

Court No. - 2

Case :- WRIT TAX No. - 577 of 2022

Petitioner :- M/S Bans Steel Through Its Proprietor Alpana Jain

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

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Mr. Parth Goswami holding brief of Mr. Pranjal Shukla for the petitioner and learned ACSC for State-respondents.

2. By means of present petition, the petitioner is assailing the order dated 14.7.2019 passed by the Assistant Commissioner, Mobile Squad -11, Kanpur Nagar and the order dated 18.11.2021 passed by Additional Commissioner, SGST Grade -II, Appeal IV, Kanpur Nagar.

3. Brief facts of the case as stated in the writ petition are that the petitioner is a retail and wholesale distributor of iron and steel having GSTIN no. 09BPOPZ48-12D12W. On 8.7.2019, the petitioner has purchased goods from M/s NBM Traders, Mandi Govindgarh, Punjab for which tax invoices as well as E-way bill was generated. The said goods were transported from State of Punjab to Bans Steel, Kanpur Nagar, Uttar Pradesh. Thereafter the petitioner has sold the said goods to M/s Dinesh Chandra Gupta and Sons through invoice no. 21 dated 12.7.2019 and M/s Jain S.S. Steel through invoice no. 22 dated 12.7.2019. The petitioner has generated the e-way bill against invoice no. 21, however due to some technical error the e-way bill against invoice no. 22 could not be generated and the same was generated on 14.7.2019 before the seizure order could be passed. However during transportation of goods, the vehicle in question having registration no. PB 10 DM 1019 was intercepted by respondent no. 3 on 13.7.2019 and thereafter GST MOV-01 has been issued on 13.7.2019 and after issuing form GST MOV-04 and GST MOV-06, the goods were detained on the ground that at the time of inspection of

vehicle in question, no E-way bill was found with regard to invoice no. 22 dated 12.7.2019. Thereafter respondent no. 3 has issued a show cause notice to the petitioner and passed the impugned order dated 14.7.2019 imposing tax liability to the tune of Rs. 382168/- together with penalty of Rs. 382168/-. The petitioner has challenged the said order in appeal before respondent no. 2, but the same has been dismissed vide order dated 18.11.2021. Hence the present petition.

4. Learned counsel for the petitioner submits that once after issuance of show cause notice as well as before passing the seizure order, the E-way bill in respect of tax invoice no. 22 dated 12.7.2019 has been submitted before the respondent authorities, the proceeding is not justified in the eyes of law. He further submits that there was no intention of the petitioner to avoid the payment of tax.

5. In support of his submission, he relied upon the judgements of this Court in **Writ Tax No. 1146 of 2021(S/S Shri Surya Traders Vs. Union of India) Neutral Citation No. 2022: AHC: 3063** and **Writ Tax No. 1049 of 2019 (M/s Havells India Ltd. Vs. State of UP and others) Neutral Citation No. 2023: AHC: 72447**. He prays for allowing the present writ petition.

6. *Per contra*, learned ACSC has supported the impugned order and submits that there was a violation of the Act as well as the Rules, therefore, the proceedings has rightly been initiated against the petitioner. He further submits that the goods were not accompanying with proper documents as require under the Act as E-way bill with regard to tax invoice no. 22 dated 12.7.2019 was not accompanying with the goods at the time of interception, therefore, a presumption has been drawn that the petitioner was trying to avoid the payment of tax in respect of tax invoice no. 22 dated 12.7.2019.

7. In support of his arguments, learned ACSC has relied upon the judgements of this Court in **Writ Tax No. 1109 of 2019 (M/s Akhilesh Traders Vs. State of UP and others) Neutral Citation No. 2024: AHC: 29040** and **Writ Tax No. 739 of 2020 (M/s Hawkins Cooker Limited Vs. State of UUP and others) Neutral**

Citation No. 2024: AHC:24164.

8. In order to buttress his submission, learned ACSC submits that since the goods were not accompanying with proper documents, therefore, presumption has rightly been drawn that the petitioner has intention to avoid the payment of tax as the same was not rebutted by the petitioner at the time of detention. He submits that it is not a case that requisite documents were accompanying with the goods but there was some technical error as Part III was not filled or there was some mistake in E-way bill. He prays for dismissing the present writ petition.

9. After hearing learned counsel for the parties, the Court has perused the records.

10. It is admitted between the parties that at the time of interception of the goods, no E-way bill in respect of tax invoice no. 22 dated 12.7.2019 was produced, therefore, the goods were detained, however before the seizure order could be passed and after issuance of show cause notice, the E-way bill in respect of tax invoice no. 22 dated 12.7.2019 was produced, in which no discrepancy was pointed out by any of the respondent authorities. The only ground for detention being taken by the respondent authority is that once the goods in question was not accompanying with proper documents, there was intention to avoid the payment of tax.

11. On pointed query raised to the learned ACSC that after detaining the goods in question, if the show cause notice was issued then this was merely empty formality or any discrepancy can be cured before the seizure order could be passed, he has relied upon the aforesaid two judgements of this Court in the cases of **M/s Akhilesh Trader (supra)** and **M/s Hawkins Cookers Limited (supra)** and try to justify the impugned orders.

12. In view of above, deeper study needed to be made for the aforesaid two judgements relied upon by the learned ACSC.

13. In the case of **Hawkins Cooker (supra)** the goods were seized on the ground

that no document was available along with the goods, therefore, the proceedings under Section 29 of the Act was justified by the Court.

14. Further, in the case of **M/s Akhilesh Traders (*supra*)**, neither any tax invoice nor any E-way bill was produced at the time of detention, therefore, the proceedings under Section 29 of the Act was justified by this Court.

15. However, in the present case, the consignment of two different dealers were loaded in the vehicle and two separate tax invoices i.e. tax invoice no. 21 dated 12.7.2019 and tax invoice no. 22 dated 12.7.2019 were generated. So far as tax invoice no. 21 dated 12.7.2019 is concerned, there is no dispute in this respect. However so far as tax invoice no. 22 dated 12.7.2019 is concerned, admittedly, E-way bill was not produced at the time of detention and the same was produced before passing the seizure order. It is not in dispute that before the seizure order could be passed, proper E-way bill was produced and the authorities, at no stage, have pointed out any discrepancy in the said E-way bill. Once the E-way bill was produced before the seizure order could be passed, the discrepancy, if any, was cured. In view of above, the aforesaid judgements relied upon by the learned ACSC have no application in the facts and circumstances of the present case, as such, the same are of no aid to the respondents.

16. The GST authorities have full mechanism as well as power that after detaining the goods, if the same was not accompanying with the proper documents, the authority could have made survey of the business premises of the petitioner to find out the correctness of transaction but the respondent authorities have chosen in their wisdom not doing so. Once E-way bill was produced before the seizure order could be passed, it would not be said that any contravention of the provision of the Act have been made by the petitioner.

17. In view of the aforesaid discussions, the impugned order dated 14.7.2019 passed by the Assistant Commissioner, Mobile Squad -11, Kanpur Nagar and the order dated 18.11.2021 passed by Additional Commissioner, SGST Grade -II,

Appeal IV, Kanpur Nagar are hereby quashed.

18. The writ petition is **allowed** accordingly.

19. If any amount deposited by the petitioner in pursuance of the impugned orders, the same shall be refunded to him, in accordance with law within a period of two months from today.

Order Date :- 9.8.2024

Rahul Dwivedi/-