

Court No. - 7

Case :- MISC. SINGLE No. - 23248 of 2019

Petitioner :- Mudassirun Nisan M/S M.N. Agencies Shahzadpur Thru. Prop. Mu
Respondent :- Addl. Commissioner Grade Ii Appeal-I Trade Tax Prayagraj&Anr
Counsel for Petitioner :- Manoj Kumar Mishra, Vinay Kumar
Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Heard.

The admitted factual position of the case is that a transport vehicle bearing No.UP-70-AT-4942 carrying 230 bags of arecanut weighing 16100 Kg. valued at Rs.27,04,800.00 was intercepted at the border of State of U.P. by the Assistant Commissioner, Prayagraj, when the aforesaid goods were being imported from Nagpur to Ambedkar Nagar i.e. from outside the State, on 10.12.2017. The driver was found in possession of bilty etc. pertaining to the goods, but not the e-way bill. A show cause notice was issued on 10.12.2017 itself under section 129(1) of the C.G.S.T. Act 2017 for seizure. A reply was submitted on the same day and on the same day in the night at 10.30 P.M. the State e-way bill was produced. Thereafter an order was passed on 20-12-2017 for the purposes of imposing penalty etc. Prior to it i.e. on 19-12-2017 in pursuance to the order passed earlier the petitioner deposited an amount of Rs. 2,65,000.00, i.e. tax of Rs.1,32,000.00 and some odd amount and penalty on the said amount. Reply was submitted to the penalty notice which was not accepted and a penalty of Rs.1,32,500.00 was imposed vide order dated 20-12-2017. Against the said order an appeal was filed which was rejected.

Learned counsel for the petitioner has relied upon a Division Bench judgment of this court dated 13.4.2018 rendered in Writ Petition No.5536 MB of 2018 wherein considering a similar issue it has been held that on the relevant date i.e. 4 Dec. 2017 when the vehicle in question was intercepted, the 'Government' referred in Rule

138 of the C.G.S.T. Rules 2017, which was the Central Government, had not developed and approved any e-way bill system nor any other arrangement had been made by the G.S.T. Council. The e-way bill system was prescribed by the Government of India only by a notification dated 7th March 2018. It being a case of inter-State transfer the provisions of C.G.S.T. Act 2017 were applicable and the State Government i.e. the Government of U.P. had no authority to issue an e-way bill in respect to such transactions, therefore, he says that the seizure as also penalty imposed is not sustainable in law.

He has also relied on another Division Bench judgment dated 5.4.2018 rendered in the case of *Shaurya Enterprises v. State of U.P. and ors.* in Writ Tax No.563 of 2018 wherein also it has been observed that till March 31, 2018 it was not mandatory to download the e-way bill from the official website and the said requirement was effective from 1st April, 2018. In this case the e-way bill which was downloaded and submitted on 10.12.2017 at 10:30 P.M. was the State e-way bill, although the State Government was not authorized to develop any such e-way bill for the transactions covered under the C.G.S.T Act, as has been held in the aforesaid decisions.

The relevant portions of the judgment rendered in *Writ Petition No.5536 (MB) of 2018, Satyendra Goods Transport Corp. v. State of U.P. & ors.* are quoted below :

"A process for initiation of a new indirect taxation regime was put into motion by the Constitution (101st Amendment) Act 2016 dated 8.9.2016 by which Articles 246-A, 269-A, 279-A and other provisions of the Constitution were amended. As per the amended Article 269-A, which pertains to levy and collection of Goods and Services Tax in the course of inter-state trade or commerce such tax shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Service Tax council. Import within the territory of India was included within the meaning of the term "Inter-State Trade or Commerce" and in respect of it tax, as aforesaid, would be levied and collected by the Government of India.

In pursuance to the aforesaid 101st Amendment of the Constitution three enactments were passed by the Parliament, i.e. the Integrated Goods and Services Tax Act 2017; the Central Goods and Services Tax Act 2017; the Union Territory Goods and Services Tax Act 2017 (hereinafter referred as "U.T.G.S.T. Act"). In addition to the aforesaid three enactments, the Legislature of the State of Uttar Pradesh passed an enactment known as the "U.P.G.S.T. Act 2017".

In matters of **inter-State Trade and Commerce** including import into the territory of India and out of it, the I.G.S.T. Act 2017 applies, whereas, in matters of **intra-State trade and commerce** the "C.G.S.T. Act 2017" and the State Goods and Services Tax Acts, which in this case is "U.P.G.S.T. Act 2017", apply.

Section 3 of the I.G.S.T. Act 2017 provides that the Board may appoint such Central Tax Officers as it thinks fit for exercising powers under this Act. There is no dispute about the fact that by virtue of section 4 of the I.G.S.T. Act 2017 the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorized to be the proper officers for the purposes of the said Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council by notification, specify. Similarly for enforcement of C.G.S.T. Act 2017 by virtue of section 6 thereof State Authorities under U.P.G.S.T. Act 2017 are also empowered to enforce C.G.S.T. Act 2017.

It is also not in dispute that by virtue of section 20(xv) of the "I.G.S.T. Act 2017" the provisions of "C.G.S.T. Act 2017" apply in respect of matters covered by the I.G.S.T. Act 2017 on the subject of inspection, search, seizure and arrest. Chapter XIV of the C.G.S.T. Act 2017 deals with inspection, search, seizure and arrest. While section 67 of C.G.S.T. Act 2017 deals with the power of inspection, search and seizure, section 68 deals with inspection of goods in movement and it is this provision with which we are primarily concerned. It reads as under:

"68. Inspection of goods in movement

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods."

As would be evident from its reading, the documents which the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified, are such, as may be prescribed. Now this prescription has been made under Rule 138 of the C.G.S.T. Rules 2017 which reads as under:

"138. E-way rule

Till such time as an E-way bill system is developed and approved by the Council, the Government may, by notification, specify the documents that the person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage."

As would be evident from a reading of the aforesaid rule it refers to an E-way bill System which is to be developed by the G.S.T. Council and it provides for an interim arrangement by the Government till an E-way Bill System is so developed and approved. The words "Government" used therein is defined in section 2(53) of C.G.S.T. Act 2017 to mean the "Central Government". It is not in dispute that on the date of interception of the vehicle in question E-way Bill System had not been developed, therefore, the documents which were required to be carried during movement of any consignment of goods were those which may have been notified by the Central Government under Rule 138 of the C.G.S.T. Rules 2017, as, by virtue of section 20(xv) thereof, it is this rule which is applicable to matters pertaining to I.G.S.T. Act 2017. Neither the State of U.P. nor the Government of India has brought on record any such notification which may have been issued prescribing the relevant documents to be carried in the course of such movement as is referred in section 68 of the C.G.S.T. Act 2017 and Rule 138 of the C.G.S.T. Rules 2017. In fact, Dr. Deepti Tripathi, learned counsel for the Government of India made a categorical statement on the basis of instructions that T.D.F. Form was not required to be carried for movement of inter-State goods to which the I.G.S.T. Act 2017 applies. In fact, as per Dr. Deepti Tripathi, learned Advocate appearing for the Government of India, C.G.S.T. Rules 2017 were amended on 30th August 2017 and vide another notification dated 29.12.2017 this amendment containing the E-way Bill system was to come into force from 1.2.2018, but, the notification dated 29th December 2017 was rescinded by a subsequent notification dated 2.2.2018. Thereafter the notification dated 7th March 2018 has been issued regarding E-way Bill System.

Thus, E-way bill system has been prescribed only recently by a notification of the Government of India dated 7th March 2018 whereby Rule 138 of the C.G.S.T. Rules 2017 has been amended and other Rules have been incorporated in this regard. These amendments are to come into force from a date to be specified by the Central Government.

Be that as it may, the fact of the matter is that on the date of incident i.e. 17.12.2017 neither there was any E-way Bill System nor any notification by the Central Government under Rule 138 of the C.G.S.T. Rules 2017 requiring the carrying of a T.D.F. Form or

any other such document in the course of inter-State supply/movement of goods, as such, the very basis for passing the impugned orders and taking action against the petitioner as impugned herein is apparently erroneous and illegal. In view of the above it cannot be said that there was any intent to evade tax.

As regards the contention of Sri Rahul Shukla, based on the notification issued under Rule 138 of the U.P.G.S.T. Act 2017, no doubt the said notification also takes into consideration the requirement of carrying documents i.e. T.D.F. Form-1, in respect of inter-State movements of goods, but, in our view it is only the Government of India which is empowered to issue such a notification in respect of inter-State trade under section 20(xv) of the I.G.S.T. Act 2017 read with section 68 of the C.G.S.T. Act 2017 and Rule 138 of the C.G.S.T. Rules 2017 made thereunder, as, the term "Government" used in Rule 138 is defined in section 2(53) of the C.G.S.T. Act 2017 to mean the "Central Government", just as, under section 2(9) of the I.G.S.T. Act 2017 "Government" means " the Central Government". Moreover, with respect to Goods and Service Tax in relation to inter-State Trade the Parliament alone has the authority to legislate as would be evident from the 101st Amendment to the Constitution.

In this view of the matter we are of the considered view that on the relevant date i.e. 17.12.2017 there was no requirement of carrying T.D.F. Form-1 in the case of an inter-State supply of goods. In fact on the relevant date there was no prescription of the documents to be carried in this regard under Rule 138 of the C.G.S.T. Act 2017, accordingly, the seizure and penalty imposed upon the petitioners based on the notification dated 21.7.2017 issued under Rule 138 of the U.P.G.S.T. Act 2017, which was not applicable, is clearly illegal.

Cross-empowerment under section 4 of I.G.S.T. Act 2017 and section 6 of C.G.S.T. Act 2017 merely means that State Authorities empowered under the U.P.G.S.T. Act 2017 can also enforce the provisions of C.G.S.T. Act 2017 or I.G.S.T. Act 2017, but it does not mean that they can apply the provisions of U.P.G.S.T. Act 2017 or Rules made thereunder to cases of inter-State trade in violation of section 20(xv) of I.G.S.T. Act 2017. It does not mean that the State Government can issue a notification under Rule 138 of U.P.G.S.T. Rules made under U.P.G.S.T. Act 2017 to prescribe documents to be carried in an inter-state supply of goods and services regarding which only the Central Government has the power under section 20(xv) of I.G.S.T. Act 2017 read with section 68 of C.G.S.T. Act 2017 and Rule 138 of C.G.S.T. Rules 2017.

The fact that the authorities under the State Act were empowered to exercise the powers under the C.G.S.T. Act 2017, assuming it to be so, is inconsequential, as, it is not their jurisdiction to exercise power of seizure which is under question, but, the manner in which they have exercised it on the basis of an inapplicable provision of law, as, they have proceeded on the presumption that T.D.F. Form-1 prescribed under a notification issued by the State Government under Rule 138 of the Rules made under the U.P.G.S.T. Act 2017, was required to be carried, which is

not the requirement in law. For this very reason the judgment dated 29.1.2018 passed by a Coordinate Bench of this Court in Writ Tax No.95 of 2018 does not apply to the instant case, as the challenge therein was to the very power of the State Authorities under U.P.G.S.T. Act 2017 to seize goods involved in inter-state supply. Here the question is whether petitioner was required to carry T.D.F. Form I or not, which we have answered in the negative.

As regards the provisions of section 129 U.P.G.S.T. Act 2017 under which the impugned action has been taken, the same is not applicable to an inter-State trade or commerce. By virtue of section 20 of the I.G.S.T. Act 2017 it is section 129 of C.G.S.T. Act 2017 that would apply, but this is not the ground on which we are invalidating the impugned action, as, if it is traceable to the aforesaid provision of C.G.S.T. Act 2017 which is *pari materia* to the State Act, then mere wrong mentioning of a provision would be too technical a ground for interference. We are invalidating the action on account of absence of any notification by the Central Government under Rule 138 of C.G.S.T. Rules 2017 and in view of incorrect application of notification issued by the State Government under Rule 138 of U.P.G.S.T. Rules.

We are supported in our view not only by the statement made by Dr. Deepti Tripathi as recorded hereinabove, but also by the judgment of the Kerala High Court on the subject as reported in *ASCICS Trading Company v. Assistant State Tax Officer & anr.*, 2017 NTN (Vol.65) 145, wherein it has been held as under:

"3. To a pointed query as to the power of the State Government to detain goods for alleged non compliance with the requirement of carrying the prescribed documents under the I.G.S.T. Act, which is the basis for the detention in Ext. P5 notice impugned in the writ petition, the learned Government Pleader would take me through the provisions of the IGST Act, CGST Act and SGST Act and in particular, the provisions of Section 4 and Section 20 of the IGST Act and Section 6 of the CGST Act read with Rule 138 of the CGST Rules as amended by notification No.27/2017 - Central Tax for the purposes of pointing out that, although the power to prescribe the documents that are to accompany the transportation of goods in the course of interstate trade is conferred on the Central Government, the Central Government has, till date, not notified the documents that have to be carried by a transporter of the goods in the course of interstate movement. Under the said circumstances, and finding that neither the State Legislature nor the State Government would have the power to make laws/rules to govern interstate movement of goods in the course of trade, and for the purposes of levy of tax, I am of the view that detention in Ext.P.5, for the sole reason that the transportation was not accompanied by the prescribed documents under the IGST Act/CGST Act/CGST Rules, cannot be legally sustained. I therefore, allow the writ petition by making the interim order absolute."

Furthermore, we find that alongwith the consignment of goods the driver was carrying an invoice which mentioned that the goods were being taken from the State of Uttarakhand to the State of West Bengal, therefore, as of now, it was an inter-State trade and there is nothing on record to show otherwise. The assertion that I.G.S.T. had already been paid, has also not been denied by the opposite parties nor that both the consignor and consignee are registered dealers. Moreover, the requisite details having been mentioned in the invoice etc. the same would be verified at the point of destination and accordingly the matter would be scrutinized as regards the liability of Tax. The notification dated 21.7.2017 issued by the State Government under Rule 138 of the U.P.G.S.T. Rules 2017 made under section 164 of the U.P.G.S.T. Act 2017 was clearly inapplicable for the reasons already mentioned earlier. There was no intent to evade tax."

The relevant portions of the judgment rendered in *Writ Tax No.563 of 2018, Shaurya Enterprises v. State of U.P. & ors.* are also quoted below :

"We have heard learned counsel for the respective parties and found that admittedly the goods were being purchased by a registered dealer and the same are sold by the registered dealer. While issuing the tax invoice which is enclosed as Annexure-1 to the writ petition clearly indicates the charge of IGST at the rate of 18% on value of the goods has been paid. We have also noticed that even the net value which includes the value of the goods as well as tax charged has been duly mentioned by the transporter while issuing the goods receipt. There is no other reason except of non submission of the E-way bill at the time of interception of the vehicle in question. We have also perused the E-way bill which has been generated by the person Incharge of the vehicle immediately within half an hour from the time of detention/interception of the vehicle mentioning therein all the requisite details and submitting the same before the authority. We failed to understand as to why the authority has not considered all the aforesaid relevant facts and has arrived to a conclusion that the transaction in question was not a bonafide transaction and has seized the goods and vehicle. Admittedly, till 31st March, 2018 it was not mandatory to download the E-way bill from the official portal. We find the substance in the submission of the learned counsel for the petitioner that only with effect from 1st April, 2018 the requirement of downloading of the E-way bill is compulsory. However, without going into the said controversy at this stage, we find that the goods were bonafidely dispatched and are travelled from Raipur for the delivery at Basti are illegally and arbitrarily detained by the respondent No.2. We see no reason in seizing the goods and asking for the penalty.

In view of the aforesaid facts and the reasons given here-in-above, the order passed under Section 129 (1) of the Act passed on 25.3.2018 and the show cause notice issued under Section 129 (3) of the Act are hereby set aside. The writ petition is allowed."

In view of the above, the orders impugned cannot be sustained.

The impugned orders dated 10.12.2017 and 30.3.2019, Annexed as Annexure No.1 to the writ petition, are hereby **quashed**.

Consequences shall follow accordingly as per law. If the petitioner is entitled to refund of any amount, the same shall be refunded to it within one month from the date a certified copy of this order is submitted. This is without prejudice to the liability of the petitioner to tax, otherwise imposable under the relevant statutory provisions based on the transactions involved.

The writ petition is **allowed** in the aforesaid terms.

(Rajan Roy, J.)

Order Date :- 22.11.2019
A.Nigam