

Reserved on 02.02.2023
Delivered on 27.02.2023

Court No. - 10

Case :- WRIT TAX No. - 1319 of 2018

Petitioner :- M/S Ayann Traders

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C.,Anant Kumar Tiwari

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Sri Rahul Agarwal, along with Sri Varun Srivastava, learned counsel for the petitioner and Sri A.C.Tripathi, learned Standing Counsel for the State.

2. This writ petition has been filed assailing the order dated 15.05.2018 passed by Additional Commissioner, Grade-II (Appeal)-05, Commercial Tax, Kanpur in proceedings under Section 129(3) of the U.P. Goods and Service Tax Act, 2017 (*hereinafter called as "Act of 2017"*).

3. The petitioner before this Court is a registered dealer and had sold 300 bags of Pan Masala valued at Rs.33,81,000/- to a dealer at Meghalaya. A tax invoice was generated on 08.04.2018 under the Integrated Goods and Service Tax Act, 2017 (*hereinafter called "IGST Act"*) charging 28% IGST and 60% Cess on the transaction.

4. According to petitioner, the goods were handed over to transporter M/s Bombay Kandla Transport Pvt. Ltd. for transporting the goods to Meghalaya through Truck No.NL01N/6504 and a E-Way bill was generated on 08.04.2018 itself. The transporter, on the same day, also issued a bility for transporting the goods to Meghalaya.

5. According to petitioner, the Vehicle No.NL01N/6504 was used for transporting fruits and vegetable to West Bengal by Bombay Kolkata Logistics through bility No.382/08-04-2018 and the journey

had already commenced on 07.04.2018. The vehicle returned to Delhi on 11.04.2018 and again on 12.04.2018 the same vehicle was loaded with rice to be transported to Darbhanga (Bihar) by Hemkunt Logistics through bility No.305. The vehicle returned on 17.04.2018 at about 6 P.M. and was made available to the petitioner for transporting Pan Masala. The journey began on intervening night of 17/18.04.2018. The goods were intercepted on 18.04.2018 at 3.42 P.M. by the Mobile Squad at Kanpur. At the time of interception of goods, the driver had produced tax invoice and bility. The goods were detained and thereafter seizure order was passed on 01.05.2018 and 100% penalty of Rs.33,81,000/- along with tax of Rs.9,46,680/- and Cess of Rs.20,28,600/- total amount Rs.63,56,280/-, was imposed. Aggrieved by the seizure order, an appeal was preferred by the petitioner which was dismissed by the order impugned, hence, this writ petition.

6. Learned counsel for the petitioner submitted that the taxing authorities were wrong to pass the order impugned as the goods, which were being transported, were carrying all necessary documents i.e. tax invoice, bility, and E-way Bill. According to him, the E-Way Bill was generated on 08.04.2018 itself and the vehicle number was mentioned. Due to the fact that the vehicle was used for transporting fruits and vegetable to West Bengal and thereafter rice to Darbhanga, it was made available to the petitioner on 17.04.2018 and the E-Way Bill was existing when the goods were to be transported. According to him, the finding returned by the Appellate Authority cannot be accepted that the E-Way Bill should have been cancelled once the goods were not dispatched on the same day. There is no compulsion to cancel E-Way Bill in view of Rule 139(9). As the vehicle was made available by the transporter on 17.04.2008, the goods were loaded and dispatched on the intervening night 17/18.04.2018. According to him,

it is not a case where goods were detained by the Mobile Squad without any document and there being evasion of tax by the assessee.

7. Per contra, learned Standing Counsel while opposing writ petition submitted that the E-Way Bill, which was generated on 08.04.2018, specifically mentioned the vehicle number. Further, the transporter bill also mentioned the vehicle number, which means that transit of goods had taken place. According to him, the vehicle was used by one Bombay Kotkata Logistics for transporting fruits and vegetable to Panchkula, (West Bengal) and bility number 382 was generated on the very same day i.e. on 08.04.2018. Another transporter bill was generated on 12.04.2018 being bility no.305 of one Hemkunt Logistics for transporting 420 bags of rice to Darbhanga (Bihar) and, on inquiry, it was found that no such goods were transported to the dealer at Darbhanga and the firm had closed down two months back.

8. According to State Counsel, provision of Rule 138 (9) of Central Goods and Service Tax Rules, 2017 (*hereinafter called as "CGST Rules 2017"*) are clear that in case, goods are not transported as per the details furnished in E-Way bill, the same may be cancelled electronically on the common portal within 24 hours of generation. If the vehicle was not made available by the transporter, the dealer could have cancelled the E-Way Bill. The action of the petitioner clearly reflects that number of transactions were made during this period on the strength of tax invoice, bility and E-Way Bill generated on 08.04.2018 through vehicle No. NL01N/6504. He further invited the attention of the Court to para 7 of the counter affidavit where description of vehicle has been given from 08.04.2018 to 18.04.2018 while it passed through three toll plazas viz. Anantram Toll Plaza, Badori Toll Plaza, Fatehpur and Kokhraj Toll Plaza, Allahabad. He then contended that the purchasing dealer has not come forward nor

any explanation was furnished after the notice was issued when the goods were intercepted and the vehicle was detained.

9. I have heard the respective counsel for the parties and perused the material on record.

10. It is a case where taxing authorities, after intercepting the goods of the petitioner on 18.04.2018, had detained the same and issued notice to both the selling and purchasing dealer. When no reply was filed, a seizure order was passed imposing 100% penalty, tax and cess aggregating Rs.63,56,280/-. It is admitted to both the parties that E-Way Bill was generated on 08.04.2018 wherein vehicle No.NL01N/6504 was mentioned and the name of the transporter was mentioned as M/s Bombay Kandla Transport Pvt. Ltd. for transporting the goods to Meghalaya. At the time of interception of goods, the driver had only produced tax invoice and transporter bill (bilty).

11. In the case set up by the dealer, defence has been taken that vehicle was made available by the transporter on 17.04.2018 at about 06:00 p.m. while E-Way Bill generated on 08.04.2018 mentions the name of transporter and vehicle number. Taxing authorities had arrived at conclusion that mentioning of vehicle number demonstrates that goods are ready for transit and the vehicle has been made available by the transporter. Chapter XVI of CGST Rule, 2017 provides for E-Way Rules. According to the same, information regarding transporter and the vehicle has to be provided in Part-B of Form GST EWB-01 before movement of goods. Once, Part-B of Form GST EWB-01 is filled, a presumption is raised that the goods are in movement. However, if movement of goods has not commenced, the legislature has provided for a way out through Rule 138(9) whereby E-Way which has been generated on the common portal, may be cancelled electronically. A safeguard has been provided that it cannot be cancelled if it has been verified in transit in

accordance with Rule 138-B. The dealer in the present case had waited for 10 long days and did not cancel the E-Way Bill generated by him on common portal, though, the vehicle was not provided by the transporter.

12. From the findings recorded by the taxing authorities it is clearly evident that vehicle no.NL01N/6504 was not only used by Bombay Kandla Transport (P) Ltd. through which goods were sent by the petitioner-dealer, but also by Bombay Kolkata Logistics for sending fruits and vegetable to Panchkula and by Delhi Hemkunt Logistics for sending rice to Darbhanga (Bihar). Once, the vehicle was not available on 08.04.2018 and was used for transporting fruits and vegetable and its journey commenced on 07.04.2018, the case set up by the petitioner cannot be accepted and has rightly been denied by the authorities.

13. From the averment made in the writ petition, it is clear that the goods were sent on 07.04.2018 to West Bengal through the vehicle in question and thereafter, on 12.04.2018 to Darbhanga (Bihar). Filling the details of the vehicle and transporter in Part-B of Form GST EWB-01 completely belie the story set up by the petitioner before the authorities.

14. Moreover, the finding recorded by the Appellate Authority that Darbhanga Dealer to whom it is alleged that rice was sent had denied such transaction as the firm having already closed down two months prior to the transactions which corroborates the facts that through tax invoice and E-Way Bill generated on 08.04.2018, the dealer has made several transactions and evaded tax. The Chart given in para 7 of the counter affidavit reflects movement of the vehicle through various Toll Plazas on relevant dates and is a establishment of fact that number of trips were made from Delhi to other places through one and the same document and also through one and the same vehicle.

15. This Court therefore, finds that there has been a complete misuse of statutory provision of the Act and Rules by the dealer. The inference drawn by the taxing authorities after interception of goods on 18.04.2018 needs no interference by this Court.

16. The writ petition fails and is hereby dismissed.

Order Date :- 27.2.2023

Kushal