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Neutral Citation No. - 2023:AHC:188713

**Reserved**

**Court No. - 5**

**Case :-** WRIT TAX No. - 277 of 2022

**Petitioner :-** M/S Om Prakash Kuldeep Kumar
**Respondent :-** Additional Commissioner Grade-2 And Another
**Counsel for Petitioner :-** Aditya Pandey
**Counsel for Respondent :-** C.S.C.

**HON'BLE PIYUSH AGRAWAL, J.**

**1.** Heard Mr. Aditya Pandey for the petitioner and Mr. Rishi Kumar, learned Additional Chief Standing Counsel for the respondents.

**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 present writ petition, the petitioner is assailing the order dated 17.8.2021 passed by respondent no. 1 in Appeal No. GST 016/2020 A.Y. 201920, under the provisions of 129 (3) of UP G.S.T. Act, 2017.

**4.** Brief facts of the case are that the petitioner is a registered dealer engaged in trading of *Bidi*, Match box, Tobacco, etc. In the normal course of business, petitioner received order for supply of *bidi* and match box from M/s Satish Chand Shelendra Kumar, Karahal Road, Mainpuri and from M/s Pawani Provisions Store, G.T. Road Chhibramau, Kannauj. Thereafter the petitioner prepared the Tax invoices no. 723 and 724 both dated 16.1.2020 as well as E-way bill no. 481104756271 and 461104755579 respectively. The said goods were loaded on Truck no. UP 76 K 5205 for transportation from Bewar Mainpuri to Karahal Mainpuri and Chhibramau, Kannauj. During onward journey, when the goods were in transit, the same were intercepted

and on production of documents i.e. tax invoice and e-way bills, form GST MOV-1 was prepared on 17.1.2020, thereafter on the statement of the driver of the vehicle, the seizure/ detention order in form GST MOV-06 was passed on 17.1.2020. Thereafter form GST MOV 07 was passed and being not satisfied with the reply of the petitioner GST MOV-09 dated 17.1.2020 was passed under Section 129 (3) of UP GST Act. Thereafter the petitioner immediately deposited the amount of Rs. 2,36,304.68/- under protest as demanded by the respondent no. 2. The petitioner challenged the order dated 17.1.2020 in appeal but the same has been dismissed confirming the said demand. Hence the present petition.

**5.** Learned counsel for the petitioner has submitted that the goods in question were accompanying with the genuine documents such as tax invoices and e-way bills and was on its onward journey to its final destination but the same has wrongly been intercepted and vehicle was seized and thereafter penalty has been imposed on the ground that driver of the vehicle, at the time of interception, has produced only one tax invoice and e-way bill whereas the documents with regard to other item was not produced. He further submitted that it has wrongly been mentioned that the truck driver has given statement that the goods were to be unloaded in Mainpuri itself in the garb of accompanying documents. He further submits that the said fact is incorrect as statement of the truck driver has been recorded in GST MOV-01 and a copy of which has been annexed as Annexure no. 2 to this writ petition, which does not supports the case of the respondent authority.

**6.** In support of his claim, learned counsel for the petitioner has relied upon the judgement of Gujrat High Court in **Special Civil Application No. 19549 of 2021 (M/s Karnataka Traders Vs. State of Gujrat)** decided on 6.1.2022 and Telengana High Court in **W.P. No. 2869 of 2021, Vijay Metal Vs. Deputy Commercial Tax Officer,** decided on 28.4.2021. He submits that in the present case there is no specific provision to declare the route which is to be taken for transporting the goods. He submits that in the earlier applicable VAT Act, there was a provision for declaring the route for transportation of the goods. He further submitted that in the absence of any specific provisions under the G.S.T.

Act, no adverse inference can be drawn by the authorities without there being any cogent material on record. He prays for allowing the writ petition.

**7.** *Per contra,* learned Additional Chief Standing Counsel supported the impugned orders and submitted that at the time of interception of vehicle, the truck driver has given statement that the goods were to be unloaded at Mainpuri in the garb of accompanying documents, which is in contravention of the provisions of the Act. He prays for dismissal of this writ petition.

**8.** The Court has perused the records.

**9.** Admittedly, the goods in question were sold by the the registered dealer along with genuine documents i.e. tax invoices and e-way bills. At the time of interception it is alleged that driver of the vehicle made statement that goods were to be unloaded at the place which is not mentioned in the tax invoice but at Mainpuri itself. But perusal of the statement of the truck driver, which is prepared and uploaded by the revenue authority in GST MOV-01, it appears that not a single word has been whispered in respect of the goods in question to be unloaded at the place which has not been shown in the tax invoice accompanying the goods. Copy of the statement of truck driver is annexed as Annexure no. 2 to this writ petition.

**10.** Another issue raised that the goods along with truck was not on the route of its destination, therefore, there was intention to evade tax. Under the GST Act, there is no specific provision which bounds the selling dealer to disclose the route to be taken during transportation of goods or while goods are in transit however there was a provision under VAT Act to disclose the rout during transportation of goods to reach its final destination. Once the legislature itself in its wisdom has chosen to delete the said provision, this Court opined that the authorities were not correct in passing the seizure order even if the vehicle was not on regular route or on different route.

**11.** The power of detention as well as seizure can be exercised only when the goods were not accompanying with the genuine documents provided under the Act. The genuineness of the documents has not been disputed at any stage.

**12.** Observation/allegation has been made that at the time of interception / detention of the goods in question, the driver of the vehicle has only produced one tax invoice and eway bill dated 16.3.2020 but none of the documents as prescribed under the Act has been referred or even brought on record before this Court in support of the said contention. Once the documents accompanying the goods were found to be genuine the goods ought not be have been seized.

**13.** Karnataka High Court in the case of **M/s Karnataka Traders (supra)** has held as under:-

> *"6. The respondent No.3 noticed two discrepancies in the impugned*
>
> *notice Form GST MOV – 10, which reads as under:*
>
> *"(i) Vehicle was intercepted while it was travelling to the different direction than the direction of destination or way to the destination. So it is clear that the goods was not moving to the place destined for.*
>
> *Hence it appears that the goods is being transported with intention to evade tax.*
>
> *(ii) The value of goods being transported is shown Rs.286/- which is to*
>
> *low compared to its Real Market Value i.e. 330/-."*
>
> *13. On careful consideration of the facts and circumstances of the case and the submissions made by the respective advocates for the parties, we find the force in the contention of the learned advocate appearing for the petitioners that there cannot be any mechanical detention of a consignment in transit solely on the basis of the two reasons as stated by the respondent No.3 in the impugned notice. We find that merely the direction preferred by the petitioners for delivery of consignment to the place destined for, an inference cannot be drawn with regard to the intention of the petitioners to evade tax. So far as the second ground with regard to the goods being transported to be undervalue is concerned, no material has been placed on record. Even otherwise, as held by this Court as well as other High Courts, it is a settled legal position that undervaluation cannot be a ground for seizure of goods in transit by the inspecting authority. In the instant case, there is no such indication."*

**14.** Telangana High Court in the case of **Vijay Metal (supra)** has held as under :-

> *"19. We do not appreciate the stand taken by the 1st respondent for the reason that the quantity consigned to the petitioner at Hyderabad was admittedly 14.30 tonnes and the quantity which was consigned to M/s. Simi Steels, Adoni was only 2.01 tonnes. Naturally for operational convenience the transporter would load the lesser quantity last and the larger quantity first, i.e. the larger quantity would then be at the bottom of the goods vehicle and the smaller quantity would be on top of it; and it would be convenient for the transporter to offload the lesser quantity first and then the larger quantity next."*

**15.** In view of the facts as stated above as well as law laid down as aforesaid, the impugned order dated 17.8.2021 cannot be sustained in the eyes of law and is hereby quashed.

**16.** The writ petition is **allowed** with the cost of Rs. 5000/- (five thousands) which shall be paid to the petitioner by the State within 15 days from today. The State exchequer will be at liberty to recover the said cost from the erring officer. The amount already deposited by the petitioner shall be refunded to him in accordance with law within a period of one month from the date of production of certified copy of this order.

**17.** List after three months in Chamber in order to ensure the compliance of this order.

**Order Date :- 3.10.2023**
Rahul Dwivedi/-