

Reserved Judgment
Reserved on : 27.10.2021
Delivered on : 16.11.2021

Court No. - 4

Case :- MISC. SINGLE No. - 29323 of 2019

Petitioner :- M/S Biharilal Chhaterpal Thru Prop. Ramesh Kumar Gupta

Respondent :- State Of U.P. Thru Prin.Secy.Tax And Registration And Ors.

Counsel for Petitioner :- Romit Seth, Pritish Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Heard.

By means of this petition the petitioner has challenged the order dated 30.3.2019 passed by the Addl. Commissioner (Appeals), Commercial Tax, Lucknow, in First Appeal No. 8 of 2018 and the order passed by the Asstt. Commissioner (Mobile Squad III), Commercial Tax, Lucknow, under section 129(3) of the U.P.G.S.T. Act 2017.

Although against the impugned orders an appeal is prescribed under the U.P.G.S.T. Act 2017 before the G.S.T. Tribunal under section 112 of the said Act, but the petition was entertained vide order dated 23.10.2019 on account of non-constitution of the G.S.T. Tribunal.

Specific query was put to the learned Addl. C.S.C. as to whether the G.S.T. Tribunal has been constituted under section 112 of the U.P.G.S.T. Act 2017 or not, he replied that it had not been constituted as yet.

By means of the impugned orders U.P.G.S.T. at the rate of 18% on the value of the goods seized during interception amounting to Rs. 2,08,800/- and equivalent penalty of Rs. 2,08,800/- has been ordered against the petitioner.

Both the authorities below have held that the petitioner was not carrying the U.P. e-way bill on the date of interception of goods, hence the impugned action has been taken.

The appellate authority has also held that the national e-way bill being carried with the vehicle at the time of conveyance was only for the purposes of trial at the relevant time and did not have any legal sanctity attached to it.

Contention of the learned counsel for the petitioner is that at the relevant time there was no system of e-way bill in place and all other relevant documents were being carried. The transportation was *bona fide* as is also evident from para-7 of the counter affidavit filed by the opposite parties wherein it has been mentioned that at the time of checking driver of the vehicle driver of the vehicle produced tax-invoice no. 135 of M/s Swastik Traders, Raipur, dated 15.2.2018 and bilty/consignment note No. 081 dated 15.2.2018 of M/s Ansroad Lines, Chhatishgarh, and national e-way bill no. 471000988313 dated 15.2.2018, and documents in relation to goods (barbed wire). This recital in the counter affidavit itself shows that the transportation of the goods was *bona fide*. Moreover at 2.49 a.m. in the night of 19.2.2018 the state e-way bill was also generated by the petitioner and handed over to the opposite parties.

It is not in dispute that the goods which were being transported by the petitioner from Raipur in Chhatishgarh State to Sitapur in the State of U.P. amounted to an inter-state transportation of goods, therefore, the Act which was applicable was the Integrated Goods and Service Tax Act 2017 (hereinafter referred as the 'I.G.S.T. Act 2017'). As per section 20(xv) of the I.G.S.T. Act 2017 the provisions of C.G.S.T. Act 2017 apply in respect of matters covered by the I.G.S.T. Act 2017 on the subject of inspection, search, seizure and arrest. Chapter XIV of the C.G.S.T. Act 2017 deals with inspection, search, seizure and arrest. Section 67 of the C.G.S.T. Act 2017 deals with the power of inspection, search and seizure. Section 68 deals with the inspection of the goods in movement. Sub-section (2) of section 68 provides that the details of the

documents required to be carried under sub-section (1), shall be validated in such manner as may be prescribed.

As would be evident from reading of section 68 of the C.G.S.T. Act 2017 the documents which the Government may require the person in charge of the conveyance, carrying any consignment of goods of value exceeding such amount as may be specified, are such, as may be prescribed. Now this prescription has been made under Rule 138 of the C.G.S.T. Rules 2017, according to which till such time as an e-way bill system is developed and approved by the council, the Government may by notification, specify the documents, that the person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage. As would be evident from a reading of the aforesaid Rule 138, it refers to an e-way bill system which is to be developed by the G.S.T. Council and it provides for an interim arrangement by the Government till an e-way bill system is so developed and approved. The word "Government" used therein is defined in section 2(53) of the C.G.S.T. Act 2017 to mean the 'Central Government'.

Now in the light of the aforesaid when we peruse the notice under section 129(3) which has been issued to the petitioner, a copy of which is annexed as Annexure-3 to the petition, Page-32, and when we read this document with the verification report prepared at the time of interception of the vehicle of the petitioner on 19.2.2018 at 1.14 in the night at Lucknow, we find that the deficiency pointed therein for the purposes of proceeding under section 129(3) of the U.P.G.S.T. Act 2017 is absence of e-way bill. In the counter affidavit it has been specifically stated that the petitioner was not carrying the U.P. State E-way bill.

It is not the case of the opposite parties that the petitioner was not carrying any other document which may have been required to be carried, by a notification of the Government as

an alternative arrangement under Rule 138 as referred hereinabove.

We have already discussed the relevant provisions, therefore, considering the fact that it was a inter-State transportation of goods, the U.P.G.S.T. Act 2017 did not apply and it is the I.G.S.T. Act 2017 and by virtue of section 20(15) of the said I.G.S.T. Act 2017 it was the C.G.S.T. Act 2017 which would apply in respect of matters covered by the I.G.S.T. Act 2017 on the subject of inspection, search, seizure and arrest as already discussed. It being an inter-State transfer of goods there was no requirement of carrying the U.P. State e-way bill. For all these reasons the insistence by the State authorities that the petitioner's vehicle was not carrying the U.P. E-way bill is without any factual and legal basis. This is what has been held by a Division Bench of this court in *Writ Petition No. 5536 (MB) of 2018, Satyendra Goods Transport Corp. v. State of U.P. & ors.*

The court also takes note of the fact that the I.G.S.T. at the rate of 18% had already been paid by the petitioner as is evident from the document annexed as Annexure-2 which has not been denied in the counter affidavit.

The goods were being transported alongwith the tax-invoice etc., therefore, it was not a fraudulent transaction and there is nothing on record to show otherwise. Moreover, as already stated vide Annexure-2 I.G.S.T. at the rate of 18% had already been paid.

Moreover, the court may again refer to the Division Bench judgment of this court dated 13.4.2018 rendered in *Satyendra Goods Transport Corp. (supra)* wherein similar issues were considered and thrashed out. It has been held therein that in an inter-State transportation of goods U.P.G.S.T. Act 2017 will not apply. In fact in the said judgment it has been categorically recorded on the basis of the statement made

by Dr. Dipti Tripathi, learned counsel for the Government of India, that the C.G.S.T. Rules 2017 were amended on 13.8.2017 and vide another notification dated 29.12.2017 this amendment containing the e-way bill system was to come into force from 1.2.2018, but the notification dated 29.12.2017 was rescinded by a subsequent notification dated 2.2.2018. Thereafter the notification dated 7th March, 2018 had been issued regarding e-way bill system which was to apply from 1.4.2018. In the instant case goods being transported were intercepted on 19.2.2018, when there was no system of e-way bill in place under C.G.S.T. Act 2017 and U.P.G.S.T. was not applicable as already discussed. The court in the aforesaid decision has also considered the issue of cross-empowerment of State authorities etc. under section 4 of the I.G.S.T. Act 2017 and has held as under:

"Cross-empowerment under section 4 of I.G.S.T. Act 2017 and section 6 of C.G.S.T. Act 2017 merely means that State Authorities empowered under the U.P.G.S.T. Act 2017 can also enforce the provisions of C.G.S.T. Act 2017 or I.G.S.T. Act 2017, but it does not mean that they can apply the provisions of U.P.G.S.T. Act 2017 or Rules made thereunder to cases of inter-State trade in violation of section 20(xv) of I.G.S.T. Act 2017. It does not mean that the State Government can issue a notification under Rule 138 of U.P.G.S.T. Rules made under U.P.G.S.T. Act 2017 to prescribe documents to be carried in an inter-state supply of goods and services regarding which only the Central Government has the power under section 20(xv) of I.G.S.T. Act 2017 read with section 68 of C.G.S.T. Act 2017 and Rule 138 of C.G.S.T. Rules 2017.

The fact that the authorities under the State Act were empowered to exercise the powers under the C.G.S.T. Act 2017, assuming it to be so, is inconsequential, as, it is not their jurisdiction to exercise power of seizure which is under question, but, the manner in which they have exercised it on the basis of an inapplicable provision of law, as, they have proceeded on the presumption that T.D.F. Form-1 prescribed under a notification issued by the State Government under Rule 138 of the Rules made under the U.P.G.S.T. Act 2017, was required to be carried, which is not the requirement in law. For this very reason the judgment dated 29.1.2018 passed by a Coordinate Bench of this Court in Writ Tax No.95 of 2018 does not apply to the instant case, as the challenge therein was to the very power of the State Authorities under U.P.G.S.T. Act 2017 to seize goods involved in inter-state supply. Here the question is whether petitioner was required to carry T.D.F. Form I or not, which we have answered in the negative.

As regards the provisions of section 129 U.P.G.S.T. Act 2017 under which the impugned action has been taken, the same is

not applicable to an inter-State trade or commerce. By virtue of section 20 of the I.G.S.T. Act 2017 it is section 129 of C.G.S.T. Act 2017 that would apply, but this is not the ground on which we are invalidating the impugned action, as, if it is traceable to the aforesaid provision of C.G.S.T. Act 2017 which is pari materia to the State Act, then mere wrong mentioning of a provision would be too technical a ground for interference. We are invalidating the action on account of absence of any notification by the Central Government under Rule 138 of C.G.S.T. Rules 2017 and in view of incorrect application of notification issued by the State Government under Rule 138 of U.P.G.S.T. Rules.

We are supported in our view not only by the statement made by Dr. Deepti Tripathi as recorded hereinabove, but also by the judgment of the Kerala High Court on the subject as reported in ASCICS Trading Company v. Assistant State Tax Officer & anr., 2017 NTN (Vol.65) 145, wherein it has been held as under:

"3. To a pointed query as to the power of the State Government to detain goods for alleged non compliance with the requirement of carrying the prescribed documents under the I.G.S.T. Act, which is the basis for the detention in Ext. P5 notice impugned in the writ petition, the learned Government Pleader would take me through the provisions of the IGST Act, CGST Act and SGST Act and in particular, the provisions of Section 4 and Section 20 of the IGST Act and Section 6 of the CGST Act read with Rule 138 of the CGST Rules as amended by notification No.27/2017 - Central Tax for the purposes of pointing out that, although the power to prescribe the documents that are to accompany the transportation of goods in the course of interstate trade is conferred on the Central Government, the Central Government has, till date, not notified the documents that have to be carried by a transporter of the goods in the course of interstate movement. Under the said circumstances, and finding that neither the State Legislature nor the State Government would have the power to make laws/rules to govern interstate movement of goods in the course of trade, and for the purposes of levy of tax, I am of the view that detention in Ext.P.5, for the sole reason that the transportation was not accompanied by the prescribed documents under the IGST Act/CGST Act/CGST Rules, cannot be legally sustained. I therefore, allow the writ petition by making the interim order absolute."

Furthermore, we find that alongwith the consignment of goods the driver was carrying an invoice which mentioned that the goods were being taken from the State of Uttarakhand to the State of West Bengal, therefore, as of now, it was an inter-State trade and there is nothing on record to show otherwise. The assertion that I.G.S.T. had already been paid, has also not been denied by the opposite parties nor that both the consignor and consignee are registered dealers. Moreover, the requisite details having been mentioned in the invoice etc. the same would be verified at the point of destination and accordingly the matter would be scrutinized as regards the liability of Tax.

The notification dated 21.7.2017 issued by the State Government under Rule 138 of the U.P.G.S.T. Rules 2017 made under section 164 of the U.P.G.S.T. Act 2017 was clearly inapplicable for the reasons already mentioned earlier. There was no intent to evade tax."

The said decision applies to the case at hand also.

We may also refer to another Division Bench judgment of this court in *Writ (Tax) 587 of 2018, Godrej & Boyce Manufacturing Co. Ltd. v. State of U.P., decided on 18.9.2018*, wherein also these aspects of the matter have been considered. Even as per the said decision the impugned action is not sustainable.

We may also refer in this regard to a Single Judge Bench judgment dated 22.11.2019 rendered in *Writ Petition No. 23248 (MS) of 2019* wherein also a similar issue was considered and the facts of the case were quite similar to the one at hand. In the said decision relying upon the Division Bench judgment in the case of *Satyendra Goods Transport Corp. v. State of U.P.* (supra) and another Division Bench judgment in the case of *M/s Shaurya Enterprises v. State of U.P. & ors., Writ Tax No. 563 of 2018*, similar orders passed were quashed.

In the judgment in *Shaurya Enterprises* (supra) the Division Bench has categorically held that admittedly till 31.3.2018 it was not mandatory to download e-way bill from the official portal. The court further observed that it found substance in the submission of the learned counsel for the petitioner that only with effect from 1.4.2018 the requirement of downloading of e-way bill was compulsory.

For all these reasons, the judgment dated 13.3.2019 passed by the by the Addl. Commissioner (Gr.II)(Appeal)-IV-Commercial Tax, Lucknow, in First Appeal No. 8 of 2018 as also the order dated 26.2.2018 under section 129(3) of the U.P.G.S.T. Act 2017 are hereby quashed.

Consequent to aforesaid orders the opposite parties are directed to refund the amount deposited by the petitioners as tax and penalty under the U.P.G.S.T. Act 2017, within two months.

The writ petition is **allowed**.

(Rajan Roy, J.)

Order Date :- 16.11.2021/A.Nigam