



High Court of Andhra Pradesh

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Principal Bench at Andhra Pradesh

Case Details

Case Type	: WP		
Filing Number	: 1505/2020	Filing Date:	21-01-2020
Registration Number	: 1242/2020	Registration Date:	21-01-2020
CNR Number	: APHC01-001893-2020		

Case Status

First Hearing Date	: 22nd January 2020
Decision Date	: 16th December 2020
Case Status	: CASE DISPOSED
Nature of Disposal	: Contested-ALLOWED NO COSTS
Coram	: 3227C.PRAVEEN KUMAR , B KRISHNA MOHAN
Bench	: Division Bench
State	: ANDHRAPRADESH
District	: WEST GODAVARI
Judicial	: WRIT Section
Causelist Name	: CAUSE LIST MOTION HEARING

Petitioner and Advocate

1) M/s. Agarwal Industries Pvt. Ltd., Advocate- G NARENDRA CHETTY
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Respondent and Advocate

1) The Deputy Assistant Commissioner (ST) (IV), Advocate - GP FOR COMMERCIAL TAX (AP)
2) The Assistant Commissioner (ST),
3) The State of Andhra Pradesh,
4) The Union of India, Advocate-B KRISHNA MOHAN (ASST SOLICITOR GENERAL OF INDIA)

Acts

Under Act(s)	Under Section(s)
01- CONSTITUTION OF INDIA	226

IA Details

IA Number	Party	Date of Filing	Next Date	IA Status
IA/1/2020 Classification : Direction Petition	M/s. Agarwal Industries Pvt. Ltd.,	21-01-2020	--	Pending

History of Case Hearing

Cause List Type	Judge	Business On Date	Hearing Date	Purpose of hearing
	C.PRAVEEN KUMAR , B KRISHNA MOHAN	16-12-2020		Disposed
			22-01-2020	FOR ADMISSION
CAUSE LIST MOTION HEARING	J K MAHESHWARI , NINALA JAYASURYA	23-01-2020	29-01-2020	ADMISSION
CAUSE LIST MOTION HEARING	J K MAHESHWARI , NINALA JAYASURYA	26-02-2020		ADMISSION
DAILY LIST-1	C.PRAVEEN KUMAR , M.GANGA RAO	24-11-2020	25-11-2020	ADMISSION
CAUSE LIST MOTION HEARING	C.PRAVEEN KUMAR , M.GANGA RAO	25-11-2020	26-11-2020	ADMISSION
CAUSE LIST MOTION HEARING	C.PRAVEEN KUMAR , M.GANGA RAO	25-11-2020	26-11-2020	ADMISSION
CAUSE LIST MOTION HEARING	C.PRAVEEN KUMAR , D RAMESH	26-11-2020	10-12-2020	ADMISSION
CAUSE LIST MOTION HEARING	C.PRAVEEN KUMAR , B KRISHNA MOHAN	10-12-2020		ADMISSION

Orders

Order Number	Judge	Order Date	Order Details
1	C.PRAVEEN KUMAR,B KRISHNA MOHAN	16-12-2020	View

Category Details

Category	WP (28)
Sub Category	COMMERCIAL TAXES (MISC.MATTERS) (11)

OBJECTION

Sr.No.	Scrutiny Date	OBJECTION	Compliance Date	Receipt Date
1	21-01-2020	All Objections are Complied	--	--

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THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI B. KRISHNA MOHAN

W.P. No. 1242 of 2020

ORDER: *(Per Hon'ble Sri Justice C.Praveen Kumar)*

1) The Writ Petitioner came to be filed seeking issuance of Writ of *Mandamus*, holding the action of the 1st Respondent in detaining the goods of the Petitioner on 24.12.2019, while they were on transit from the place of the Selling Dealer in Maharashtra to the place of the Petitioner in Andhra Pradesh and levying tax and penalty of Rs.2,84,530/- as illegal, improper and incorrect.

2) The facts, in issue, are as under:

(i) The Petitioner herein is a registered Dealer under GST Act on the rolls of 2nd Respondent, doing business in manufacture of Edible Oils and Poultry Feed.

(ii) In the course of business, the Petitioner purchased 313.30 quintals of Acid Oil, required in the process of manufacture by the Petitioner, from a registered GST Dealer in Maharashtra. The goods were dispatched by the vendor of the Petitioner for delivery to the Petitioner at the factory in Vakalapudi, Kakinada, through vehicle bearing No. RJ-14-GC-9099, accompanied by Tax Invoice bearing No. REF/19-

20/1969, dated 19.12.2019, and E-Way Bill No.2311 6481 4756, dated 19.12.2019. The value of the goods shown in the Tax Invoice was at Rs.12,21,870/-, to which IGST payable is Rs.2,19,936.60 paise.

- (iii) The said vehicle was intercepted on 24.12.2019 at Kovvur and after perusing the documents accompanying the goods, Order of Detention under Section 129(1) of CGST Act, 2017, in Form GST MOV-06, came to be made, on the ground that 'Invoice number mentioned in the Tax Invoice is not tallying with the one in E-Way Bill'. It is to be noted that, while Invoice Tax Number is 'REF/19-20/1969' in the E-Way Bill, the number of the Invoice was typed as 'REF/19-20/1669'. Therefore, the digit '9' was wrongly mentioned as '6'. Having regard to the above, it is clear that, the mistake, if any, was made by the Selling Dealer.
- (iv) According to the Petitioner, this mistake, if any, would not cause any prejudice to the Department as E-Way Bill was generated in the GST Portal and it is duly accounted for and IGST was also collected from the Petitioner. Having regard to above and aggrieved by the action taken, the present Writ Petition came to be filed, on the ground that the order of detaining goods, is illegal, improper and incorrect.

3) The learned Government Pleader for Commercial Taxes, opposing the same, would contend that, when there is a remedy of Appeal, invoking jurisdiction under Article 226 of Constitution of India, is illegal and incorrect. He further pleads that, there is no illegality in the Order passed, as there is a variation in the invoice number.

4) In reply, the counsel for the Petitioner would submit that, an Appeal would lie provided there is an order. But, in the absence of the same, no Appeal would lie.

5) The point that arises for consideration is, ***whether the 2nd Respondent was justified in ordering the detention of goods under Section 12(1) of CGST Act?***

6) Before going further, it would be appropriate to refer to the Notice issued under Section 129 of CGST Act. In the said Notice, the reason for detention of goods, is as under:

“Invoice number mentioned in Tax invoice not tallied with E-way bill. Hence, pay tax & penalty on invoice value”.

7) The Tax Invoice shows, the value of the goods as Rs.12,21,870/- and output IGST was rounded to Rs.2,19,936.60 paise and invoice number mentioned therein, as under:

“REF/19-20/1969”

8) In the E-Way Bill, the document number was typed as under:

“REF/19-20/1669”.

9) But, all other contents tallied with the Tax Invoice and the Notice issued under Section 129 of CGST Act.

10) The fact that, there is a variation in the invoice number, in the E-Way Bill and in the original Invoice is not in dispute. The only variation being that, in-stead of ‘1969’, ‘1669’ was typed, i.e., in place of ‘9’, numerical ‘6’ was typed. The Government of India, Ministry of Finance, Department of Revenue, vide Notification, dated 14.09.2018, clarified that, *in case of consignment of goods is accompanied with an invoice or any other specified document and also an E-Way Bill, proceedings under Section 129 of CGST Act, may not be initiated, inter alia in the following situations.*

a) “... ..”

b)”

c)”

d) *Error in one or two digits of the document number mentioned in the e-way bill.*

e)”

f)”

11) Clause 6 of CGST, postulates that, in case of any such variation, penalty to a tune of Rs.500/- each under Section 125 of CGST Act and the respective State GST Act, should be imposed. It is stated that, though, the Petitioner brought to

the notice of the authority the above Circular and also explained that the mistake was done by the Selling Dealer, and that, the same was uploaded in the GST Portal also, but, the authority refused to release the goods unless the Petitioner pays tax and penalty. Having regard to the above circumstances and since the goods detained are very much essential, the Petitioner claimed to have paid the tax and penalty to a tune of Rs.2,84,530/- and got the goods released.

12) A reading of the Circular issued by the Government of India, dated, 14.09.2018, would make it clear that, collection of tax, in the instant case, is contrary to the Circular, for the reason that, when there is a mistake in typing a numerical in the E-way bill, while, all other contents, namely, the seller and the place where it has to be delivered, are consistent, imposition of tax and penalty, as done, in our view, may not be proper.

13) At this stage, the learned Government Pleader would contend that, when the Petitioner has already paid the entire tax amount and subjected himself to the notice issued, he cannot now turn around and question the same.

14) It is not doubt true that, the Petitioner has paid the entire tax amount pursuant to the notice issued and, thereafter, filed the present Writ Petition. The reason being that, these goods, namely, Acid Oil, which is being detained, is very much essential for the day-to-day functioning of the

business. Having regard to the requirement of the seized goods, the Petitioner is said to have paid the amount, got the seized goods released, and thereafter, challenged the same. Therefore, the argument of the learned Government Pleader that the Petitioner is estopped from challenging the same, after paying the tax and penalty, cannot be accepted.

15) The issue some what identical to the case on hand came up for consideration before the Division Bench of this Court in ***Annam Jewellers v. Deputy Commercial Tax Officer***¹. In the said case, the Writ Petitioners were engaged in the business of gold and silver articles. The premises was inspected by the 1st Respondent, and on verification of the stocks, the inspecting authority got recorded statements from the writ petitioners to the effect that the petitioners were liable to pay tax under Section 6A of the Andhra Pradesh General Sales Tax Act, 1957, and accordingly, collected the tax as well as the penalty, which was five times that of the tax payable and the amount was collected by way of cheques. Later on, the action of the authority was challenged on the ground that the same is arbitrary and violative of principles of natural justice, and that no notice and opportunity was given to the dealers and no assessment was also made. The Court found that the levy of penalty at five times the amount of tax was unsustainable, as it was not a case of composition of

¹ [1996] 102 S.T.C.506

offence under Sec.32 of the Act, and ordered refund of the amounts collected.

16) Similarly, in **Life Line Devices v. Commercial Tax Officer**² the Division Bench of this Court, held as under:-

*“There can be no doubt that the second respondent and the Regional Vigilance and Enforcement Officer acted high-handedly and in utter disregard of law by which they are bound. Undisputedly and indisputably, the Andhra Pradesh General Sales Tax Act within the realm of which the second respondent and his superiors are supposed to discharge the functions, does not authorize the on-the-spot collection of tax by coercion. The Act provides for assessment-provisional or final and a procedure therefor. The very fact that the petitioner’s representative was made to part with post-dated cheques under protest would unequivocally indicate that the payment was not made voluntarily. The second respondent and the Regional Vigilance and Enforcement officials topsy-turvied the procedure by first collecting the tax by hook or crook and then addressing a letter to the Assessing Officer while furnishing the material gathered as a result of inspection and requesting him to take necessary action. In a more or less same situation, a Division Bench of this Court to which one of us (PVR,J.) was a member, in *Priyanka Wines v. Assistant Commissioner (CT)* [1998] 110 S.T.C. 73 expressed its displeasure and condemned the practice of the Vigilance and Enforcement Officials pressurizing the assesseees to give the cheques on the spot towards the alleged tax due.”*

17) From the judgments referred to above, it is very much clear that the action of the authorities in collecting the tax either on the spot or later, can always be challenged

² [(2000) 119 S.T.C. 52]

subsequently by questioning the jurisdiction or their authority to collect tax.

18) In view of the above and having regard to the Circular issued by the Government of India, Ministry of Finance, Department of Revenue, prohibiting imposition of penalty, when there is an error in one or two digits of the document number mentioned in the e-way bill, we hold that the Respondents made an error in collecting the tax and penalty from the Petitioner.

19) Accordingly, this Writ Petition is **allowed**, holding that the Respondents were in error in collecting the tax and penalty from the Petitioner, for release of the goods seized, vide proceeding, dated 24.12.2019, and consequently the Respondents shall release the amount in terms of the Circular and proceed in terms of the circular. No order as to costs.

20) Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE B. KRISHNA MOHAN

Date: 16.12.2020.
SM...

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI B. KRISHNA MOHAN

W.P. No. 1242 of 2020
(Per Hon'ble Sri Justice C.Praveen Kumar)

SM

Dt. 16.12.2020