

RAM PRAKASH CHAUHAN v. COMMR. (*Vibhu Bakhru, J.*) 387

(2023) 1 High Court Cases (Del) 387

2023 SCC OnLine Del 285

a HIGH COURT OF DELHI

(BEFORE VIBHU BAKHRU AND AMIT MAHAJAN, JJ.)

RAM PRAKASH CHAUHAN .. Petitioner;

Versus

COMMISSIONER OF DELHI (GOODS AND SERVICE TAX) AND ANOTHER .. Respondents.

b WP (C) No. 6924 of 2022, decided on January 19, 2023

GST — Central Goods and Services Tax Act, 2017 — S. 129 — Detention, seizure of goods and conveyances in transit — Release of goods on payment of tax and penalty — Whether voluntary — Held, payment of tax for release of seized goods does amount to voluntary payment of tax — Petitioner paid tax and penalty under impugned order of demand and penalty for release of goods — Petitioner not precluded from challenging the impugned order — Further, payment of tax does not amount to consent to such order

c Disposing of the petition, the High Court of Delhi

Held :

d The payment of tax, on order of demand and penalty is not a consent order, and the petitioner is not precluded from challenging the same. Payment of tax and penalty for release of the goods is not voluntary. (Para 20)

VS-AS/139829/DEL

Advocates who appeared in this case :

e Ms Smriti Sinha, Satyam Thareja, Ms Vasundhara Nagarath and Ms Shriyanshi Pathak, Advocates, for the Petitioner;
Satyakam, Additional Standing Counsel, for the Respondents.

The Judgment of the Court was delivered by

VIBHU BAKHRU, J. (ORAL)— The petitioner has filed the present petition impugning an order dated 23-10-2020, whereby the petitioner's goods were detained under Section 129(1) of the Goods and Services Tax Act, 2017 (hereafter "the Act") as well as an order dated 23-10-2020 raising a demand of tax and penalty of a sum of Rs 2,78,129.

2. The petitioner had appealed the said orders. However, the said appeal was dismissed by the appellate authority in terms of an order dated 31-12-2021. The petitioner also impugns the said appellate order.

g 3. The petitioner states that it carries on the business of trading in steel/iron bars as a sole proprietor of a concern named Shri Ram Enterprises.

h 4. The controversy, in the present case, relates to detention of a consignment of goods intercepted during their transportation. The petitioner states that it had purchased the said consignment of steel from M/s Mahendra Steels (GSTIN 07ABBFM3857D1ZE) and had sold it to M/s S.K. Integrated Consultants (GSTIN 07AAQFSS059PIZ8). The said goods were in the process of being

2J

388

HIGH COURT CASES (DELHI)

(2023) 1 HCC (Del)

transported directly from the premises of M/s Mahendra Steels to M/s S.K. Integrated Consultants.

5. The petitioner claims that an e-way bill (E-Way Bill No. 731151893114) dated 19-10-2020 was generated for transporting the said goods. The said e-way bill duly recorded the movement of goods in question, in a truck bearing Registration No. HR 46-D 1337 from M/s Mahendra Steels (Khasra No. 59/8 Tel Wali Gali, Mundka, Delhi) to Dwarka more near Dwarka Metro Station, Dwarka, New Delhi - 110 077, which are the premises of S.K. Integrated Consultants.

6. The petitioner states that the e-way bill clearly mentions the GSTIN number of the petitioner being GSTIN 09AJJPC9819MIZL. However, since the petitioner had sold the goods in question to M/s S.K. Integrated Consultants, therefore, the address provided in the e-way bill was that of M/s S.K. Integrated Consultants.

7. The truck was intercepted by the GST authorities on 19-10-2020 at 11.00 p.m. The said truck was detained on the ground that the documents found were defective. However, there is some controversy in this regard as the respondent claims in the counter-affidavit that the goods were not accompanied by any e-way bill but merely an invoice in the name of M/s S.K. Integrated Consultants.

8. The petitioner's goods were detained by a detention order dated 23-10-2020 and on the same date, notice under Section 129(3) of the GST Act was issued. The said notice stated the reasons for detaining the goods as "prima facie, the documents tendered are found to be defective".

9. On the same date (that is, 23-10-2020), an order of demand of tax and penalty was passed raising a demand of Rs 2,78,129 and a penalty of an equivalent amount.

10. The petitioner states that he required the goods urgently and therefore, paid the tax and penalty demanded for securing the release of goods.

11. Thereafter, the petitioner preferred an appeal before the appellate authority impugning the said demand of tax and the levy of penalty. The said appeal was dismissed by the appellate authority by an order dated 31-12-2021.

12. The appellate authority found that the order dated 23-10-2020, passed by the proper officer, was legally justified and required no interference. The reasons for the said conclusion are set out in para 11 of the order passed by the appellate authority, which reads as as under:

"11. I have heard the submissions of the representatives of the appellant and also gone through the impugned order issued in GST MOV-09 by the proper officer dated 23-10-2020 along with all the other documents placed on record. After having carefully perused the impugned order as well as written submissions and the grounds raised by the appellant in the instant appeal, it is found that the proper officer has issued the detailed/speaking order after complying the provisions as envisaged under the DGST Act and rules made therein under. The proper officer has categorically pointed the discrepancy in form of mismatch between the e-way bill and goods in movement in the order which formed the basis for penalising the appellant

a and passed the impugned order accordingly. Even otherwise, it is also worthwhile to mention that the appellant himself has admitted the liability fastened upon him by paying the demand towards tax, interest and penalty to the Government and in view of the same, it appears that the proper officer was legally justified in raising the impugned demands towards tax and penalty in MOV-09 Thus, the contentions raised by the counsel for the appellant have no merits and hence rejected accordingly.”

b **13.** Ms Sinha, the learned counsel for the petitioner, submits that the GST authorities concerned had not mentioned any specific reason for detaining the goods, raising the demand of tax or for levying penalty, in any of the orders passed by the said authorities.

c **14.** The notice dated 23-10-2020 merely indicates that the documents tendered are found to be defective; it does not mention any specific defect found by the GST authorities concerned.

d **15.** The order of tax and demand, which is also dated 23-10-2020, does not specify any reason why the documents accompanying the goods were found to be defective.

e **16.** Further, as is apparent from para 11 of the order passed by the appellate authority, the order which formed the basis for penalising the appellant too does not disclose the discrepancy or mismatch between the e-way bills and the goods.

f **17.** Admittedly, there has been no mismatch in the quantity of the goods found in the vehicle and the invoice produced. However, according to the respondents, the goods were not accompanied by an e-way bill. Although this is stated in the counter-affidavit, the said fact does not find mention in the order of demand dated 23-10-2020 or the order dated 31-12-2021, passed by the appellate authority.

g **18.** The learned counsel for the petitioner also submits that there is an error in the e-way bill inasmuch as it does not reflect the name of the consignee but merely mentions the petitioner’s GSTIN number. She submits that the e-way bill is required to be read with the two invoices — one invoice raised by M/s Mahendra Steels addressed to the petitioner and the second raised by the petitioner in the name of S.K. Integrated Consultants. She contends that if these documents are viewed in conjunction with one another, it would be clear that any error in the documents is only a minor error and the petitioner cannot be penalised by imposition of tax on the goods as well as penalty of an equivalent amount.

h **19.** Mr Satyakam, learned counsel for the respondent, states that the order dated 23-10-2020, raising a demand of tax and penalty, is a consent order and therefore, the GST officer concerned was not required to give detailed reasons. Ms Sinha disputes the contention that the order dated 23-10-2010 was a consent order. She submits that the petitioner had no option but to pay the amount of tax and penalty as the goods had been detained and the petitioner required their release.

390

HIGH COURT CASES (DELHI)

(2023) 1 HCC (Del)

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. a

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. b

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.

23. In view of the above, the order dated 23-10-2020, raising a demand of tax and penalty, is set aside. The order dated 31-12-2021 passed by the appellate authority is also set aside. The matter is restored to the file of the GST officer concerned. He shall issue a fresh show-cause notice within a period of two weeks from today and pass an appropriate order after affording a reasonable opportunity to the petitioner to be heard. c

24. The petition is disposed of in the aforesaid terms. d

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