



A.F.R.

Court No. - 3

Case :- WRIT TAX No. - 600 of 2022

Petitioner :- M/S Gobind Tobacco Manufacturing Co. And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Aloke Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard Shri Aloke Kumar, learned counsel for the petitioners and Shri Nimai Das, learned Additional Chief Standing Counsel for the State-respondents.

2. This writ petition has been filed praying for the following reliefs:-

“(i) Issue a suitable writ, order or direction in the nature of certiorari quashing the Detention/ Seizure Order dated 07.03.2022 [Annexure no. 13 to the writ petition] passed by respondent no. 3 under Section 20 of the IGST Act read with section 129 (1) of the CGST Act.

(ii) Issue a suitable writ, order or direction in the nature of certiorari quashing the Order of release dated 13.03.2022 [Annexure no. 16 to the writ petition] passed by respondent no. 3 under Section 20 of the IGST Act read with section 129 (3) of the CGST Act.

(iii) Issue a suitable writ, order or direction in the nature of certiorari quashing the Notices dated 22.03.2022 and 28.03.2022 [Annexure no. 18 and 20 to the writ petition] issued by respondent no. 3.

(iv) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondent no.3 to release the goods and vehicle no. UP65BT/2241 so seized/ detained vide Order dated 07.03.2022.

(v) Issue any other suitable writ, order or direction in favor of the petitioner as this Hon'ble High Court may deem fit and proper under the facts and circumstances of the case.

(vi) Award the cost of the petition to the petitioner.”

3. This writ petition was heard at length on 21.04.2022 and a detailed order was passed. The matter was again heard on 29.04.2022 and 06.05.2022. Counter and rejoinder affidavits have been exchanged between the parties.

4. **Petitioner no.1** is the partnership concern engaged in manufacture and sale of tobacco products and is registered under the provisions of The Central Goods & Service Tax Act, 2017 (hereinafter referred to as the 'CGST Act') having GSTIN 06AABFG2788A1ZQ at Panipat (Haryana). **Petitioner no.2** is a proprietorship concern engaged in transportation of goods and is registered under the CGST Act as a service provider having GSTIN 09ACIPY7858G2ZO at Gorakhpur. The aforesaid facts stated in paragraphs 4 and 5 of the writ petition have not been denied by the respondent no.3 in the counter affidavit dated 05.05.2022.

5. **In paragraph 6 of the writ petition**, it has been stated that the goods manufactured by petitioner no.1 are usually consumed in Nepal which **he used to export to Nepal covered under the letter of undertaking for export of excisable goods without payment of duty under Notification No.42/2001- CE(N.T.) dated 26.06.2001.** **In paragraph 7 of the writ petition**, it has been stated that in the course of business, petitioner no.1 dispatched the consignment of **BIJLI SPIT TOBACCO** packed in 200 boxes valuing Rs.7,20,000/- covered under the invoice no.51/2021-22/GTMC dated 14.01.2022 to **Lumbini Traders, Krishna Nagar, Nepal**, through the transporter namely, Ankul Transport Service. **In paragraphs 8 and 9**, it has been stated that HSN code of the commodity meant for export was mentioned on the aforesaid invoice, and that the digits of tariff mentioned therein are required to be mentioned only when the commodity is subject matter of export. **In paragraph 10** of the writ petition, it has been stated that in the invoice it was specifically mentioned that **“Export to Nepal Goods**

dispatched under LUT ARN No.AD0603210027240 DTD. 06/03/2021” and the copy of LUT was attached with the invoice for the purpose of transshipment to Nepal. **In paragraph 11** of the writ petition, it has been stated that the invoice issued for the goods was in accordance with the condition prescribed in Tariff Code-24039910. **In paragraph 12**, it has been stated that the petitioner no.1 got generated E-way Bill No.3414 0160 4901 from the portal of Government of India on 14.01.2022 at 3:09 P.M. for the goods in question by giving the reference of invoice.

6. The aforestated paragraphs 6, 7, 8, 9, 10, 11 and 12 of the writ petition have been replied by the respondent no.3 in paragraph 31 of the counter affidavit as under :-

“31. That the contents of paragraph nos.6, 7, 8, 9, 10, 11 & 12 of the writ petition do not call for any reply and comments being matter of record be verified therefrom.”

7. In paragraphs 14, 15, 16 and 17 of the writ petition, the petitioners have stated as under :-

“14. That as **the Government of Nepal after opening its border** (which was sealed in March 2020 with India) **imposed conditions of 7 days quarantine and the visitors are allowed only after 14 days from the date of having last dose of COVID-19 vaccine and as the driver of the vehicle does not fulfill the conditions required for entry in Nepal thus he left the goods in the godown of petitioner no. 2 situated at Gida, Gorakhpur for further transshipment by another vehicle to Nepal.** In support of the above said submission the petitioner is bringing on record a news report published in Kathmandu Post. A true/photo copy of the news report as published in Kathmandu Post is being filed herewith and marked as Annexure No.8 to this writ petition.

15. That as **the quantity of the goods of the petitioner is not a full truck load further limited drivers are available intended to transport goods in Nepal thus the period specified in E-way bill expired.**

16. That the expiry of period of E-way bill is beyond the control of the petitioner and is not a deliberate act of the petitioner in fact the same is bona fide.

17. That under the above said specific circumstances the goods in question can only be transported to Nepal, when the vehicle is available and **in the instant case the petitioner no. 2 ultimately arranged the vehicle no. UP 65 BT 2241 and issued GR No. 635 dated 26.02.2022 for the goods in question and for the purpose of compliance of the provisions of rule 138 and 138A being transporter generated E-way bill no. 4712 3392 2443 on 26.02.2022 itself by giving the details of the documents.** A true/photo copy of the GR No. 635 dated 26.02.2022 and E-way bill no. 4712 3392 2443 are being filed herewith and marked as Annexure No.9 and 10 to this writ petition.

8. The aforequoted paragraphs 14, 15, 16 and 17 of the writ petition have been replied by the respondent no.3 in paragraphs 33, 34 and 35 of the counter affidavit in which he has not specifically denied the contents of the aforesaid paragraphs of the writ petition. Thus, the averment of facts made in paragraphs 14, 15 and 16 of the writ petition stands admitted to the respondents. **What has been stated in the counter affidavit while replying the aforesaid paragraphs of the writ petition is that the petitioners being aware of the COVID-19 pandemic situation, should not have export the goods and, instead of getting generated the second e-way bill, should have got extended the validity of the e-way bill within 8 hours of its expiry as per the provisions of Rule 138(10) of the CGST/IGST Rules.**

9. In paragraph 22 of the writ petition, the petitioners have stated that *“there is no intention of evasion of tax and the goods in question are covered by documents required to be carried as per the provisions of Rule 138(A).”* In paragraph 27 of the writ petition, the petitioner no.2 has stated that *“he was of the bonafide opinion that the place of dispatch is required to be disclosed from Panipat as the goods had originally originated from Panipat not from Gorakhpur”*. In paragraph 28 of the writ petition, it has been

stated that the petitioner no.2 had generated e-way bill on 26.02.2022 indicating the said invoice as bill of supply bonafidely and in doing so there is no intention of evasion of tax. **The contents of aforesaid paragraphs of the writ petition have been replied by the respondents in paragraphs 37 and 38 of the counter affidavit in which the facts so stated have not been specifically denied at all.**

10. In paragraph 43 of the writ petition, the petitioners have stated that they have sent the objection through speed post but no order or notice fixing any other date has been communicated to them. **In paragraph 44 of the writ petition,** the petitioners have stated that **they cannot be punished for the mistake occasioned bonafidely** under the specific condition imposed by the Government of Nepal for entry due to COVID-19. **These paragraphs 43 and 44 have been replied in paragraph 40 of the counter affidavit in which the facts as aforementioned have not been specifically denied by the respondents.**

11. In paragraphs 46, 47 and 48 of the writ petition, the petitioners have stated that the respondent no.3 had issued notice dated 28.02.2022 in the form of an order in arbitrary exercise of his power and ordered for deposit of more than Rs.1,00,000/- for release of the vehicle and while issuing the said notice directed to deposit Rs.3,00,000/- as against the outer limit of Rs.1,00,000/- fixed by the Statute. **In paragraphs 50, 51 and 52 of the writ petition,** the petitioners have made detailed and pointed specific averments that neither there was any intention of evasion of tax nor have they committed any default nor a sum of Rs.27,07,200/- could have demanded for release of goods nor the goods could be confiscated. It has further been specifically stated that the **transaction in question was covered by IGST Act. These paragraphs have been replied**

in paragraphs 42, 43, 44 and 45 of the counter affidavit in which there is no specific denial.

12. Thus, from the facts as may be ascertained from the averments made by the parties in the writ petition and the counter affidavit, it is admitted to the parties that the goods in question originated from Panipat and were being transported with valid invoice from Panipat to Nepal but due to restriction imposed on account of COVID-19 pandemic, as specifically mentioned in paragraphs 14, 16, 17, 27 and 28 of the writ petition, the goods were unloaded at Gorakhpur and after the arrangement of another vehicle was made under prevailing situation of COVID-19 pandemic, the goods were transported to Nepal. Since the time gap was much, therefore, a second e-way bill was generated so that the goods may reach to its destination at Nepal. There is absolutely no dispute that the goods in question were dispatched by the petitioner no.1 from Panipat (Haryana) under valid invoice and valid papers. The goods in question were intercepted and seized by the respondents on hyper-technical ground and assumptions, without there being any allegation of intention to evade payment of tax. The second e-way bill was generated bonafidely and in circumstance beyond control of the petitioners. The averments of the petitioners in paragraph No.16 of the writ petition that generating the second e-way bill was totally bonafide, has also not been denied by the respondents. Since the goods were covered by valid documents, therefore, it could not have been detained or seized and hence the entire proceedings were totally arbitrary, illegal and without jurisdiction. The action of the respondents in seizing the goods in question is evidently an act of harassment to the petitioners, breach of their fundamental rights guaranteed under Article 14 of the Constitution of India and blatant abuse of power by the respondents.

13. In the case of **Assistant Commissioner (ST) & Ors. vs. M/s Satyam Shivam Papers Pvt. Limited & Anr. (Special Leave to**

Appeal No.21132 of 2021, decided on 12.01.2022, Hon'ble Supreme Court held as under:-

“Having heard learned counsel for the petitioners and having perused the material placed on record, we find no reason to consider interference in the well-considered and well-reasoned order dated 2nd June, 2021, as passed by the the High Court for the State of Telangana at Hyderabad in Writ Petition No. 9688 of 2020. Rather, **we are clearly of the view that the error, if any, on the part of the High Court, had been of imposing only nominal costs of Rs. 10,000/- (Rupees Ten Thousand) on the respondent No. 2 of the writ petition, who is petitioner No.2 before us.**

The consideration of the High court in the order impugned and the **material placed on record leaves nothing to doubt that the attempted inference on the part of petitioner No.2, that the writ petitioner was evading tax because the e-way bill had expired a day earlier, had not only been baseless but even the intent behind the proceedings against the writ petitioner was also questionable**, particularly when it was found that the goods in question, after being detained were, strangely, kept in the house of a relative of the petitioner No.2 for 16 days and not at any other designated place for their safe custody.

The High Court has, inter alia, found that:

“41. It was the duty of 2nd respondent to consider the explanation offered by petitioner as to why the goods could not have been delivered during the validity of the e-way bill, and **instead he is harping on the fact that the e-way bill is not extended even four(04) hours before the expiry or four(04) hours after the expiry, which is untenable.**

The 2nd respondent merely states in the counter affidavit that there is clear evasion of tax and so he did not consider the said explanations.

This is plainly arbitrary and illegal and violates Article 14 of the Constitution of India, because there is no denial by the 2nd respondent of the traffic blockage at Basher Bagh due to the anti CAA and NRC agitation on 4.01.2020 up to 8.30 pm preventing the movement of auto trolley for otherwise the goods would have been delivered on that day itself. He also does not dispute that 04.01.2020 was a Saturday, 05.01.2020 was a Sunday, and the next working day was only 06.01.2020.”

The High Court has further found and, in our view, rightly so thus:

“42. How **the 2nd respondent could have drawn an inference that petitioner is evading tax merely because the e-way bill has expired**, is also nowhere explained in the counter- affidavit.

In our considered opinion, there was no material before the 2nd respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill because even the 2nd respondent does not say that there was any evidence of attempt to sell the goods to somebody else on 06.01.2020. **On account of non-extension of the validity of the e-way bill by petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax”.**

The High Court has also commented on blatant abuse of the power by the petitioner No.2 and has deprecated his conduct in the following words:

“43. We are also unable to understand why the goods were kept for safe keeping at Marredpally, Secunderabad in the House of a relative of 2nd respondent for (16) days and not in any other place designated for such safe keeping by the State.

44. In our opinion, there has been a blatant abuse of power by the 2nd respondent in collecting from the petitioner tax and penalty both under the CGST and SGST and compelling the petitioner to pay Rs.69,000/- by such conduct.

45. We deprecate the conduct of 2nd respondent in not even adverting to the response given by petitioner to the Form GST MOV-07 in Form GST MOV-09 and his deliberate intention to treat the validity of the expiry on the e-way bill as amounting to evasion of tax without any evidence of such evasion of tax by the petitioner.”

Having said so, the High Court has set aside the levy of tax and penalty of Rs. 69,000/- (Rupees Sixty-nine Thousand) while imposing costs of Rs. 10,000/- (Rupees Ten Thousand), payable by the petitioner No.2 to the writ petitioner within four weeks.

The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, **the amount of costs as awarded by the High Court in this matter is rather on the lower side.** Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.

Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to

even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, **it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner.** When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic.

Having said so; having found no question of law being involved; and having found this petition itself being rather mis-conceived , we are constrained to enhance the amount of costs imposed in this matter by the High Court.

The High Court has awarded costs to the writ petitioner in the sum of Rs. 10,000/- (Rupees Ten Thousand) in relation to tax and penalty of Rs.69,000/- (Rupees Sixty-nine Thousand) that was sought to be imposed by the petitioner No.2. In the given circumstances, a further sum of Rs. 59,000/- (Rupees Fifty-nine Thousand) is imposed on the petitioners toward costs, which shall be payable to the writ petitioner within four weeks from today. This would be over and above the sum of Rs. 10,000/- (Rupees Ten Thousand) already awarded by the High Court.

Having regard to the circumstances, we also make it clear that the **State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person/s responsible for this entirely unnecessary litigation.**

This petition stands dismissed, subject to the requirements foregoing.

Compliance to be reported by the petitioners.”

(emphasis supplied by us)

14. Applying the law laid down by Hon'ble Supreme Court in the case of Satyam Shivam Papers Pvt. Ltd. (supra) on the facts of the present case, the writ petition deserves to be allowed with cost.

15. For all the reasons aforestated, the impugned detention order dated 07.03.2022, the release order dated 13.03.2022 and notices dated 22.03.2022 and 28.03.2022, are hereby quashed being totally

arbitrary and illegal. The goods and vehicle in question seized by the respondents are directed to be released forthwith.

16. The writ petition is, accordingly, **allowed with cost of Rs.50,000/- to each of the petitioners, i.e. total Rs.1,00,000/-** which the respondents shall pay the petitioners within four weeks from today.

Date :17.05.2022

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