

**Court No. - 3**

**Case :-** MISC. BENCH No. - 19542 of 2019

**Petitioner :-** Shiv Enterprises Thru.Employee Gaurav Kumar & Anr.

**Respondent :-** State Of U.P.Thru.Secy.Institutional Finance,Lucknow & Ors.

**Counsel for Petitioner :-** Sameer Gupta,Abhimanyu Singh,Atul Krishna

**Counsel for Respondent :-** C.S.C.

**Hon'ble Anil Kumar,J.**

**Hon'ble Saurabh Lavania,J.**

Heard learned counsel for the petitioners and learned Standing Counsel.

By means of the present writ petition, the petitioners have challenged the detention order dated 06.06.2019 and penalty notice dated 06.06.2019 broadly on the ground of jurisdiction of respondent no.2/Commissioner of State Tax, U.P., Lucknow under the Goods and Services Tax (GST) in seizing the consignment of goods, which were coming from Panipat (Haryana) to Lucknow.

Facts in brief of the present case are that the petitioner no.1 is the seller of the goods (cloud check) and is a registered dealer under GST having GSTIN 06AMUPK3123C1ZA. The said goods were sold by the petitioner no.1 to the Vision Luxuries, which were loaded on the vehicle (Truck) of petitioner no.2, who is owner of the same. The consignment of goods was duly patronaged by the requisite documents viz. tax invoice and bilties. The value of such goods was also declared. On 06.06.2019, opposite party no.3/Assistant Commissioner, State Tax Department, Mobile Squad-2, Lucknow has passed (MOV-06) detention order under Section 129 (1) of Uttar Pradesh Goods and Sevices Tax Act (hereinafter referred to as UPGST Act) and has also issued penalty notice (MOV-07) under Section 129 (3) of the UPGST Act.

Learned counsel for the petitioners while challenging the impugned orders submits that no seizure can be made on the ground of the technical glitch and unintentional proecedural lapse as the consignment was duly supported by all the documents. The E-Way Bill was successfully downloaded and duly accompanied along with the vehicle and the goods. The E-Way bill was valid when the consignment was intercepted. Hence, the present transaction was in the knowledge of the department prior to the interception of vehicle and therefore, it cannot be alleged that there was any intention to evade the payment of tax.

Further, submitted that there is no allegation with respect to any discrepancy in the documents, which were accompanying the goods. The validity of the E-Way Bill has not been doubted by the respondent authorities and the seizure has been made on the basis of suspicion. The seizure is entirely based on surmises and conjectures and is, therefore, bad in law.

As per the provisions of Section 129 of UPGST Act, 2017, the goods and the conveyances can only be seized where any person transports any goods in contravention of the provisions of the Act or the Rules made thereunder. The term 'contravention' has not been defined under the GST legislation,

however, the same is construed in common parlance as the same is violation of the provisions of law. It is imperative to note here that the consignment in question was still in transit and the goods were not delivered to the buyer. Further, the consideration with respect to such consignment has not been received yet by the petitioner no.1 and conspicuously, the supply of the goods is not concluded. The petitioner no.1 continues to be owner of the goods and there cannot be said to be any contravention of Section 129 of the UPGST Act, 2017.

The counsel for the petitioner placed reliance on the following judgments :-

Hon'ble Orissa High Court in the case of ***Hindustan Liver Limited and Another vs. The Collector and District Magistrate, Sundargarh, 117 (2014) CLT 99*** has held as under :-

*"16. If the above provision is considered in the light of the fact obtained on record, it is to be seen that the truck was seized by the Marketing Officer at Vedavyas Chowk in front of Bhagabati Weigh Bridge and it has not yet reached the destination or none had acknowledged receipt of the consignment on behalf of the consignee. The transit therefore continued and the petitioner no.1 company for all purposes was the owner of the goods at the time of its seizure by the Marketing Inspector. It is not required to refer to different judicial pronouncements to burden the judgment so far as proposition that carrying of goods in a vehicle does not amount to storage is concerned. In this regard reference may be made to Bijaya Kumar Agarwala v. State of Orissa, AIR 1996 SC 263.*

*17. Viewed from this perspective, as the petitioner no.1 company, who had valid licence to deal with Vanaspati Dalda, continued to be the owner of the Vanaspati Dalda, no contravention can be held to have occasioned by the time of seizure and the consequent order of confiscation is not sustainable in the eye of law."*

Hon'ble the Apex Court in the case of ***Hindustan Steel Ltd. vs. State of Orissa, AIR 1970 SC 253*** has held that *"Penalty shall not be imposed in cases of technical or venial breach of the provisions of the Act. It was also observed that a provision to impose a penalty does not necessarily convey that penalty must be imposed in all cases."*

Accordingly, it is submitted by learned counsel for the petitioner that the detention order (MOV-6) dated 06.06.2019 as well as penalty notice (MOV-7) dated 06.06.2019 passed by opposite party no.3 may be quashed.

Learned Standing Counsel on the basis of the instructions received to him submits that in the proceedings based on the impugned notice, final order has been passed under the provisions of CGST Act, 2017 and against the said order, the petitioners have got a statutory remedy of appeal under Section 107 of CGST Act, 2017. So, in view of the same, the present writ petition filed by the petitioner is not maintainable and is liable to be dismissed.

The fact pertaining to passing of final order has not been disputed by the counsel petitioners.

In view of the fact that the final order has been passed against which

petitioners have got a statutory remedy of appeal, we are not inclined to entertain the present writ petition.

For the foregoing reasons, the writ petition is ***dismissed***.

However, it would be open for petitioners to avail the statutory remedy and the present order would not be a hurdle for the said purpose.

It is made clear that we have not decided any issue on merits.

**(Saurabh Lavania,J.) (Anil Kumar,J.)**

**Order Date :- 18.7.2019/Mahesh**