Court No. - 7

Case :- WRIT TAX No. - 173 of 2024

Petitioner :- M/S Exide Industries Ltd. Lucknow Thru. Authorised Signatory Mr. Shri Nath Tiwari
Respondent :- Addl. Commissioner Grade-Ii (Appeal)-1, State Tax, Mainpuri And Another
Counsel for Petitioner :- Vikas Singh,Raja Babu Gupta
Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Vikas Singh, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2.The instant petition 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 has challenged the order dated 06.03.2024, passed by the Additional Commissioner, Grade-II (Appeal), Trade Tax, Mainpuri, thereby appeal of the petitioner has been rejected and penalty amounting to Rs.1,22,760/- has been imposed upon the petitioner.

4. It has been submitted by learned counsel for the petitioner that the petitioner is a registered dealer within the State of U.P. and is engaged in the business of trading of Electric Accumulators, including Separators, Lead Acid etc. The dispute in the present case has arisen on account of the fact that the petitioner transported 722 pieces of battery and other items from its registered address at Nandanganj Industrial Area, Amausi, Lucknow to his registered dealers i.e. M/s Jejas Aanya Enterprises, Auraiya and M/s Five Star Engineering Works, Etawah. For transportation, the batteries were handed over to M/s Ravindra Road Carriers against goods receipt no. VL/1081 and the goods were being transported on the vehicle bearing registration no. UP-65-BT-0352 alongwith Tax Invoice No. 1125221617 and 1125221498 dated 13.07.2023 and 11.07.2023 respectively.

5. It is next submitted that during transit the vehicle on which aforesaid goods were being transported was intercepted at Toll

Plaza, Tundl, Firozabad, where all the documents available with the driver were shown to the authorities, but the authorities were not satisfied as according to them the goods were to be supplied at Auraiya and Etawah, while the said vehicle was intercepted at Firozabad which according to the authorities was not the route to be taken by the said vehicle and accordingly they were of the opinion that there is violation of Rule 129 of the SGST Rules, 2017 and accordingly, show cause notice was given to the petitioner asking him to explain as to why penalty may not be imposed for violation of GST Rules, 2017.

6. The petitioner had given his reply to the show cause notice. The Assistant Commissioner (MS) Unit-1, State GST, Firozabad by means of order dated 25.07.2023, rejected the reply submitted by the petitioner and imposed penalty of Rs.1,22,760/- on estimated value of goods at Rs.2,83,468.33.

7. The petitioner being aggrieved by order dated 25.07.2023, preferred an appeal before the Additional Commissioner Grade-II (Appeal)-1, Sales Tax, Mainpuri which as been rejected by means of impugned order dated 06.03.2024, and accordingly the aforesaid order dated 06.03.2024 has been challenged in the present writ petition.

8. Learned counsel for the petitioner has submitted that the goods in question were accompanying with the genuine documents such as tax invoices, builty, e-way bills etc. and was on its onward journey to its final destination but the same was intercepted and the vehicle was seized and thereafter penalty has been imposed on the ground that the vehicle was intercepted on the route which was not the one on which the driver was carrying the goods.

9. Learned counsel for the petitioner has vehemently submitted that in the form supplied by the respondents, there is no route prescribed and merely because the goods were intercepted at Firozabad, which in any case was in close proximity to one of the destination of the goods which were being transported by the said vehicle. There was no violation of the rules, as the said route was taken by the vehicle to reach the destination where the goods were to be delivered.

10. 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.

11. 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 Auraiya and Etawah in the garb of accompanying documents, which is in contravention of the provisions of the Act. He prays for dismissal of this writ petition.

12. The Court has perused the records.

13. 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 Auraiya and Etawah 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.

14. 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.

15. 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.

16. 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 tax invoice and e-way bill dated 11.07.2023 and 13.07.2023, 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.

17. 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 too 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."

18. 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.*"

19. In view of the facts as stated above as well as law laid down as aforesaid, the impugned order dated 06.03.2024 cannot be

sustained in the eyes of law and is hereby quashed.

20. The writ petition is **allowed**.

Order Date :- 9.7.2024
A. Verma

(Alok Mathur, J.)