

Case :- WRIT TAX No. - 731 of 2018

Petitioner :- S.B.G.C Logistics

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Nishant Mishra, Vipin Kumar Kushwaha

Counsel for Respondent :- C.S.C., A.S.G.I., B.K. Singh Raghuvanshi

Hon'ble Krishna Murari, J.

Hon'ble Ashok Kumar, J.

Heard Sri Nishant Mishra, learned counsel for the petitioner, Sri A.C. Tripathi representing the respondent nos.1, 2 and 3 and Sri B.K.Singh Raghuvanshi, learned counsel appearing on behalf of the respondent nos.4 and 5.

Learned counsel for the petitioner, at the outset, has contended that he is not pressing the alternative prayer made in prayer no.A.

The petitioner is aggrieved by the seizure of his goods seized vide impugned order dated 24.04.2018 passed by the Assistant Commissioner, State Tax, Mobile Squad, Unit VIIth, Ghaziabad (respondent no.3) as well as consequential notice dated 24.04.2018 issued under Section 129 (3) of the GST Act, 2017 (*hereinafter referred as 'the Act'*).

The contention of the counsel for the petitioner is that the petitioner is a transporter and is engaged in business of transporting goods from one place to another having its head office at Delhi and godown at U.P. Boarder, Ghaziabad as also branches in various cities.

On 18.04.2018 and 20.04.2018 four registered persons/dealers of New Delhi booked their goods for transportation to four registered persons/dealer of Assam and Nagaland. The submission of counsel for the petitioner is that the consignors and the consignees are registered with their respective GST

Consignors prepared the invoices and charged the IGST at appropriate rate and downloaded the e-way bill from the common portal electronically in which the transporter's details and details of invoices are duly mentioned.

The contention of the counsel for the petitioner is that though the e-way bill has been downloaded from common portal while providing all details as necessary to be mentioned in 'Part A', since the dealers/consignors were not aware about the details of vehicle by which the goods were supposed to be transported from the godown of the transporter situated at U.P. Boarder, Ghaziabad to its ultimate destination the vehicle details could not be furnished in 'Part B' at that time.

According to the counsel for the petitioner, the goods proceeded from the place of business of the consignors from New Delhi and required to be brought to the U.P. Boarder godwon at Ghaziabad and thereafter the same were required to be reloaded in bigger trolley/vehicle for the purpose of transportation from Ghaziabad to Assam and Nagaland respectively and when the aforesaid goods proceeded from Delhi and entered into the State of U.P., the same were detained by the respondent no.3 at 3.15 P.M. on 21.04.2018, solely on the ground the goods are not accompanied with filled 'Part B' of form GST e-way bill-01.

The person in-charged, though has explained that the goods are required to be reloaded at the U.P. Boarder godown for the purpose of transportation from there hence filling the e-way bill-01 of 'Part B' could not be done, for the reason that the details of vehicle, which was supposed to proceed for transportation from U.P. Boarder godown to its ultimate destination, were not known.

Sole ground for seizure of goods and vehicle and issuance of notice for penalty is that 'Part B' of e-way bill was not filled up.

The respondent no.3 after passing the seizure order dated 24.04.2018 has directed the petitioner to deposit an amount of Rs.67,323/- and equivalent amount of penalty.

In paragraph 25 of the writ petition, the petitioner has contended that goods were being transported from the place of business of registered persons to the godown of the transporter to be reloaded in big Trolley and thereafter further transportation, and this distance from Bawana, New Delhi to U.P. Boarder godown is less than 50 km.

Counsel for the petitioner has further submitted that in view of the decision taken by the Government that if the goods are transported within a distance of 50 km in the case of intra-state transaction, there is no requirement to fill up 'Part B'. Notification no.12 of 2018 dated 07.03.2018 craves out an exception and provides that registered person of transporter may not furnish details of conveyance in 'part B' and further where the goods are transporter for a distance of upto 50 km within the State or Union Territory from the place of business of consignor to the place of business of transporter for further transportation.

Learned counsel for the petitioner has submitted that the Central Government, for similar cases, clarified vide clarification dated 31.03.2018 that in such cases, as like the present petitioner, only 'Part A' of Form GST e-way bill-01 to be filled up and not 'Part B'.

In support of his claim, learned counsel for the petitioner has also relied on a recent decision of this Court in **Writ Tax**

No.689 of 2018 (Rivigo Services Pvt. Ltd. vs. State of U.P. and others) decided on 24.04.2018 in which this Court has set aside the seizure order as well as consequential proceedings initiated under Section 129(3) of the Act on the similar grounds.

Since the facts of the present case are identical as of **Rivigo Services Pvt. Ltd. (supra)** and in view of the above Notification and decision of the Central Government, we are disposing of the present petition on similar terms by directing the respondent no.3 to release the seized goods and vehicle forthwith. We further hold that, in the present case, the seizure proceedings are carried out illegally and the same are wholly without jurisdiction as also against the Government Notification and Central Government decision, hence both the seizure order and consequential penalty proceedings under Section 129 (3) of the Act are hereby set aside.

The writ petition stands **allowed**.

Order Date :- 3.5.2018

A.Kr.*

[Ashok Kumar, J.]

[Krishna Murari, J.]