movement and which led to its seizure/detention under Section 129 of 'the Act' and the proceedings initiated thereunder with



service of notice on the dealer. The proceedings on record so initiated which have been placed on record by the respondents in the counter affidavit so filed at Annexure-A bearing case no. 18 of 2019-2020 would confirm that no sooner the position was gathered by the petitioner that a fresh E-WAY BILL was generated at 6.16 A.M in the morning of 26.04.2019 validating the transportation and which fact is taken note of by the Deputy Commissioner in his order recorded on 26.04.2019 whereby the proceedings had been initiated.

The copy of the order of detention on initiation of such proceedings is at Annexure-2 to the writ petition and the Deputy Commissioner while putting the petitioner on notice on the expiry of the E-WAY BILL ordered for detention of the vehicle together with the goods loaded thereon. This order is dated 27.04.2019. The proceedings so initiated has culminated in the demand present in the summary of the order impugned at Annexure-5 dated 07.05.2019, whereby the Deputy Commissioner State Taxes, Kishanganj while quantifying the Tax liability of the petitioner for the goods loaded on the vehicle to the tune of Rs. 2,30,722/- has imposed equal penalty to raise a demand of Rs. 4,61,444/-and it is feeling aggrieved by such demand that the petitioner is before this Court.



We have heard Mr. Jayanta Ray Chaudhary, learned counsel appearing for the petitioner and Mr. Vikash Kumar, SC-11 and while it is the submission of Mr. Chaudhary, that the entire exercise is dehors the statutory provision underlying Section 68, Section 129 and Rule 138 as amended by the State vide notification dated 07.03.2018 which enables the consignor of a goods to validate the E-WAY BILL, the challenge is resisted by Mr. Vikash Kumar to support the impugned order, as according to him since it is not in dispute that when the seizure took place the E-WAY BILLS had already expired, a subsequent generation of E-WAY BILLS of 26.04.2019, would not validate an invalid action.

Making reference to the statutory provisions of Section 129 of 'the Act' he submits that the order is within the parameter of the stipulations and since the provision begins with a non-obstante clause, it has overriding effect over the rules. In reference to the proceedings enclosed at Annexure- A to the counter affidavit he submits that it is after giving due opportunity to the petitioner that the order has been passed and which would suffer no infirmity. Learned counsel refers to an instruction issued by the Commissioner, a copy of which is placed with the supplementary counter affidavit at Annexure-J dated 18.05.2018 laying down procedure for interception of conveyances and in reference



thereto, he submits that the exercise does not suffer any infirmity because the E-Way Bill supporting the transportation had expired on 22.4.2019..

We have heard learned counsel for the parties and we have perused the records and it would not take us long to hold the entire exercise dehors the statutory provisions. For the purpose we would be referring to some of the provisions which are relevant for the purpose.

Section 68 of 'the Act' casts an obligation on the person in-charge of a conveyance carrying consignment of goods, to carry with him such documents as may be prescribed. The Bihar Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the Rules') was framed by the State of Bihar in exercise of powers vested under Section 164 of 'the Act' and Rule 138 thereof while providing for E-WAY BILLS, allows the Government by notification to specify the documents that the person in-charge of a conveyance carrying any consignment, is to possess while the goods are in movement or in store until the E-WAY BILLS system is fully developed. It is under the enabling provision of Rule 138 that the State of Bihar by a gazette notification dated 07.03.2018 issued amendment to substitute Rule 138 and as per the substituted rule every registered person was to be in possession of



an E-WAY BILLS during the course of transportation of any consignment exceeding 50,000/- rupees.

Rule 138 casts an obligation on such person to electronically upload the information as provided at Part A of Form GST EBW-01 on the common portal and whereupon a unique number is to be generated which in terms of second proviso to Rule 138(9) has a validity of 15 days from its generation. The second proviso attached to Rule 138(10) caters to exceptional circumstances where the goods can not be transported within the validity period of the E-WAY BILLS. The rule allows the transporter to extend the validity period after updating the details in part B of Form GST EWB-01. A copy of the notification dated 07.03.2018 has been placed on record by the State in the supplementary counter affidavit filed today and Form GST EWB-01 is in two parts confirms that whereas part A relates to the details of the consignment of the goods so being transported, part B relates to the details of the vehicle carrying such goods.

Be that as it may, Rule 138 as amended by the State of Bihar through the notification dated 07.03.2018 allowed the dealer concerned to validate the E-WAY BILL for the reasons as present in second proviso to Rule 138(10).



Mr. Vikash Kumar, learned counsel appearing for the State has placed on record the orders passed in the proceedings but the order dated 26.04.2019 passed by the Deputy Commissioner fairly records that E-WAY BILLS after its expiry on 22.04.2019 had been again generated at 6.16 A.M on 26.04.2019. This fact is noted by the Deputy Commissioner and confirms that the transportation regained its lawful identity.

Mr. Vikash Kumar, learned State counsel in his last ditch effort submits that even if the provision of Rule 138(9) and (10) enables the petitioner to upload and validate part B of the Form GST EWB-01 within a period of 15 days, in the present case a new E-WAY BILL has been generated and which would not come to the aid of the petitioner. In our opinion the submission is only taken for rejection for if the legislature has thought of giving liberty to a transporter to validate an E-WAY BILLS for reasons beyond his control and which exercise has been done either by way of a fresh generation or a re-validation, it would come within the parameter of such enabling jurisdiction which suffers no infirmity.

We completely fail to appreciate that where the rules framed by the State of Bihar as discussed above itself enables a dealer to extend the validity period of the E-WAY BILLS on its



expiry after updating the details in part B of form GST EWB-01, meaning thereby, the generation of the E-way bill on 26.4.2019 did not suffer infirmity and confirmed that it is the same vehicle which is transporting the goods; that there is no change in the nature of goods or the mode of conveyance and the generation had been done by the petitioner on 26.04.2019 i.e. before the detention order then in absence of any prescription in the Rule which debars a dealer from generating such E-WAY BILLS on its expiry, where is the default to invite a proceeding.

We also fail to appreciate as to how after taking note of the generation on 26.04.2019 yet the Deputy Commissioner has proceeded to order for detention of the vehicle together with the goods loaded thereon on 27-04-2019 when admittedly whatsoever document that was missing on the date on which the proceedings had been initiated i.e. E-WAY BILLS, had since been generated on its validity period. This is the first lacuna which stares at the face of the respondent in the present proceeding.

The second lacuna which faces the impugned proceeding is the provision underlying Section 129 of 'the Act. The proceedings on record confirm that it is exercising powers vested in the assessing authority under Section 129(1)(a) that the order has been passed and the demand raised. A cursory glance to the



statutory provisions underlying under Section 129(1)(a) would confirm that it relates to goods on which tax is yet to be paid. In other words the stipulations present in Section 129(1)(a) regulates the exercise in so far as it concerns non-tax paid goods and in which event the tax to be imposed is to be 100% with equal penalty thereon unless the goods being transported or found to be exempted from the tax.

In so far as the present case is concerned, the document at Annexure -A series would confirm that the goods were tax paid and thus the exercise had to be regulated under the provisions of Section 129(1)(b) which provides for a lenient applicability of the penal provisions and understandably because the tax amount on the goods has already been paid by the dealer.

Perhaps this important aspect of the matter has eluded the assessing authority while carrying out the exercise. In our opinion the entire exercise is dehors the provisions of amended Rule 138 as notified in the gazette dated 07.03.2018 which enables a consignor of goods to validate his E-WAY BILL and which was done by the petitioner on 26.4.2019 i.e. before the order of detention could be passed under Section 129 on 27.4.2019.



In our considered opinion, once the assessing authority i.e. the Deputy Commissioner, State Tax has recorded in his proceedings on 26.04.2019 that the E-WAY BILL has been generated, meaning thereby the goods carried a valid E-WAY BILL, the proceedings ought to have been brought to a close, rather than to perpetuate the illegality as done in the present case.

For the reasons so recorded, we quash the proceedings in its entirety together with the demand dated 07.05.2019 impugned at Annexure-5 which is accordingly quashed and set aside. The conditional release of the goods together with the vehicle vide order passed on 17.5.2019 is confirmed and the petitioner is discharged from the liability of the security directed under the interim order.

The writ petition is allowed.

(Jyoti Saran, J)

(Partha Sarthy, J)

Anjula/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

