

Chief Justice's Court

Case :- WRIT TAX No. - 1852 of 2024

Petitioner :- M/S Lakhdatar Traders

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- Ankur Agarwal, S.C.

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

1. This writ petition has been filed by the petitioner aggrieved of the proceedings initiated under Section 129 of the CGST Act read with Section 20 of the IGST Act and a demand of penalty order dated 16.10.2024 in Form GST MOV-09 along with Form GST DRC-07 dated 16.10.2024 passed by Respondent No.3. Further the detention order and consequential notice dated 08.10.2024 have also been challenged.

2. Brief facts of the case are that the vehicle 'DL1 MA-8846' was on its way from Patna, Bihar to Gurugram, Gurgaon, which was intercepted by the respondent-authorities on 04.10.2024 at 23:00 hours at Mathura.

3. The statement of the person incharge (driver) was obtained in Form GST MOV-01 and physical verification was made in which, it is claimed that no discrepancy was found. However, the goods were detained by indicating movement of goods without proper documents. A notice dated 08.10.2024 was issued in Form GST-MOV-07 *inter alia* indicating that the registration of the petitioner was suspended. Further several indications were made pertaining to the validity of the registration of the petitioner-firm.

4. The petitioner questioned the validity of the notice issued on the ground of suspension of the registration and sought release of the goods, however, by order impugned dated 16.10.2024, a demand

under Section 129 (1)(b) of the Act to the tune of Rs.14,81,490/- was made.

5. Learned counsel for the petitioner made submissions that it is not the case of the respondent that the vehicle was not accompanied by the requisite documents. The show cause notice simply indicates that the registration of the petitioner was suspended based on which, the demand has been raised, which is not justified. Submissions have been made that the documents in question are dated 01.10.2024 and that the show cause notice was issued by the jurisdictional authority at Bihar on 03.10.2024, wherein the registration has been suspended. However, apparently, the respondent-authorities, who had no jurisdiction had recorded a finding pertaining to the registration being bogus and as a consequence to the same, penalty under Section 129 (1)(b) has been imposed, which is not justified. Reliance has been placed on judgement in *Halder Enterprises v. State of U.P. and others, Writ Tax No.1297 of 2023* decided on 11.12.2023.

6. Learned Standing counsel supported the order impugned. Submissions have been made that a bare perusal of the order impugned would reveal that the registration was obtained by the petitioner based on fake documents and, therefore, as the documents which were accompanying the goods in question were obtained based on a fake registration, the passing of the order was justified.

7. We have considered the submissions made by counsel for the parties and have perused the material available on record.

8. The facts are not in dispute that the documents in question which were accompanied the goods, were dated 01.10.2024 and at the time of interception of the vehicle, the requisites were found.

The notice issued by the respondents indicated the fact of the registration being suspended by the jurisdictional authorities at Bihar on 03.10.2024, based on which, the penalty has been imposed under provisions of Section 129(1)(b) of the Act. A coordinate Bench of this Court in the case of Halder Enterprises (supra), wherein, the goods were intercepted on 03.10.2023 and the suspension took place on 06.10.2023 w.e.f. 18.09.2023, after referring to the orders of this Court in *M/s Sahil Traders v. State of U.P. and another*, 2023:AHC:116953-DB and *M/s Sanjay Sales Agency v. State of U.P. and another*, 2023:AHC:193624-DB, and provisions of Section 129 came to the conclusion that once the goods were found with proper tax invoice and E-way bill belonging to the petitioner, the circular dated 31.12.2018 would apply and the petitioner would be deemed to be owner of the goods and the same was to be released in terms of Section 129 (1) (a) of the CGST Act. In the present case also, as noticed hereinbefore this is not the case of the respondents that the goods were not accompanied with proper tax invoice and E-way bill and only on account of the fact that the registration was suspended on 03.10.2024 that the action has been initiated and the order impugned has been passed as such the issue stands covered.

9. Consequently, the writ petition is **allowed**. The order impugned dated 16.10.2024 (Annexure-1) is set aside.

10. The authorities are directed to carry out the exercise in terms of Section 129 (1)(a) of the CGST Act within a period of two weeks from today.

Order Date :- 11.11.2024
N.S.Rathour/A.Prajapati

(Vikas Budhwar, J) (Arun Bhansali, CJ)