

Court No. - 21

Case :- WRIT TAX No. - 763 of 2018

Petitioner :- M/S Modern Traders

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Nishant Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Krishna Murari,J.

Hon'ble Ashok Kumar,J.

Heard Sri Nishant Mishra, learned counsel for the petitioner and Sri Jagdish Mishra, learned standing counsel.

The instant writ petition has been filed by the petitioner by which the petitioner has sought the following relief :

"A. Issue a writ, order or direction in the nature of certiorari quashing the impugned seizure order and consequential order under Section 129(3) (Annexure 1 and 2) passed by respondent no.3 on the same i.e. 5.5.2018.

B. Issue a writ, order or direction in the nature of mandamus commanding respondent no.3 and his agents, to release the Vehicle No. UP13AT-1153, without insisting for deposit of any amount of tax/penalty."

The brief facts of the case are that the petitioner is a registered firm and is engaged in business of Iron and Steel goods. Certain goods of the aforesaid nature were sold to one M/s Arjun Dev & Company, Delhi, who is also a registered company against the invoice No. 0003 dated 5.4.2018 after charging IGST @ 18%. The goods were handed over to the transporter who has loaded the same in a vehicle No. UP 13 AT 1153 on 4.5.2018. It is an admitted case of the petitioner that though the E-way bill post 1.4.2018 was not clear and the notification issued under CGST/UPGST Act were silent with regard to requirement of E-way bill for inter-state transactions, the petitioner dispatched the goods without generating the E-way bill.

While movement of the vehicle and when the vehicle crossed Yamuna Express Way it was intercepted by the respondent no.3 Assistant Commissioner, State Tax, Mobile Squad, Unit-II, Noida at 1.30 a.m. on 5.5.2018 solely on the ground that the goods were not accompanied with E-way bill. The respondent no.3 has proceeded for inspection/physical verification of the goods and for the same he has issued verification report in part-A and part-B on 5.5.2018 itself wherein no time has been mentioned. When the proprietor of the petitioner's firm has received the information about interception of the vehicle, he has immediately generated E-way bill on 5.5.2018 at 11.55 a.m.

and tried to contact the respondent no.3, however, he was informed that the respondent no.3 will be available after 2 p.m. and thereafter at 2.30 p.m. the aforesaid E-way bill was furnished.

The submission of the learned counsel for the petitioner is that though the petitioner has furnished the E-way bill before the respondent no.3 prior to the seizure proceedings and seizure order, but the respondent no.3 has passed the seizure order. Again without mentioning the time of passing the seizure order a consequential notice under Section 129(3) of the UPGST Act (hereinafter referred to as the Act) was issued requiring the petitioner to deposit the tax as well as the penalty to the tune of Rs.46,119/- each. An order under Section 129(3) was also passed on the same day i.e. 5.5.2018 in which no time has not been mentioned by the respondent no.3.

The contention of the learned counsel for the petitioner is that both the impugned seizure order as well as the order passed under Section 129(3) are completely without jurisdiction, arbitrary as such are nothing but clearly a misuse of power by the respondent no.3. Counsel for the petitioner has relied upon a recent decision of this Court in the case of **Axpress Logistics India Pvt. Ltd. vs. Union of India and 3 others** reported in **2018 NTN (Vol.66) 245**.

Learned counsel for the petitioner has submitted that the goods were intercepted at 1.30 a.m. on 5.5.2018 whereas the E-way bill was generated on the same day at 11.55 a.m. which was furnished before the respondent no.3 but reasons best known to the respondent no.3, a seizure order and consequential penalty order has been passed. Counsel for the petitioner has submitted that once E-way bill was generated after interception of the goods, but before seizure order is passed, then the goods cannot be seized as is held by this Court in the case of **Axpress Logistics India Pvt. Ltd. (supra)**. Counsel for the petitioner has also relied upon the circular dated 13.4.2018 issued by the Central Board of Direct Tax and Custom distinguish between interception and detention and hence in the instant case since the petitioner has furnished the E-way bill prior to detention and seizure of goods, no seizure order can legally be passed nor penalty can be asked.

We have heard learned counsel for the parties and perused the documents enclosed along with the writ petition.

We find substance in the submission of the learned counsel for the petitioner that while issuing the interception memo the respondent no.3 has mentioned the time being 1.30 a.m. on

5.5.2018 and directed the petitioner to appear on 6.5.2018 at 10 a.m. for physical verification, however while preparing the verification record (Part-A and Part-B) no time has been mentioned.

Learned counsel for the petitioner has also brought to our notice that the respondent no.3, with malice intention, has deliberately not mentioned the time in either of the orders passed being the seizure order under section 129(1) and penalty under Section 129(3). Both the aforesaid orders are passed on 5.5.2018 i.e. before the date which has been indicated in the interception memo being 6.5.2018. Learned counsel for the petitioner has submitted that since the petitioner has placed the E-way bill on 5.5.2018 itself the respondent no.3 has illegally proceeded to pass the impugned orders before any physical verification done.

We find substance in the submission of the learned counsel for the petitioner. Once the E-way bill is produced and other documents clearly indicates that the goods are belongs to the registered dealer and the IGST has been charged there remains no justification in detaining and seizing the goods and asking the penalty.

In view of the aforesaid facts, we quash the seizure order dated 5.5.2018 as well as the consequential penalty order dated 5.5.2018. We direct the respondent no.3 to immediately release the goods and vehicle in favour of the petitioner.

The writ petition is allowed..

Order Date :- 9.5.2018
S.S.

((Ashok Kumar, J.)

(Krishna Murari, J.)