

न्यायालय संयुक्त आयुक्त (अपील)—चतुर्थ, राज्य कर रुद्रपुर

उपस्थिति: श्री डी0एस0नबियाल, संयुक्त आयुक्त (अपील)—चतुर्थ, राज्य कर रुद्रपुर

अपील संख्या APL-02-08/18 वर्ष - 2018-19

सर्वश्री गुडवियर फैशन प्रा0लि0 पन्तनगर

GSTN :- 05AACCG4408K1ZR

बनाम

सहायक आयुक्त, सचल दल इकाई—बी, रुद्रपुर।

प्रतिनिधित्व :: अपीलकर्ता की ओर से

विभाग की ओर से—

श्री हेमन्त सिंघल, अधिवक्ता फर्म।

श्री विक्रम सिंह मेहरा, राज्य कर अधिकारी,
विभागीय प्रतिनिधि।

// निर्णय //

यह अपील श्री अनिल कुमार सिन्हा, सहायक आयुक्त राज्य कर सचल दल इकाई "बी" रुद्रपुर द्वारा वर्ष 2018-19 के लिए वस्तु एवं सेवा कर अधिनियम की धारा-129(1) के अन्तर्गत पारित आदेश दिनांक 10.10.2018 के विरुद्ध योजित की गयी, जिसमें अपीलार्थी पर रू0 129915.00 आईजीएसटी के तहत तथा रू0 129915.00 अर्थदण्ड आरोपित किया गया। इस प्रकार उक्त अपील में विवादित कर की कुल धनराशि रू0 259830.00 है।

अपील की सुनवाई हेतु श्री हेमन्त सिंघल, अधिकृत प्रतिनिधि फर्म उपस्थित हुए। अपील मैमो में दिये गए तथ्यों को दोहराया गया तथा मौखिक तर्क भी दिये गए। बताया कि "पारित आदेश विधि व तथ्यों के विरुद्ध हैं।

- i. That the proper officer has grossly erred in passing the impugned order under Section 129(3) of the GST Act. Order passed by the proper officer is against the settled principles of law and is liable to be quashed.
- ii. That Appellant Supplier was transporting goods in the state of Uttarakhand under cover of valid Tax invoice duly charging Integrated Tax of Rs 1,29,915/-. Also E Way Bill (EWBN- 3710 4848 2948) has been generated for the movement of goods with correct Invoice details, Vehicle Details and Goods Details.
- iii. It is clearly evident that there is no intention at all to evade tax in the present case and the error committed in E Way Bill is a clerical mistake apparent from the face of records.
- iv. The Learned officer has grossly erred in passing the Impugned Order for imposition of tax and penalty liable to be quashed by the Honorable Appellate Authority on following grounds:
 - a. Necessity of *Mensrea* under GST Act for Penalty and Prosecution,
 - b. No penalty for mistake in documentation apparent on the face of record as per Section 126 of GST Act,
 - c. Order is against the intent of section 129 and 130 of GST Act,
 - d. Impugned order is contrary to the Circular no. 64/38/2018-GST & FAQ issued by Central board of indirect taxes and customs (CBIC),
 - e. Eway bill was corrected well before initiation of detention proceedings thus making the impugned order *void ab initio*,
 - f. No opportunity of being heard provided to the Applicant,
 - g. Order is against the well settled principles of law decided by the Courts.
- v. We have analyzed provisions of GST Act in the foregoing paragraphs to substantiate the grounds of appeal raised above.
- vi. **NECESSITY OF MENSREA FOR PENALTY AND PROSECUTION**

Section 135 of the Act specifies that "in any prosecution for an offence under this Act which requires culpable mental state on the part of accused, the court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution." Hence mensrea is a necessary ingredient under this Act, the court shall presume its existence and burden of proof to show its absence is on accused.
- vii. That the Integrated Tax of Rs 1,29,915 was correctly shown on both Tax Invoice and and E Way Bill. The invoice is correctly accounted for in the books of account of applicant.
- viii. It is clearly evident that there is no malafide intention to evade tax in the present case. Mensrea is essential to attract penalty under this Act. Thus penalty and prosecution proceeding are invalid and void.
- ix. That Hon'ble Supreme Court of India in the case of state of Kerala Vs M.M. Mathew (1978) vol.42-STC-348(SC) has also held that strong suspicion, strange coincidences and grave doubts cannot take the place of legal proof.
- x. **NO PENALTY FOR MISTAKE IN DOCUMENTATION APPARENT ON THE FACE OF RECORD**

Section 126 specifies that "No officer under this Act shall impose penalty for mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence. An omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record."
- xi. That E way bill is wrongly generated for Inward supply instead of Outward Supply is clearly evident from the documentation for the movement of goods. Thus in the present case no penalty should have been invoked by the proper officer as per Section 126 of GST Act.
- xii. The Impugned Order is bad in law and is liable to be quashed.

वैयक्तिक अधिकारी

संयुक्त आयुक्त (अपील) चतुर्थ
कमरा नं० 02 पर
राज्य कर, रुद्रपुर

IMPUGNED ORDER IS AGAINST THE INTENT OF SECTION 129 AND 130 OF GST ACT.

- xiii. Section 129 of GST Act, 2017 provides for detention, seizure and release of goods and conveyances in transit while Section 130 of the GST Act provides for the confiscation of Goods or conveyances and imposition of penalty. Proceedings for detention of goods under section 129 shall be initiated only when goods are liable to be confiscated under Section 130. *Detention of goods where there is no intention of evasion of tax is against the provisions of Section 129 and Section 130 of GST Act, 2017.* Sub Section (6) of Section 129 of GST Act, 2017 is reproduced hereunder:
"Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in subsection (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance of with the provisions of Section 130."
Thus sub section (6) of section 129 clearly indicates that detention orders shall be issued when goods are liable for confiscation under section 130.
- xiv. Further Sub section (1) of Section 130 provides that:
"Notwithstanding anything contained in this Act, if any person—
(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
(ii) does not account for any goods on which he is liable to pay tax under this Act; or
(iii) supplies any goods liable to tax under this Act without having applied for registration; or
iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or conveyance of the owner himself, his agent, if any, and the person in charge of the conveyance,
then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122."
Section 130 indicates beyond doubt that confiscation of goods is contemplated only where there is intent to evade payment of tax.
- xv. On harmonious interpretation of Section 129 and Section 130 of GST Act, it is clear that Detention proceedings can be initiated under Section 129 only if following conditions are satisfied:
a) Goods are liable to be confiscated under section 130,
b) Goods are being transported with the intention to evade tax,
- xvi. In the present case goods are not being transported with intention to evade tax and thus cannot be confiscated under section 130. Therefore Proper officer is grossly incorrect in initiating detention proceeding and subsequently levying Tax and penalty under section 129(3).

IMPUGNED ORDER IS CONTRARY TO THE FAQ ISSUED BY CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (CBIC)

- xvii. This aspect is clarified by Central Board of Indirect tax and Custom, New Delhi in the recently issued FAQs on GST 2nd Edition, 31 March 2017 (updated as on 1 Jan 2018). Relevant Extracts of Question 16 of Chapter 19 dealing with Inspection, Confiscation Search and Seizure are reproduced hereunder:
"Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. Seizure is taking over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation."
- xviii. In the present case both the parties are registered dealers and Integrated Tax has been correctly charged on the Invoice, there is no intention of evasion of tax thus Detention proceedings under section 129 cannot be initiated. There is only a clerical error of generating E Way Bill for Inward Supply instead of Outward Supply. Detention order passed under section 129 only on the ground that E Way Bill was incorrectly generated is against the intent of GST Law.
- xix. Given the above, it is evident that CBIC itself emphasize on initiating detention proceeding only when it is suspected that goods are liable to confiscated i.e. intention to evade tax. Therefore taking a contrary view would lead to an incongruous situation which is against the intent of legislature.

IMPUGNED ORDER IS CONTRARY TO THE CIRCULAR NO. 64/38/2018-GST ISSUED BY CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (CBIC) ON 14 SEP 2018

- xx. That various representations were received by the CBIC regarding imposition of penalty in case of minor discrepancies in the details mentioned in the e way bill although there are no major lapses in the invoices accompanying the goods in movement. In order to clarify this issue and to bring uniformity in implementation of GST provisions, Board, has issued Circular no. 64/38/2018- GST; Dated: 14 Sep 2018 modifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods.
- xxi. It was clarified in the circular that proceedings under Section 129 of the CGST Act may not be initiated for every mistake in the documents carried with the vehicle. In case a consignment of goods is accompanied with an invoice and also an e way bill, proceedings under section 129 of GST Act may not be initiated in case of minor discrepancies. That in such cases General Penalty to the tune of Rs 500/- each shall be imposed under section 125.

xxii. In light of the clarification issued by the Board on the abovesaid matter, proper officer is grossly wrong in invoking proceedings under section 129. Proceedings under Section 129 shall be initiated where goods are not accompanied by E Way bill or Invoice or any other specified document. However detention proceedings should not be initiated in case of minor discrepancies in generation of E Way Bill.

xxiii. In the present case Bill No., Bill Date, Vehicle No., Bill Amount, Bill Quantity, Product Description and Product HSN are correctly mentioned in E Way Bill. However E Way bill for Inward Supply is generated instead of Outward Supply. Invoking of detention proceedings on human error will be great hardship on the applicant.

IMPUGNED ORDER CONTRARY TO SETTLED LAW

xxiv. That in the matter of *Indus Towers Ltd. Vs. Assistant State Tax Officer (Kerala High Court) W.P. (C) No. 196 of 2018; Date of Order- 22/12/2017* it was observed that a combined reading of Sections 129 and 130, especially the provision contained in sub section (6) of Section 129 indicates that the detention of the goods is contemplated under the statutes only when it is suspected that the goods are liable to confiscation. This aspect is seen clarified by the Central Board of Excise and Customs in the FAQs published by them in Question No.-16 on 2nd Edition 31.3.2017 (updated as on 1 Jan 2018) also. Section 130 dealing with the confiscation of goods indicates beyond doubt that the confiscation of goods is contemplated under the statutes only when a taxable supply is made otherwise than in accordance with the provisions contained in the statutes and the Rules made there under with the intent to evade payment of tax. If that be so, mere infraction of the procedural Rules like Rules 55 and 138 of the State GST Rules cannot result in detention of goods, though they may result in imposition of penalty.

xxv. That the above consignment is properly accounted in books of accounts, being maintained in the ordinary course of our business.

xxvi. That the Proper Officer, Assistant Commissioner, Mobile Squad, Rudrapur in the penalty order or notice never mentioned that the goods were transported with intention to evade tax. Therefore such penalty order is not sustainable as there is no mala fide intention to evade payment of tax.

EWAY BILL WAS CORRECTED WELL BEFORE INITIATION OF DETENTION PROCEEDINGS THUS MAKING THE IMPUGNED ORDER INVALID

xxvii. That the correct E way bill was generated immediately after the Vehicle was intercepted and the mistake was brought to the notice. 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 the Allahabad High Court in the case of *Axpress Logistics India Pvt. Ltd. (supra)*. Circular No. 41/15/2018-GST 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.

xxviii. That in the matter of *M/s Modern Traders vs. State of UP and 2 Others (Writ No. 763 of 2018); date of order 9/05/2018; Allahabad High Court* wherein goods were detained and penalty order is passed on 05.05.2018 for not furnishing E way Bill. E Way bill was generated by the petitioner immediately after the vehicle was intercepted. Valid E Way bill was produced before the proper officer before initiating the detention proceedings and detention order. 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.

Above finding of Hon'ble Allahabad High Court is exactly applicable in appellant's case also as valid E Way bill was produced before initiating Detention Proceedings by the proper officer.

xxix. That in the matter of *Raj Iron & Building Materials Vs. Union of India through secretary and others (2018)36 V LJ17 (Writ tax no. 826 of 2017 decided on 22-12-2017)* wherein the goods (TMT rod) had been seized while it was imported by the petitioner from West Bengal. At the stage of seizure, a show cause notice was issued and seizure order was passed pursuant there to. 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 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 and produced though with some delay. Hon'ble Allahabad High Court held that "in view of the fact that in the present case that 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." This decision is equally applicable in appellant's case as the seizure order/penalty order passed U/S 129(1)/129(3) of GST Act 2017 and there is no intention to evade tax. Following the ratio laid down in above case, the order of penalty passed on 06-07-2018 U/S 129(3) of UP GST Act is against the GST Act/Rules and liable to be quashed.

NO OPPORTUNITY OF BEING HEARD PROVIDED

- XXX. Sub Section (4) of Section 129 of GST Act provides that "No tax Interest or penalty shall be determined under sub section (3) without giving the person concerned an opportunity of being heard." However in the present case despite asking for Detention order and Notice under section 129, proper officer didn't provide any document and insisted for payment of tax and penalty.
- XXXi. That the notice under Section 129 for Levy of tax and penalty was served to the authorized representative of applicant on 24 Sep 2018.
- XXXii. No opportunity of being heard was provided to the Appellant and Proper officer proceeded with the proceeding and passed Order for Demand of Tax and Penalty in "FORM GST MOV 09" on 20Sep 2018 itself imposing Penalty and Tax of Rs 1,29,915/-.
- XXXiii. The impugned order was issued well before the date of service of notice and date of hearing of the applicant.
- XXXiv. That Order referred above imposing Tax and Penalty is bad and not tenable in law and Ultra Vires the prevailing provisions of GST Law.
- XXXV. That on the facts, in circumstances and judicial pronouncements, the order of penalty passed by the Proper Officer is arbitrary, unjustified and liable to be quashed.
- XXXvi. That with due permission of the Court, the appellant reserves the right to add /amend or alter the grounds of appeal or add/amend fresh/further evidence in support of his submission for the proper administration of justice

उक्त आधार पर अपील स्वीकार किये जाने तथा पारित अर्थदण्ड आदेश निरस्त किये जाने की प्रार्थना की गयी।

इस प्रकार उक्त अपील में विवाद का बिन्दु यह है कि, क्या भौतिक रूप से उपलब्ध वाहन एवं e-way bill पर अंकित Reason for Transportaion (आपूर्ति के स्थान)में अन्तर होने पर वस्तु एवं सेवा कर की धारा-129(1) के अन्तर्गत कर व अर्थदण्ड आरोपित किया जाना उचित है ?

विभागीय प्रतिनिधि द्वारा विवादित आदेश में अंकित तथ्यों को दोहराया गया।

दोनों पक्षों को सुना गया तथा पत्रावली का अवलोकन किया गया। माल के साथ बिल, बिल्टी व e-way bill संलग्न थे। माल वाहन संख्या HR55P8436 द्वारा सर्वश्री गुडवियर फैशन प्रा0लि0 पन्तनगर से प्रान्त बाहर रिथत अपने डिपों सर्वश्री गुडवियर फैशन प्रा0लि0 गुडगांव हरियाणा को परिवहन किया जा रहा था, परन्तु e-way bill संख्या 371048482948 में Outward-supply के स्थान पर inward-supply अंकित था। इसी आधार पर सचल दल अधिकारी द्वारा अधिनियम की धारा-129(1) के अन्तर्गत अर्थदण्ड आदि कार्यवाही की गयी। अपीलार्थी का कथन है कि ई-वे बिल में केवल उपरोक्त अन्तर है और यह मानवीय त्रुटि के कारण हुआ है। बिल में वाहन संख्या Goodwear fashions pvt ltd manesar Gurgaon Haryana ही अंकित है। इस प्रकार केवल बहुत नगण्य अन्तर है, जिसे मानवीय त्रुटि माना जा सकता है। इस सम्बन्ध में यहाँ पर उल्लेखनीय है कि "Central Board of Indirect Taxes and Customs, Government of India Ministry of Finance द्वारा अपने Circular No. 64/38/2018-GST/Date - 14-09-2018 द्वारा परिवहन के दौरान वाहन को जाँच हेतु रोके जाने की प्रक्रिया के सम्बन्ध में एक सर्कुलर जारी किया गया, जिसमें e-way bill में कुछ साधारण त्रुटियाँ होने पर अधिनियम की धारा-129(1) की कार्यवाही न करने के दिशा निर्देश जारी किये गये हैं। उक्त सर्कुलर के बिन्दु संख्या-5 के उपबिन्दु-(F) में निम्नलिखित त्रुटि होने पर अधिनियम की धारा-129(1) के अन्तर्गत कार्यवाही शुरू न करने के निर्देश दिये गये हैं, :- "Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

प्रश्नगत संव्यवहार में भी e-way bill में वाहन संख्या में केवल Recipient के नाम के स्थान पर Supplier का नाम अंकित था, Outward-supply के स्थान पर inward-supply अंकित था, जबकि अपीलार्थी द्वारा बताया गया कि "हम अपनी फैक्ट्री रुद्रपुर पन्तनगर में सभी कच्चे माल की खरीद करते हैं और फिर तैयार माल का उत्पादन करने के बाद फिनिश माल को हमारी सेंट्रल वेयरहाउस ब्रांच मानेसर को टैक्स बिल के द्वारा स्थानान्तरित कर दिया जाता है। जहाँ से फिनिश माल की आगे बिक्री की जाती है।" इस सम्बन्ध में अपीलार्थी द्वारा लेजर व अन्य साक्ष्य प्रस्तुत किये गये, जिसकी जांच पर व्यापारी का कथन उचित पाया गया। इसके अतिरिक्त निर्मित ई-वे बिल में अन्य सभी प्रविष्टियों का इन्द्राज विधिवत् किया गया था। अतः उपरोक्त सर्कुलर के आलोक में सचल दल अधिकारी द्वारा अधिनियम की धारा-129(1) के अन्तर्गत कार्यवाही किया जाना विधि-अनुकूल नहीं है। अतः अपील स्वीकार करते हुए पारित आदेश निरस्त किया जाता है। उपरोक्त सरकुलर में ही बिन्दु-6 में अंकित किया है कि इस तरह के मामले में वस्तु एवं सेवा कर अधिनियम के अनुसार रू0 "एक हजार" का अर्थदण्ड किया जाना चाहिए। अतः सचल दल अधिकारी द्वारा आरोपित अर्थदण्ड व आई0जी0एस0टी0 की धनराशि क्रमशः रू0 129915.00 व रू0 129915.00 के स्थान पर आई0जी0एस0टी0 के तहत रू0 1,000.00 अर्थदण्ड आरोपित किया जाता है। सचल दल/कर निर्धारण अधिकारी रू0 1,000.00 आई0जी0एस0टी0 के अतिरिक्त समस्त आई0जी0एस0टी0 की धनराशि व अर्थदण्ड की धनराशि नियमानुसार अपीलार्थी को समायोजित करेंगे।

—: आदेश :-

अपील स्वीकार की जाती है। पारित आदेश अपास्त किया जाता है। अपीलार्थी द्वारा अर्थदण्ड व कर के रूप में जमा धनराशि नियमानुसार अपीलार्थी को समायोजित की जाए।

दिनांक-31.10.2018

सत्य प्रतिलिपि

व्यक्तिगत अधिकारी
संयुक्त कमिश्नर (अपील) चतुर्थ

ह0/

(डी0एस0नबियाल)

संयुक्त आयुक्त (अपील) चतुर्थ