

**Court No. - 35**

**Case :-** WRIT TAX No. - 771 of 2017

**Petitioner :-** M/S M.K. Enterprises Thru' Its Prop. Mukesh Kumar

**Respondent :-** State Of U.P. & 3 Others

**Counsel for Petitioner :-** Suyash Agarwal

**Counsel for Respondent :-** C.S.C.,A.S.G.I.,Gyan Narayan Kanaujiya

**Hon'ble Bharati Sapru,J.**

**Hon'ble Saumitra Dayal Singh,J.**

This writ petition has been filed by the petitioner to challenge the order dated 28.10.2017 passed under Section 129(1) U.P. GST Act (hereinafter referred to as the Act) and the penalty order dated 31.10.2017 passed under Section 129(3) of the Act.

The petitioner claims to to transporting 'Panmasala' from Delhi to Dumka, Jharkhand. The goods were passing through State of U.P. being a transit State. On 27.10.2017 the goods were detained. At that stage only one reason was informed to the petitioner for detention being absence of Transit Declaration Form (TDF in short). The petitioner claims to have filed reply on 27.10.2017. Along with that reply a copy of it's invoice and other documents were annexed.

It appears that at the stage of passing seizure order dated 28.10.2017, the seizing authority compared the IGST and compensation cess paid as disclosed in the Tax Invoice found accompanying the goods and as disclosed in the copy of the Tax Invoice filed by the petitioner along with the reply.

There is apparent discrepancy in those particulars. While in the copy of Tax Invoice (number 19) dated 25.10.2017 found accompanying the goods the IGST and the

compensation cess values have been mentioned at Rs. 17,42,400/- and Rs. 11,88,000/- respectively. Those values have been mentioned at Rs. 5,54,400/- and Rs. 11,88,000/- in copy of Tax Invoice (no. 19) dated 25.10.2017 filed along with the reply furnished by the petitioner.

Taking note of the aforesaid discrepancy the proper officer has without issuing any other or further notice passed the seizure order wherein an intention to evade tax has been inferred against the petitioner. Consequently, the penalty order has been passed on 31.10.2017.

Learned counsel for the petitioner submits, the detention and seizure had been made only on account of absence of TDF form. No other ground had been disclosed to the petitioner at that stage.

He therefore submits, the seizure has been made ex-parte though the movement of goods from Delhi to Jhankhand was otherwise established on record and the goods could not have been detained or seized merely because of the TDF form has not been found.

Opposing the writ petition, Sri Manish Goyal, learned Additional Advocate General assisted by Sri C.B. Tripathi, learned standing counsel submits, while at the stage of detention there was only one copy of the Tax Invoice available with the goods and therefore the only reason for detention as communicated to the petitioner was of absence of TDF, however, from the reply filed by the petitioner itself it became clear that tax was sought to be evaded inasmuch as, according to him two copies of the computer generated tax invoice cannot record different figures of IGST

and compensation cess. He therefore submits, the seizure order has been correctly passed on the allegation of intention to evade tax for the reason of Tax Invoice being not genuine.

Without going into the merits of the case, we find that the allegation made in seizure order that petitioner was not given any opportunity to show cause or give reply to the allegation on which goods have been seized.

Inasmuch as the petitioner had no notice or opportunity to explain his conduct with respect to the discrepancy in the Tax Invoice alleged in the seizure order, we consider it proper to set aside the orders dated 28.10.2017 and 31.10.2017 passed under Section 129(1) and 129(3) of the Act. The matter is remitted to the respondent no. 4. The petitioner shall treat the seizure order dated 28.10.2017 to be a show cause notice in respect of the charge levelled against it. It shall furnish the reply thereto before respondent no. 4 necessarily within a period of one week from today. Upon such reply being furnished, respondent no. 4 shall have one week thereafter to pass a fresh order, in accordance with law. However, inasmuch as there is no allegation against the vehicle with respect to the same may be released in the meanwhile without any security.

In view of the above, the instant writ petition is **disposed of**.

**Order Date :-** 1.12.2017

A. Singh