

Neutral Citation No. - 2023:AHC:201258

Reserved

Court No. - 5

Case :- WRIT TAX No. - 721 of 2020

Petitioner :- M/S Millennium Impex Pvt. Ltd.

Respondent :- Additional Commissioner Grade-2 (Appeal) - I State Tax,
Noida And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- A.S.G.I., Anant Kumar Tiwari, C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Suyash Agarwal for the petitioner, Mr. Rishi Kumar, learned A.C.S.C. for respondent nos. 1 and 2 and Mr. A.K. Tiwari for respondent no. 3.

2. The instant Writ Tax is being entertained by this Court in view of the fact that G.S.T. Tribunal is not functional in the State of Uttar Pradesh pursuant to the Gazette notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.

3. By means of this writ petition, the petitioner is assailing the order dated 31.8.2020 passed by respondent no. 1 in Appeal No. GST-113/19 A.Y. 2019-20 dismissing the appeal filed by the petitioner.

4. Brief facts of the case as stated, are that the petitioner being a registered company incorporated under the Companies Act having GSTIN No. 07AACCM3279J1Z8 as well as duly certified by ISO 9001:2015. The petitioner is a verified seller of supreme quality of metal seated zero leakage Ball Valves and purchaser of Ball Valve, Diaphragm Valves in bulk. In the normal course of business, the petitioner has made outward supply of Rotor Assembly Elmo and Complete Assy-CL 3001 to NTPC Ltd, Ramagundam Super Thermal Power Station, P.O. Jyotinagar, Distt. Pedapalli, Telangana vide Tax Invoice No. 0000781/19-20 dated 14.8.2019 and the said goods

were being transported from New Delhi to Telangana via Agra, U.P. , where the same was intercepted by respondent no. 2 at Saiyan, Agra, U.P. on 16.8.2019 and after physical verification of the goods, it was found that part B of the e-way bill accompanying with the goods, was not filled on which notice was issued proposing to impose tax @ 18 % i.e. Rs. 14,63,063/- along with equal amount of penalty. Thereafter on deposit of impugned tax along with penalty, the goods in question were released and respondent no. 2 vide order dated 21.8.2019 passed the penalty order in Form GST MOV 09 under Section 20 of IGST read with Section 129 (3) of CGST Act observing that part B of e-way bill was not filled, hence the seizure of the goods was valid. Feeling aggrieved to the said order, the petitioner has filed an appeal which was dismissed by respondent no. 1 by order dated 31.8.2020. Hence the present writ petition.

5. Learned counsel for the petitioner has submitted that goods in question was sold by one registered dealer to another registered dealer and same was accompanying with genuine tax invoices, GR, e-way bill; the authorities ought not to have seized the goods on technical glitch. He further submitted that merely because part B of e-way bill was not filled, which was required to be filled by the transporter, the proceedings has wrongly been initiated against the petitioner. It was further argued that there was no intention to evade the payment of tax; once the authorities have not recorded any finding of fact in respect of any intention to evade the payment of tax, the impugned order is not justified in the eyes of law and same is liable to be quashed.

6. In support of his contention, learned counsel for the petitioner has relied upon the Division Bench judgement of this Court in **Ram Dev Trading Company Vs. State of U.P. (Writ Tax No. 779 of 2017, decided on 30.1.2017)**, which was affirmed by the Apex Court in **Special Leave to Appeal (c) No. 18781 of 2018** decided on 27.7.2018. He further relied upon the Division Bench judgement of this Court in **VSL Alloy (India) Pvt. Ltd. (Writ Tax No. 637 of 2018 decided on 13.4.2018)** as well as Single Judge Bench of this Court in the case of **M/s Citykart Retail Pvt. Ltd. Vs. C.C.T. (Writ C No. 22285 of 2019 decided on 6.9.2022)** and **Shyam Sel and Power Ltd. Vs. State of U.P. (Writ**

Tax No. 603 of 2023, decided on 5.10.2023).

7. He further relied upon the circular CBEC/20/16/03/2017-GST dated 14.9.2018 issued by the revenue authority and referred Para 5 sub clause (f) of the same and prays for allowing the writ petition .

8. *Per contra*, Mr. Rishi Kumar, learned A.C.S.C. has supported the impugned order and submitted that it is admitted fact that at the time of interception of goods, the documents which were produced by the petitioner, after verification of the same, it was found that part -B of e- way bill was not filled and the same is in contravention of the provisions of the Act, therefore, proceeding has rightly been initiated. It was further argued that after detention of the goods a show cause notice was issued to which no reply was submitted by the petitioner to explain the fact that under what circumstances, part -B of the e-way bill was not filled. The amount was deposited and goods were got released on the next date, which shows that there was contravention of the provisions as contemplated under the Act.

9. He further argued that each case of detention, seizure as well as penalty has to be looked into independently on its own facts therefore the judgements relied upon by the counsel for the petitioner are of no help to him as the aforesaid judgements have also been given in the facts of respective case.

10. He further argued that the argument raised by the counsel for the petitioner that the Circular dated 14.9.2018 has binding over the provisions of Section 129 of the Act, is incorrect as after taking note of the difficulty faced by the registered dealer, the aforesaid circular has been issued, wherein it has been prescribed for not initiating the proceedings under Section 129 of the Act, which falls from under para 5 of clause a to f; but the facts of the present case are different as the petitioner has not given any reason whatsoever under what circumstances part B of e -way bill was left blank.

11. He further argued that findings of fact recorded in the impugned order have not specifically been challenged by the petitioner in the present case, however, some general narration of fact has been mentioned by the petitioner; once the finding of fact recorded by authorities below against the petitioner have

not been challenged, the impugned order cannot be said to be bad. An assertion made in the counter affidavit are not being rebutted by the petitioner by filing any rejoinder affidavit and on 6.10.2023, statement was given on behalf of petitioner for not filing any rejoinder affidavit, thus no interference is called for in the impugned orders. He prays for dismissing the writ petition.

12. Rebutting to the said submission, learned counsel for the petitioner submitted that findings of fact recorded against the petitioner have been assailed by the petitioner specifically in para 10, 11 and 12 of the writ petition.

13. After hearing learned counsel for the petitioner, the Court has perused the records.

14. Admittedly, the goods were intercepted during transportation from New Delhi to Telangana at Agra, U.P. and after verification of the documents produced, it was found that part- B of the e- way bill was left blank thereafter a show cause notice was issued to the petitioner but the petitioner has not submitted any explanation for the same. But on deposit of amount of tax along with penalty, the goods were released on 27.8.2019. The petitioner has not submitted any explanation up to the stage of this Court that under what circumstances, part B of the e-way bill was not filled. The demand raised against the petitioner was challenged in the appeal but the same has been dismissed by the impugned order dated 31.8.2020. The petitioner has not assigned any reason, whatsoever, for not complying the provisions under Rule 138.

15. An argument has been raised by the counsel for the petitioner that there was no intention to avoid the payment of tax or any finding has been recorded by the authorities below in this respect. He has relied upon para 3 and 5 of the grounds of appeal filed before the first appellate authority. On perusal of the impugned order, it shows that the petitioner pressed only two grounds taken in the appeal. Further not a single word has been whispered in the writ petition about the said argument, as such the petitioner's counsel cannot be permitted to argue the case without any pleading in the writ petition.

16. Hon'ble the Apex Court in the case of **Bachhaj Nahar Vs.Nilima Mandal and another, (2008) 17 SCC 491** has held as under:-

9. *The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly **held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.***

10. *The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief **and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.***

(Emphasis supplied by this Court)

17. Further this Court in the case of **Shri Shiv Prakash Vs. Additional District Judge (Matter under Article 227 No. 3423 of 2018, decided on 18.10.2019) Neutral Citation No. 2019: AHC:194707** has held as under :-

9. *As per provisions of Order VI Rule 1, C.P.C., 'pleading' shall mean plaint or written statement. Order VI Rule 2 provides that every pleading shall contain only, a statement in a concise form of the material facts on which the party relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph, dates. Sums and numbers shall be expressed in a pleading in figures as well as in words. **Thus, a party cannot make out a case on the basis of an evidence for which he/ she has laid no foundation in the pleadings. It is fairly well settled that no amount of evidence can prove a case for a party who has not set up the same in his/ her pleadings.***

(Emphasis supplied by this Court)

18. Again in **Bharat Singh and others vs. State of Haryana and others, (1988) 4 SCC 534** (para-13), Hon'ble Supreme Court held as under:

*"13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. **In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.**"*

(Emphasis supplied by this Court)

19. On perusal of the aforesaid judgements of Apex Court as well as this Court, it has been held that the petitioner cannot be permitted to argue the case without there being any pleading in support of his arguments.

20. Moreover the findings of fact recorded in the impugned order has not been assailed by the petitioner in the present writ petition. Only general argument has been made that the findings recorded against the petitioner have been assailed in para 10,11, 12 of the writ petition. The said paragraphs are quoted hereunder :-

10. That it is relevant to submit here that as per Section 68 of the UPGST Act, the goods in question were being transported with all relevant documents like the Tax Invoice, GR and E-way Bill as provided under Rule 138 A of the Rules as such the seizure of goods and all consequential penalty proceedings u/s 129 (3) of the Act is wholly illegal, without jurisdiction and liable to be quashed.

11. That the action u/s 129 of the Act may be initiated for violation of grounds mentioned u/s 122 of the Act whereas in the case in hand the Petitioner has not violated any of the clauses of Section 122 of the Act as such the orders dated 31.8.2020 and 2.8.2019 passed by respondent no. 1 and 2 respectively

are wholly illegal, without jurisdiction and liable to be quashed.

12. That non-filing of part B of the E-way Bill is just a mere technical mistake or simply a procedural lapse for which penal action u/s 129 (3) is not warranted as such the seizure of goods and all consequential penalty proceeding u/s 129 (3) of the Act is wholly illegal, without jurisdiction and liable to be quashed.

21. The contents of said paragraphs have been denied by the State in its counter affidavit in paragraphs 16 and 17, which are quoted hereunder :-

16. That the contents of paragraph nos. 10 and 11 of the writ petition are not admitted as framed hence denied, in reply it is submitted that the petitioner has furnished the part b of the E-way Bill after being detained and intercepted by the answering respondent no. 3 which is clearly an afterthought because if the goods were not detained then in such situation, the petitioner defiantly would have succeeded to make transit without generating Part B of the E-way Bill which amounts to tax evasion causing revenue loss to the Government.

17. That the contents of paragraph no. 12 of the writ petition are not admitted as framed hence denied. A suitable reply has already been given in the preceding paragraphs of the counter affidavit hence the same are being reiterated and reaffirmed.

22. No rebuttal / rejoinder affidavit has been filed by the petitioner controverting the said assertions made in the counter affidavit and on the other hand on 16.10.2023, a statement was made on behalf of the petitioner that the petitioner did not propose to file any rejoinder affidavit.

23. Once the finding of fact, which has been recorded against the assessee has not been assailed in the present writ petition, the petitioner cannot be permitted to argue the case beyond the pleadings. In view of the aforesaid facts, the case law as well as circular relied upon by the petitioner are of no help to him.

24. In view of the facts as stated above, no interference is called for by this Court in the impugned order. The writ petition fails and is **dismissed** accordingly.

Order Date :- 18.10.2023

Rahul Dwivedi/-