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Court No. - 9

Case :- WRIT TAX No. - 1177 of 2022

Petitioner :- M/S Gurunanak Arecanut Traders

Respondent :- Commercial Tax And Another

Counsel for Petitioner :- Pooja Talwar

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Ms. Pooja Talwar, learned counsel for the petitioner and Sri Arvind Kumar Mishra, learned Standing Counsel for State.
2. Through this writ petition, a challenge has been made to order dated 16.06.2022 passed by Commercial Tax Officer, Sector-3 (Mobile Squad), Etah exercising power under Section 129(1) of the State Goods and Service Tax Act, 2017 and order dated 24.06.2022 under Section 129(3) and also quashing has been sought for the demand of tax and penalty of Rs.90,62,400/- as well as appellate order dated 18.08.2022.
3. The brief facts of the case are that petitioner is a registered dealer under State Goods and Service Tax Act, 2017 (*hereinafter called as "the Act of 2017"*). He has sold 400 bags of Arecanut vide tax invoice dated 09.06.2022 to M/s. Jagdamba Enterprises, Nagpur which is also said to be a registered dealer in his respective State. The said Arecanut was being transported from Delhi to Nagpur, Maharastra by M/s. Ravi Goods Transport. The goods were intercepted at Mathura at 4:28 a.m. on 10.06.2022. The goods while in transit were not carrying the e-way bill. The e-way bill was generated on 10.06.2022 at 7:36 a.m. and was valid till 16.06.2022. A physical verification of consignment of goods was carried out. A detention order was passed on 16.06.2022 under Section 129(1) of the Act of 2017. On verification, it was found that the goods which were in transit is *Chikni Bhuni Supari* (processed Arecanut) and is

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taxable @ 18% and not @5% as declared by the petitioner. A show-cause notice was issued on 16.06.2022. When the show-cause notice remained unattended, respondent no. 2 on 24.06.2022 passed order under Section 129(3) of the Act of 2017 and a demand of tax and penalty of Rs.90,62,400/- was raised against the petitioner. Aggrieved by the said order, petitioner filed Writ Tax No. 933 of 2022 before the Division Bench of this Court which was dismissed on 12.07.2022 on the ground that petitioner has remedy of filing an appeal under Section 107 of the Act of 2017. Thereafter, an appeal under Section 107 of the Act was preferred by petitioner before Additional Commissioner, Grade-II (Appeal), Aligarh which was rejected by order impugned dated 18.08.2022. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that the detention order dated 16.06.2022 as well as penalty order dated 24.06.2022 have been passed without giving any opportunity of hearing. It is further submitted that first appellate authority has not applied its mind while rejecting the appeal and a non-speaking order has been passed. According to her, the person who had downloaded the e-way bill was not present at the place of detention and the driver of the vehicle had moved out without intimation to the petitioner. As soon as the driver realised the mistake and informed the petitioner about the non availability of the e-way bill, the same was downloaded without delay and produced before the authorities. Reliance has been placed upon the decision in case of **M/s. Modern Traders vs. State of U.P. and 2 others, 2018 NTN 187** and decision of co-ordinate Bench in case of **Axpress Logistics India Pvt. Ltd. vs. Union of India and 3 others, 2018 NTN 245**. Reliance has also been placed upon decisions rendered in **Raj Iron and Building Materials vs. Union of India, 2018 UPTC 217**, **M/s. Falguni Steels vs. State of U.P. and others, 2024 UPTC 221** and decision of Kerala High Court rendered in case of **Asharaf Ali K.H. vs. The Assistant State Tax Officer & others,**

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2021 UPTC 469.

5. It is next contended that the goods have been declared as Arecanut while the authorities are claiming it to be *Chikni Bhuni Supari* (processed Arecanut). According to her, the misclassification of goods cannot be basis of detention of goods in transit. The taxing authorities could at the most detained the goods for purpose of preparing the relevant papers for effective transmission to the judicial assessing officers and nothing beyond.

6. Learned Standing Counsel while opposing the writ petition submitted that there was an intention to evade the tax. He further submitted that goods which were intercepted while in transit were being transported without e-way bill. The vehicle No. NL-01-Q-5655 was intercepted at about 4:28 a.m. while the e-way bill was downloaded after it was issued at 7:36 a.m. on 10.06.2022 i.e. after almost three hours. Further, when the petitioner firm was checked on GST portal, the signature of proprietor of the firm, Gursen Singh on the rent agreement was different from that of tax invoice issued for the transaction.

7. The driver of the vehicle in his statement stated that goods were taken from other vehicle and it was loaded in the vehicle in Bakauli, Delhi. The firm has neither main place of business nor additional place of business at Bakauli, Delhi. Further, place of dispatch in subsequent e-way bill issued reflects North West Delhi, PIN Code 110041 while PIN Code of Bakauli is 110036. These evidences show that registration is being misused to hide the original source of transportation and clearance of goods. On the basis of GSTIN, deficiencies found in checking of seller firm, M/s. Gurunanak Arecanut Traders, Delhi (petitioner), a letter was sent to Assistant Commissioner, SGST, Zone-5, Ward-62, Delhi for investigation of the firm. An inquiry report dated 14.06.2022 was sent, in which place of business of firm was not found to be traceable and process

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for *suo moto* cancellation has been marked against the firm.

8. According to learned Standing Counsel, this clearly proves the evasion of tax due to mismatch between unidentified goods owner in the name of present seller. At the time of investigation, no business activity was found at the seller's shown trading place. Further, verification of goods revealed that chopped smooth roasted betel nut (processed) were loaded while they have been declared as Arecanut-201 goods, while on physical verification goods fall under the category of Betel Nut (HSN Code 21069030) which are taxable @18%, whereas tax was charged @5%. It was further contended that buyer firm M/s. Jagdamba Enterprises, Nagpur, Maharashtra was only registered on 05.01.2022 and has purchased goods from only one firm M/s. Harsh International, Delhi. According to him, the facts reveal that transaction in question was being done with an intention to evade tax by organised group which is in violation of Section 68 read with Rule 138 and 138A of the Act of 2017 and it attracts the provision of Section 20 of IGST Act, 2017 read with Section 129 of UGST/CGST Act. Moreover, the notice was provided on 16.06.2022 to driver of the vehicle and was also sent through e-mail to consignee and consignor on 16.06.2022 but no clarification was received from anyone on their behalf.

9. It was lastly contended that the judgment relied upon by petitioner relate to the period where the detention of goods was prior to April, 2018. According to him, in instances of detention that occurs subsequent to April, 2018, e-way bill is mandatory and required to be carried along with goods. Reliance has been placed upon the decision of co-ordinate Bench in case of **M/s. Jhansi Enterprises, Nandanpura, Jhansi vs. State of U.P. and others, Writ Tax No. 1081 of 2019**, decided on 01.03.2024 and decision rendered in case of **M/s. Akhilesh Traders vs. State of U.P. and others, Writ Tax No. 1109 of 2019**, decided on 20.02.2024.

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

11. The sole question for consideration is whether carrying e-way bill is mandatory for the movement of goods from one place to another. The question is no more *res integra* after the 14th Amendment of the Uttar Pradesh Goods and Service Tax Rules, 2017 which came into effect from 01.04.2018. Post amendment in the Rule, it has become obligatory that goods should be accompanied with e-way bill. The co-ordinate Bench in **Akhilesh Traders (supra)** had held that in case goods are not accompanied by e-way bill, a presumption may be read that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods. Relevant paras 7 and 8 are extracted hereasunder:-

“7. This Court in umpteen cases where penalties were being imposed under Section 129 of the Act though held that an intention to evade tax should be present, however, in the event the goods are not accompanied by the invoice or the e-way bill, a presumption may be raised that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods.

8. In the present case, one comes to an inexorable conclusion that the petitioner has not been able to rebut the presumption of evasion of taxes, as he has not been able to explain the absence of invoice and the E-Way Bill. Production of these documents subsequent to the interception cannot absolve the petitioner from the liability of penalty as the very purpose of imposing penalty is to act as a deterrent to persons who intend to avoid paying taxes owed to the Government. It is clear that if the goods had not been intercepted, the Government would have been out of its pocket with respect to the GST payable on the said goods.”

12. In **Jhansi Enterprises (supra)**, the co-ordinate Bench following the decision rendered in **Akhilesh Traders (supra)** further held that mere furnishing of documents subsequent to interception cannot be a valid ground to show that there was no intention to evade tax. The Court further held that reliance placed upon the decision by petitioner therein was of transaction prior to April, 2018 but after April, 2018, those difficulties

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have been resolved and there is no difficulty in generating and downloading the e-way bill. The Court held as under:-

“11. Mere furnishing of the documents subsequent to the interception can not be a valid ground to show that there was no intention to evade tax. There must be some reasonable grounds to justify the non-production of documents at the proper time.

12. Furthermore, the judgments upon which the petitioner is relying are prior to April 2018, when there were actually some difficulties with the generation of e-way bill. But after April, 2018 those difficulties have been resolved and now there is no difficulty in generating and downloading the e-way bill.

13. The argument raised by the counsel appearing on behalf of the petitioner that the vehicle was parked at the godown for unloading is not supported by the facts. The interception of the vehicle was in a place away from the godown and this entire argument is obviously an afterthought. Accordingly, the application of Section 129(3) of the Act by the authorities is valid and just in law.

14. In light of the above, I am of the view that the petitioner herein has not complied with the provisions of law, hence the steps taken by the respondent authorities are proper and in accordance with the law and require no interference by this court. “

13. In the instant case, it is an admitted case that the goods were intercepted by respondent no. 2 on 10.06.2022 at 4:28 a.m., while the e-way bill was generated on the same day at 7:36 a.m. after about three hours after the detention of the goods. Moreover, on the inquiry it was found that the petitioner was not carrying out the business at the place where the firm was registered. The registration of the firm was also *suo moto* cancelled.

14. The argument raised by petitioner’s counsel that notice was not served before order dated 24.06.2022 was passed is totally against the material on record which not only reveals that notice was served upon the driver but it was also sent through e-mail to both the seller and buyer on 16.06.2022 which remained unattended. Once finding has been recorded by authorities and petitioner firm never participated in the proceedings before the authorities, no case is made out for interference by this Court.

15. Moreover, conduct of the petitioner clearly reveals that an intention

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to evade the tax is there as not only the goods in transit were not accompanied by e-way bill but also the description of goods declared by petitioner was different which was intercepted by the taxing authorities on 10.06.2022. Goods declared were taxable @5% while the goods found on verification were taxable @18%.

16. Reliance placed upon the Division Bench judgment is distinguishable in the facts of the present case as in those cases, the transaction was prior to April, 2018 where the benefit was given to those assesses. It is mandatory on the part of the seller to download the e-way bill once the goods are put in transit. Subsequent downloading of e-way bill would not absolve the liability under the Act.

17. No case for interference is made out.

18. The writ petition fails and is hereby dismissed.

Order Date :- 05.03.2025

V.S.Singh