

Court No. - 35

Case :- WRIT TAX No. - 826 of 2017

Petitioner :- M/S Raj Iron & Building Materials

Respondent :- Union Of India Thru' Its Secy. & 3 Others

Counsel for Petitioner :- Alope Kumar

Counsel for Respondent :- C.S.C.,A.S.G.I.

Hon'ble Bharati Sapru,J.

Hon'ble Saumitra Dayal Singh,J.

Heard Sri Alope Kumar, learned counsel for the petitioner and Sri C.B. Tripathi, learned counsel for the respondents.

This writ petition has been filed to challenge the seizure order dated 06.12.2017 by which the petitioner's goods mainly TMT rod had been seized while it were being imported by the petitioner from West Bengal. At the stage of seizure, a show cause notice was issued and seizure order was passed pursuant thereto. The only ground found recorded to effect seizure is that the E-Way Bill was not found accompanying the goods though admittedly, the goods were being imported against regular Tax Invoice. Then, it is also the case of the petitioner that it had downloaded the E-Way Bill from the website of the department on 05.12.2017, a copy of which is also annexed to the writ petition. In the short counter affidavit filed by the State, the reply furnished by the assessee before authorities below containing that stand has also been brought on record.

Therefore, it does appear that the E-Way Bill had been downloaded and produced though with some delay but before conclusion of the penalty proceedings.

In view of the fact that in the present case there is no allegation of evasion of tax liability established either from the reading of the show cause notice or the seizure order or the penalty order the consequential penalty imposed appear to have been occasioned upon a mere technical breach and not on account of any intention to evade tax.

In the facts of the present case, there is no foundation for such allegation.

It is also not disputed that being faced at present there are certain difficulties with regard to the downloading of the E-Way Bill and also certain doubts still remain with regard to the requirement and submission of E-Way Bill.

In view of the above, the penalty order and the seizure order cannot be sustained and are hereby quashed. The petitioner's vehicle along with the goods may be released in favour of the petitioner forthwith.

The writ petition is **allowed**. No order as to costs.

Order Date :- 22.12.2017

A. Singh