

Court No. - 5

Case :- WRIT TAX No. - 1412 of 2022

Petitioner :- M/S Galaxy Enterprises

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Pranjal Shukla for the petitioner and Mr. Rishi Kumar, learned A.C.S.C. for State-respondents.

2. The instant Writ Tax is being entertained by this Court in view of the fact that G.S.T. Tribunal is not functional in the State of Uttar Pradesh pursuant to the Gazette notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.

3. By means of this writ petition, the petitioner is assailing the order dated 27.1.2022 passed by Assistant Commissioner, Mobile Squad, State Goods and Services Tax, Khataunil Unit Muzaffarnagar, respondent no. 3 and the order dated 2.7.2022 passed by Additional Commissioner, Grade -2 (Appeal), State Goods and Services Tax Muzaffarnagar, respondent no. 2.

4. Brief facts of the case as stated, are that the petitioner is a proprietorship concerned having GSTIN No. 09AAPFG6376E1ZY and engaged in the business of manufacturing and sale of laminated papers. In the normal course of business, the goods were loaded on Truck no. RJ 01 GC 4269 for dispatch from Muzaffarnagar to Rajasthan along with tax invoices, E-way Bills and GR. During transit, the goods were intercepted on 25.1.2022 and Form GST MOV-2 was issued by respondent no. 3 after recording the statement of the truck driver and after physical verification Form GST MOV-04 was issued on the ground that the goods were found to

be different than mentioned in accompanying documents. Thereafter a show cause notice was issued in Form GST MOV-07 on 27.1.2022. The petitioner submitted reply and being not satisfied with the same, penalty was imposed by order dated 27.1.2022. Thereafter the petitioner filed an appeal against the said order, which was also dismissed by impugned order dated 2.7.2022. Hence the present writ petition.

5. Learned counsel for the petitioner has submitted that it is admitted that the goods were moving along with tax invoice no. 139 dated 25.1.2022 along with e-way bill but before physical verification or issuance of show cause notice or passing the detention as well as seizure order, another tax invoice no. 140 dated 25.1.2022 along with e-way bill was produced rectifying the mistake but still notice was issued and penalty order was passed, which has been affirmed by the appellate authority without proper consideration of claim made by the petitioner. He further submitted that once before issuance of show cause notice or passing of detention as well as seizure order, the genuine tax invoice along with e-way bill was produced and the mistake was rectified, the authorities ought not to have initiated the proceeding. He submitted that the petitioner has duly explained the discrepancy, which has been occurred due to clerical error of his accountant and in support thereof, also filed an affidavit of the accountant but none of the authorities have considered the same. The petitioner has no intention to evade the payment of tax as such the impugned order is not justified in the eyes of law and same is liable to be quashed.

6. In support of his contention, learned counsel for the petitioner has relied upon the Division Bench judgement of this Court in **M/s Axxpress Logistics India Pvt. Ltd. Vs. Union of India and others, (Writ Tax No. 602 of 2018, decided on 9.4.2018)** and **M/s Bhumika Enterprises Vs. State of UP and others (Writ Tax No. 564 of 2018, decided on 3.4.2018)**. He submitted that in the aforesaid case, Division Bench of this Court has held that if the tax invoice along with E-way bill are produced before passing the seizure as well as detention order, the proceedings is not justified. He submitted that the present case is identical and is squarely covered with the aforesaid Division Bench

judgement of this Court. He prays for allowing the writ petition .

7. *Per contra*, Mr. Rishi Kumar, learned A.C.S.C. has supported the impugned orders and submitted that at the time of detention of goods in question, the goods were found different and quantity was also different as mentioned in the accompanying documents such as e-way bill and tax invoices; if the goods were not detained, the petitioner would have succeeded in evading the payment of legitimate tax to be paid to the State. He further submitted that subsequent tax invoice no. 140 dated 25.1.2022 is clear cut breach of the provisions specifically mentioned under Rule 31 (1) of UP GST Rules. He prays for dismissing the writ petition.

8. After hearing learned counsel for the petitioner, the Court has perused the records.

9. On perusal of the records, it transpires that the goods in question were in transit during its onward journey from Muzaffarnagar, U.P. to Bhilwada, Rajasthan and the same were intercepted on the ground that the goods found different as mentioned in the accompanying document but before detention and seizure order could be passed, the petitioner produced another bill i.e. tax invoice no. 140 of 25.1.2022 along with e-way bill. The said fact is not disputed by any of the authorities below. While issuing show cause notice in GST MOV 09 the authorities below has recorded a finding which is quoted hereunder:-

"प्रस्तुत टैक्स इनवॉइस अहस्ताक्षरित है, जिसकी वैधता संदिग्ध है, जोकि UPGST Act 2017 धारा 31(1) तथा नियम 46 का स्पष्ट उल्लंघन है। टैक्स इनवॉइस में समस्त माल का वजन 28628 कि. ग्रा. है, जबकि इ-वे बिल में मात्रा 170588 कि. ग्रा. घोषित है, जोकि UPGST Act 2017 के नियम 138 (A) का उल्लंघन है। भौतिक सत्यापन पर आपके द्वारा एकाउंटेंट की गलती बताते हुए प्रश्नगत कन्साइनमेंट से सम्बंधित टैक्स इनवॉइस संख्या 0140 दिनांक 25.01.2022 प्रस्तुत किया गया। प्रस्तुत टैक्स इनवॉइस सं. 0140 माल का मूवमेंट प्रारम्भ हो जाने के उपरांत जारी किया गया है।"

10. The authorities below has not accepted the documents on the ground that same were produced after the movement of goods. But lost the site of the fact that the discrepancies were cured before the detention or seizure order could be

passed.

11. Once the documents were produced before passing of the detention / seizure order, the authorities ought not to have proceeded further as held by the the Division Bench judgement of this Court in the case of **M/S Axxpress Logistics India Pvt. Ltd (*supra*) and M/s Bhumika Enterprises (*supra*)**. Since the Division Bench has specifically decided the said issue in an identical matter way-back in the year 2018, the impugned order is not justified as the documents have already been produced before passing of the detention as well as seizure order.

12. In view of the facts as stated above, the writ petition succeeds and is **allowed**. The impugned orders are set aside. The matter is remanded to the first appellate authority, who shall pass a fresh order in accordance with law, expeditiously, preferably within a period of two months from the date of producing a certified copy of this order.

Order Date :- 6.11.2023

Rahul Dwivedi/-