Ram Prakash Chauhan v. Commissioner of Delhi (GST) & Anr.

Validity of detention order and demand of tax and penalty under Section 129 of the CGST Act, 2017 for alleged defective documents accompanying goods in transit — whether payment of tax and penalty for release of detained goods amounts to voluntary payme

Date of Order: January 19, 2023
Case Law No: GIB-DHC-2023-07
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The petitioner, a sole proprietor trading in steel/iron bars, purchased a consignment of steel and sold it onward. An e-way bill was generated for transporting the goods directly from the seller's premises to the buyer's premises. The e-way bill reflected the petitioner's GSTIN, while the address mentioned was that of the buyer, since the goods had already been sold.

RELEVANT FACTS

The truck carrying the goods was intercepted by GST authorities on 19-10-2020 at 11:00 p.m. and detained on the ground that the documents accompanying the goods were found defective. A detention order dated 23-10-2020 was passed, followed on the same date by a show-cause notice under Section 129(3) of the CGST Act stating the reason as "*prima facie, the documents tendered are found to be defective*" — without specifying any particular defect. Simultaneously, an order of demand of tax and penalty of Rs. 2,78,129 each was raised. Since the petitioner urgently required the goods, he paid the demanded tax and penalty to secure release of the goods. Thereafter, the petitioner filed an appeal, which was dismissed by the appellate authority on 31-12-2021, which also failed to disclose the specific discrepancy alleged between the e-way bill and the goods. The petitioner then filed the present writ petition before the Delhi High Court challenging both orders.

COURT OBSERVATIONS (Verbatim)

Para 20: "*We are unable to accept that the order of demand and penalty is a consent order and the petitioner was precluded from challenging the same. The goods had been detained and it is not disputed that the same would not have been released unless the tax and penalty was paid. We are persuaded to accept that the petitioner had paid the tax and penalty for release of the goods and the said payment was not voluntary.*"

Para 21: "*As stated above, it is apparent that neither the show-cause notice nor the order of demand clearly sets out the reason for imposing the tax liability as well as penalty.*"

Para 22: "*In the given facts, we are of the view that it would be apposite to remand the matter to the GST officer concerned to decide afresh after giving the petitioner full opportunity to address the allegation against him.*"

FINAL VERDICT □

Both the order dated 23-10-2020 raising demand of tax and penalty, and the appellate order dated 31-12-2021, were set aside. The matter was remanded to the GST officer concerned, who was directed to issue a fresh show-cause notice within two weeks and pass a fresh order after affording the petitioner a reasonable opportunity of hearing.

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