

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)317 of 2020

M/S Sri Gopikrishna Infrastructure Pvt.LtdPetitioner(s)

Versus

The State of Tripura and OrsRespondent(s)

For Applicant(s) : Mr. B.N.Majumder, Adv.

For Respondent(s) : Mr. K.Dey, Addl. GA.

**HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

Judgment & Order(Oral)

07/01/2021

[1] Heard Mr.B.N.Majumder, learned counsel appearing for the petitioner as well as Mr. K.Dey, learned Addl. GA appearing for the respondents.

[2] By means of this petition, the petitioner has challenged the Order No.2 dated 27.05.2020 [Annexure 7 to the Writ Petition] passed by the Superintendent of State Tax, Churaibari Enforcement Wing, North Tripura. By the said order, the liability of the petitioner of paying the CGST and SGST has been determined @Rs.3,56,990/-. Moreover, since the petitioner could not produce the valid e-way bill against the vehicle by which the consignment relating to invoice No SGIEL/19-20/161, an aggregate penalty of Rs.3,56,990/-, equivalent to the tax payable, was imposed. Before imposing such tax, the taxing authority issued notice to the petitioner under Section 129(3) of the CGST Act, 2017, Section 68(3) of the UTGST Act, 2017 and Section 20 of the IGST Act, 2019 asking why a proceeding under the provisions of Central

Goods and Services Tax Act, 2017, State/ Union Territory Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and Goods and Services Tax (Compensation to States) Act, 2017 shall not be initiated. The notice is quite in detail. Except the part of not-tendering the e-way bill for the goods in movement, no controversy has been raised in respect of the other descriptions including the invoice no, rate of tax under Central GST Act or State GST Act. The petitioner by filing the reply on 21.05.2020 has stated that for two vehicles used consecutively, the valid e-way bills were generated, but due to sudden lock down the consignment could not be brought into the State of Tripura within the time. Even they could not generate a new e-bill against a new vehicle where as the petitioner was compelled to cause trans-shipment as the earlier vehicle got completely broken down while stranded for the nationwide lock-down. The petitioner has also stated that they made an attempt to have the amended e-way bill, but as the system was not approached within the valid time i.e. within 24 hrs of the expiry date, the system refused to generate a fresh e-way bill at their instance. As a result, when the vehicle was detained in the Churaibari check post, the vehicle was not carrying the valid e-way bill.

[3] Mr. Majumder, learned counsel has fairly stated that only violation that has been noticed by the taxing authority is of not carrying the valid e-way bill against the said invoice. Even in the detention order dated 18.05.2020, as examined by us, the only ground of detention, as shown, is that no e-way bill was tendered for the goods in movement. That is the only solitary ground in the notice, as issued under Section 129(3) of the CGST Act etc.

[4] Finally, on consideration of the reply filed by the petitioner on 26.05.2020 [Annexure 8 to the Writ Petition], the said order of tax

and penalty, as challenged in this writ petition, was passed. In the reply, the petitioner has stated that the vehicle carrying the goods under e-way bill had broken down. During trans-shipment, the e-way bill could not be amended due to COVID 19 situation and the consequential countrywide lock-down declared by the Government of India. It has been further asserted that the same transporter had been carrying the goods. At the behest of the petitioner, he had shifted the goods in another vehicle but was unable to amend the e-way bill through the designated portal. But the goods in transit were matching with the following facts:

- (a) invoice number and date
- (b) the goods as per invoice and as per e-way bill dated 21.2.2020
- (c) details of Consignee and Consigner.

[5] It may be noted that the e-way bill dated 17.5.2020 the details of the consignment has been provided and the same details are available with the last e-way bill generated after the expiry of e-way bill dated 18.03.2020, though in the reply it has been stated as 21.02.2020. We have compared the e-way bill dated 18.3.2020 with the e-way bill with the invoice which was valid till 11.06.2020. In the e-way bill there is no change in the description, save and except in the vehicle number. It has been admitted by the petitioner that the omission is attributable on their part for not generating the e-way bill despite their diligent efforts to generate a new e-way bill against the vehicle which was carrying the consignment to Churaibari.

[6] Mr. B.N.Majumder, learned counsel appearing for the petitioner has submitted that if the allegations as made by the respondents are wholly accepted, that breach will be covered by Section 122(xiv) of the CGST Act, 2017. Section 122 of the CGST Act, 2017 provides that where a taxable person who-

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not collected under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher;

he shall be liable to pay penalty of Rs.10,000/- or an amount equivalent to tax evaded or tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or not collected under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher. Mr. Majumder, learned counsel, has submitted clearly that the breach is of transporting the taxable goods without the cover of document as is specified by the said statute. The petitioner is definitely covered by the definition of 'taxable person' as provided under Section 2(107) of the CGST Act, 2017 and the petitioner files regularly the returns within the

time as prescribed. Mr. Majumder, learned counsel has further submitted having referred para 19 of the rejoinder filed by the petitioner that the tax due has already been paid and that has been reflected in the return filed in the month of March, 2020. For purpose of reference, the part of the paragraph 19 which is relevant in the context is reproduced hereunder:

“19. That the petitioner most respectfully submits that the petitioner is registered under the IGST Act and TSGST Act. The goods are to be utilized in a Electrical project in the state of Tripura and the goods were Transported from their Raipur Factory. The total value of the consignment was Rs.1983282/- applicable taxes was Rs.356991/- total invoice value was Rs.2340273/-. Since the petitioner is a Tax payee under the relevant Act, he is under obligation to furnish monthly return and in due obedience, the petitioner has submitted return in the month of March, against the Invoice No.SGIPL/19-20/161 and had already paid due Taxes on 24.06.2020 again the Total value of the goods of as many as 8 consignments and payments are made quarterly. Be it also mentioned here that the petitioner is paying IGST @18%, which is double of the rate of CGST and SGST which is 9%, only, under both the Acts.”

[7] Mr. Majumder, learned counsel has contended that there is no fraudulent intention or malafide act indulged by the petitioner. It was a lapse under very abnormal circumstances of lockdown and that aspect of the matter has not been considered at all. Moreover, Mr. Majumder has submitted that while imposing the penalty the Superintendent of State Tax has exceeded his authority as provided under Section 126 of the CGST Act and as reproduced above. According to Mr. Majumder, learned counsel, even the general principles in imposing the penalty (see Section 126 of the CGST Act) has not been taken serious care of, in as much as Section 126 of the CGST Act parts on a direction on the officers who are authorized to impose tax. On considering the proportionality vis- a-vis the omission or mistake in documentation and mistake committed without fraudulent intent or gross negligence, the quantum of penalties is supposed to be recorded.

[8] Mr. K.Dey, learned Addl.GA has submitted that true it is that the breach is covered under Section 122(xiv) of the CGST Act. But the petitioner has committed gross negligence by not upgrading or amending the e-way bill when the regular e-way bill had expired in transit. The e-way bill was upgraded or amended when the consignment was detained. As such, there is no irregularity or lack of proportionality in imposing the penalty. Mr. Dey, learned Addl.GA has pointed out that the penalty has been imposed only for not tendering the valid e-way bill for the movement of the vehicle with goods. Tax and the penalty have been imposed as per the law. On query from this court, Mr. Dey has candidly submitted that in respect of the payment of the tax by the petitioner, the respondents have not stated anything specifically or in denying the statement in that regard.

[9] Having appreciated the rival contentions, we are satisfied that the breach definitely falls within the ambit of Section 122(xiv) of the CGST Act and as such the petitioner is excisable to the penalty. But the pertinent question that falls for consideration is whether the Superintendent of State Tax has exceeded his jurisdiction in imposing the penalty? Having read the provisions of imposing penalty as provided under Section 122 of the CGST Act, we are of the view for the breach which falls under Section 122(xiv), the penalty is fixed @Rs.10,000/-. So far the penalty for an amount equivalent to tax is concerned those are for the incidents when the tax is sought to be evaded or not deducted under Section 51 etc. The other incidences as cataloged in Section 122 of the CGST Act are not relevant to the present case and as such we are of the firm view that the Superintendent of State Tax has exceeded his jurisdiction while imposing the penalty. The penalty would have been Rs.10,000/-. As there is no dispute about the tax, we will not lay our

hands on that aspect. Mr. Majumder has categorically stated that the petitioner has paid the said tax. We are also not accepting that statement on the face of it. The revenue authority shall be at liberty to verify that fact to ascertain whether tax has been paid or not. In the event of non-payment of tax the appropriate action be taken for realizing the said tax from the petitioner. But in the circumstances, we set aside the order of penalty and direct the petitioner to pay the sum of Rs. 10,000/- as penalty for the breach which is covered under Section 122(xiv) of the CGST Act within a period of 1 month from today. If not paid, the action as prescribed by the statute be followed for realizing the same.

In the result, this petition stands partly allowed.

There shall be no order as to costs.

JUDGE

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