

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T. AMARNATH GOUD

**WRIT PETITION No.2161 of 2020**

**ORDER:** (per Hon'ble Sri Justice M.S. Ramachandra Rao)

The petitioner herein is a proprietary concern engaged in the business of Iron and Steel and is a registered dealer on the rolls of the Hyderabad Rural STU-I, Centre Jurisdiction, Gajularamaram, Hyderabad (2<sup>nd</sup> respondent).

2. The petitioner was allotted GST No.36AAMPA4421B2ZC.
3. The petitioner purchased goods from a dealer M/s. JSW Steel Limited, Vidyanagar, Karnataka vide Tax Invoice No.19UJ2900401551 dt.11.12.2019 valued at Rs.3,52,920.74.
4. Against the said tax invoice under the Integrated Goods and Service Tax Act (I.G.S.T.), tax at Rs.18% was levied coming to Rs.63,526/-.

**The plea of the petitioner**

5. According to petitioner, when the consignment was coming from Vidyanagar, Karnataka with all requisite documents through a vehicle bearing No.KA 35 C 0141, it was detained at Jeedimetla at 05:30 p.m. on 12.12.2019, and a notice under Section 129 (3) of the C.G.S.T. Act, 2017 (for short, 'the Act') was issued alleging '*wrong destination*' and directing payment of 9% of the Central Tax and 9%

of State Tax and penalty equal to tax estimating the purchase value of Rs.11,14,579/- as against the actual tax invoice value of Rs.4,16,447/-.

6. It is contended by the petitioner that since at that time the proprietor of the petitioner could not contest it on account of there being a marriage in his house on 12.12.2019 at Hyderabad, and since the driver of the vehicle was pressurizing for release of the vehicle, he was forced to pay the amount mentioned in the notice dt.12.12.2019 issued by the 1<sup>st</sup> respondent.

7. The petitioner further contended that the said collection of tax and penalty by the respondents is through coercion and threat in spite of the fact that the consignment was covered by all the requisite documents. It is alleged that when the goods were in transit in an inter-State sale, the respondents cannot detain the same and demand and collect the tax in the manner they have done which is arbitrary and without jurisdiction.

8. It is also contended that the 1<sup>st</sup> respondent had no authorization as contemplated under Section 67 of the Act read with Section 68 thereof and the collection of taxes under both the Central and State Acts towards G.S.T. is arbitrary and highhanded; that at best the 1<sup>st</sup> respondent can collect from the dealer a security equivalent to the amount payable under Clauses (a) or (b) in the manner prescribed in Section 129(1) of the Act; and that the reason '*wrong destination*' given by the respondents is not a good and sufficient reason for

levying and collecting tax and penalty from the petitioner and the detention of the goods and the vehicle as well as collection of tax and penalty, is contrary to the provisions of G.S.T. Act, 2017.

9. It is also contended that penalty cannot be levied unless there is willfulness and contumacious conduct of the dealer, and therefore, the petitioner should be granted a refund of the amount of Rs.4,16,447/- levied and collected under both the Central Tax Act and the State Tax Act, 2017.

**The stand of the 1<sup>st</sup> respondent**

10. Counter-affidavit was filed by 1<sup>st</sup> respondent contending that there was no pressure on the dealer to pay the tax and penalty; moreover a show-cause notice in Form MOV-07 was given and opportunity to file objections was also given; and there was, therefore, compliance with principles of natural justice.

11. Quoting the terms of the invoice, it was contended how the total value of the goods in the vehicle transporting them from Karnataka to Hyderabad was arrived at; that even if the goods are coming from Karnataka there is a possibility that the goods were to be sold to third-party as a local sale or not intended to be delivered at the correct place indicated in the documents being carried in the conveyance / vehicle.

12. It is further contended that if the goods were to be delivered at Balanagar according to the invoice, the vehicle cannot be at

Jeedimetla since Balanagar comes first and Jeedimetla later, and no reasonable person would cross over Balanagar and then turn over to go back to the place of destination. It is also stated that there is a road from Jeedimetla to Balanagar which can be used to turn back to Balanagar. But, if the said road is blocked due to strikes or repairs or if there are rallies only that can be done, and there is no reason assigned to take the longer route avoiding the normal route.

**13.** It was further contended that no objection was raised regarding the notice to pay tax and penalty, and the amount was also paid without any protest.

**14.** It is alleged that under the guise of inter-State sale or supply, the petitioner tried to sell the goods in the local market evading levies both under the CGST and SGST. It is stated that the 1<sup>st</sup> respondent had authorisedly issued the impugned notice on 11.12.2019 to detain the goods.

**15.** It was also stated that the 1<sup>st</sup> respondent had valid authorization to detain the vehicle with the goods.

**The Consideration by the Court**

**16.** We have noted the contentions of both sides.

**17.** Admittedly, it was mentioned in the order of detention of the vehicle and the consignment carried thereon from Karnataka to Hyderabad issued under Section 129(1) of the CGST Act, 2017 that

the reason for such detention is '*wrong destination*'. Under the Act, this is not a ground to detain the vehicle carrying the goods or levy tax or penalty.

**18.** Though it is stated that tax and penalty were levied and collected because it was presumed that at Jeedimetla, there was *possibility* of a local sale, a mere possibility cannot clothe the 1<sup>st</sup> respondent to take the impugned action. There is no material placed on record by the 1<sup>st</sup> respondent to show that any attempt was made by the petitioner to deliver the goods at a different place and sell in the local market evading CGST and SGST, because it was found at Jeedimetla. It is not as if the detention was affected by the 1<sup>st</sup> respondent after noticing any such attempt to sell the goods in the local market by the petitioner.

**19.** When the vehicle is being driven from Karnataka by a local driver of Karnataka it is perfectly possible for the driver to lose his way on account of being unfamiliar with the roads in the city of Hyderabad and bypassing Balanagar and going to Jeedimetla. Or else he may have entered the City by a Ring Road from the direction of Jeedimetla to go towards Balangar, his destination.

**20.** So the fact that the vehicle was found at Jeedimetla does not automatically lead to any presumption that there was an intention on the part of the petitioner to sell the goods at the local market evading the CGST and SGST.

**21.** The invoice in the custody of the driver of the vehicle indicated that IGST @ 18% was already collected and the goods were coming from Karnataka to Balanagar in Hyderabad. When the IGST was already paid, the goods cannot be treated as having escaped tax and fresh tax and penalty cannot be imposed on petitioner.

**22.** We therefore hold that there was no warrant to detain the vehicle along with goods, demand payment of Rs.4,16,447/- as tax and penalty under the CGST and SGST Act, 2017.

**23.** Since petitioner could not contest it owing to the wedding ceremony in his family at that point of time in order to be able to secure the release of the vehicle carrying the goods at the instance of the driver of the vehicle, such payment has to be presumed as one made due to economic duress and the petitioner cannot be blamed for paying the same without protest, when he had no choice but to pay it.

**24.** In our considered opinion, there were no good and sufficient reasons for detention by the 1<sup>st</sup> respondent of the vehicle and the goods which it was carrying when the transaction causing movement of the goods was inter-State in nature and the provisions of the SGST were not shown to have been violated. Also, there is no warrant to levy any penalty since it cannot be said that there is any willfulness in the conduct of the dealer.

**25.** It is settled law that no tax shall be levied or collected except by authority of Law as per Article 226 of the Constitution of India.

**26.** In **Dabur India Ltd. vs. State of Uttar Pradesh**<sup>1</sup>, the Supreme Court observed that a litigant cannot be coerced by the Government to make payment of duties which the litigant is contending not to be leviable. The Supreme Court held that though the State is entitled to enforce payment and to take all legal steps, it cannot be permitted to play dirty games with the citizens to coerce them in making payments when the citizens were not obliged to make them. It also observed that if any money is due to the Government it should not take extra-legal steps to recover it.

**27.** Therefore, in our considered opinion, the impugned action of the respondents in collecting the amount of Rs.4,16,447/- from the petitioner towards tax and penalty under the CGST and SGST Act, 2017 under threat of detention of the vehicle carrying the said goods for an absurd reason ('wrong destination') when the vehicle in question carried all the proper documents evidencing that it was an inter-State sale transaction is clearly arbitrary, violative of Articles 14, 265 and 300-A of the Constitution of India.

**28.** The 1<sup>st</sup> respondent is directed to refund the same with interest at the rate of 6% per annum from 13.12.2019 till the date of payment within a period of three (03) weeks from the date of receipt of copy of the order.

**29.** The 3<sup>rd</sup> respondent shall also consider initiating disciplinary action against 1<sup>st</sup> respondent for the above conduct of 1<sup>st</sup> respondent.

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<sup>1</sup> (1990) 4 S.C.C. Pg.113

**30.** Accordingly, the Writ Petition is allowed as above with costs of Rs.25,000/- to be paid by 1<sup>st</sup> respondent.

**31.** As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

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**M.S.RAMACHANDRA RAO, J**

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**T. AMARNATH GOUD, J**

Date: 04.03.2020

Ndr

