

Court No. - 1

(1) **Case :-** WRIT TAX No. - 916 of 2022

Petitioner :- M/S Eco Plus Steels Pvt. Ltd.

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Alope Kumar

Counsel for Respondent :- C.S.C.

With

(2) **Case :-** WRIT TAX No. - 1600 of 2022

Petitioner :- M/S Eco Plus Steels Pvt. Ltd.

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Alope Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. Heard Mr. Alope Kumar, counsel appearing on behalf of the petitioner and Mr. Rishi Kumar, Additional Chief Standing Counsel appearing for the respondents.

2. The above two writ petitions have been filed challenging the orders passed in appeal under Section 107 of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act').

3. In the first writ petition bearing Writ Tax No.916 of 2022, the orders under challenge are the order passed by the respondent No.3 (being the Assessing Officer) dated September 25, 2019 and the order dated April 5, 2022 passed by the Appellate Authority under Section 107 of the Act. The above two orders have been passed in relation to confiscation under Section 130 of the Act and levy of penalty under Section 122 of the Act.

4. In the second writ petition bearing Writ Tax No.1600 of 2022, the order dated December 3, 2022 passed by the respondent No.3 (being the Assessing Officer) and the order dated August 3, 2022 passed by the First Appellate Authority under Section 107 of the Act are under challenge. These orders have been passed under Section 74 of the Act for liability arising out of additional stock that was present with the petitioner.

5. In relation to Writ Tax No.916 of 2022, the issue to be answered is whether mere presence of additional stock would result in confiscation and subsequent penalty.

6. Counsel on behalf of the petitioner has relied on two judgments of the coordinate Bench of this Court in the case of **M/s Maa Mahamaya Alloys Pvt. Ltd. vs. State of U.P. and others** reported in **2023 82 NTN DX 393** and in the case of **M/s Metenere Ltd. vs. Union of India** (Writ Tax No.360 of 2020, decided on December 17, 2020) in support of his arguments.

7. From a perusal of the judgment in the case of **M/s Maa Mahamaya Alloy Pvt. Ltd. (supra)**, it is clear that the issue was decided against the respondents. One may rely upon the paragraphs provided below for the same:-

“14. Coming to the Issue no.2, Section 130 of the GST Act contemplates and provides for levy of the penalty, in the event, any of the conditions so mentioned in Section 130(1) are made out. Section 130(1) reads as under:

"Section 130. Confiscation of goods or conveyances and levy of penalty-

(1) Notwithstanding anything contained in this Act, if any person -

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122."

15. *On a plain reading of the allegations levelled against the petitioner with regard to the improper accounting of goods, the only stipulation contained in Clauses (ii) and (iv) of sub-section (1) of Section 130 can at best be invoked by the department, however, in the present case, even assuming for the sake of argument, that the goods were lying in excess of the goods in record, the case against the petitioner would not fall under Clause (ii) of sub-section (1) of Section 130 for the simple reason that the liability to pay the tax arises at the time of point of supply, and not at any point earlier than that. On a plain reading, the scope of Clause (ii) of sub-section (1) of Section 130 is that any assessee who is liable to pay tax and does not account for such goods, after the time of supply is occasioned, would be liable to penalty under Clause (ii). Analyzing Clause (iv) of sub-section (1) of Section 130, the contravention of any provision of the Act or the Rules should be in conjunction with an intent to evade payment tax and penalty can be levied by invoking Clause (iv) only when the department establishes that there were a contravention of the Act and Rules coupled with the 'intent to make payment of tax'. There is no such allegation in the show cause notice or any of the orders, I have no hesitation in holding that even the Clause (iv) of sub-section (1) of Section 130 would not be attracted in the present case."*

8. Furthermore, the coordinate Bench in **M/s Maa Mahamaya Alloy Pvt. Ltd. (supra)** held that confiscation of the stock cannot be done only on the basis of eye estimation. The relevant paragraph is delineated below:-

"19. Coming to the Issue no.IV with regard to the determination of value of the goods. Section 15 of the GST Act provides for valuation of the taxable

supply. In furtherance of the provisions contained in the Act, Rules have been framed and Rule 27 of the said Rules provides for the manner of valuation of supply of goods or services, however, in the present case, the valuation of the goods is required to be done in terms of the mandate of Section 15(1) read with Section 15(2) and read with Section 15(3). In the said Section 15 or the Rules framed thereunder, there is no prescriptions for valuation of the goods on the basis of eye estimation as has been done by the department and has been repelled by the appellate authority. The appellate authority has erred in repelling the valuation done on the basis of eye estimation, however, has proceeded to value the goods (although differently) at the appellate stage without resorting to the mandate and manner prescribed in Section 15 read with the Rules, thus, on that count also, the impugned order is not sustainable.”

9. In the present case, the Appellate Authority, after examining all materials, came to the following conclusion:-

“... यह स्थिति यह स्पष्ट करती है कि अधिकारियों द्वारा वास्तव में माल का वजन कराकर स्टाक अंकित नहीं किया गया है तथा इस संबंध में अपीलकर्ता का कथन उचित होना स्पष्ट होता है कि अधिकारियों द्वारा उचित प्रकार से वजन कराकर स्टाक अंकित किए बना अंदाजा से गिनती एवं वजन का आगणन किया गया है जो केवल **eye estimation** के आधार पर ही है जिसमें जूनियरतम अधिकारी को अकेले लगभग 90 प्रति० स्टाक को अंकित करने का कार्य दिया गया है। सर्वेक्षण के समय बनाए गये स्टाक शीट में से किसी भी स्टाक शीट के साथ माल को छोटे छोटे टुकड़ों में वजन कराने की तकपट्टी जिसमें एक बार में किए गये वजन को लिखा जाता है, नहीं बनायी गयी जबकि व्यापार स्थल पर वजन कराने का कांटा उपलब्ध रहा था? स्टाक गणना की यह प्रक्रिया निश्चय ही त्रुटिपूर्ण है जिसमें सभी साइज के सरिया का एक बण्डल का वजन बिना वास्तविक वजन कराए गोलांकित में 50 केजी अंकित किया गया है एवं बिना तकपट्टी बनाए 520, 1676, 478, 757, 150, 400, 350, 500, 292 टन आदि का स्टाक एक एक ढेर में अंकित किया गया है। इस प्रकार का स्टाक अंकित किये जाने से यह स्पष्ट है कि स्टाक की गणना उचित प्रकार से नहीं की गयी है तथा अधिकारियों द्वारा केवल Eye Estimation के आधार पर स्टाक का अंकन किया गया है। यहाँ यह भी उल्लेखनीय है कि स्टाकशीट के प्रत्येक पन्ने पर व्यापारी की ओर से उपस्थित व्यक्ति के हस्ताक्षर न होने एवं पंचों के हस्ताक्षर न होने से यह स्पष्ट हो रहा है कि अधिकारियों द्वारा स्टाक गणना करने के विभागीय परिपाट का अनुपालन भी नहीं किया गया है। मेरे द्वारा भौतिक सत्यापन शीट पर हस्ताक्षर करने वाले अधिकारियों द्वारा प्रयोग किए गये बाडी वार्न कैमरे की रिकार्डिंग मंगाकर देखी गयी। रिकार्डिंग की विडियों उपलब्ध नहीं करायी गयी। जो स्पष्ट करता है कि इन अधिकारियों द्वारा माल की कोई तौल करायी गयी है से संबंधित साक्ष्य विभाग के पास नहीं है। व्यापार स्थल पर ट्रकों का वजन करने हेतु कांटा उपलब्ध रहने की दशा में व्यापारी के मजदूरों का प्रयोग करके वजन कराया जा सकता

था। यह भी उल्लेखनीय रूप से पाया गया कि मात्र 10 घंटे के कार्यकाल में इतने अधिक सरिया के बंडल की गिनती भी नहीं करायी जा सकती है जबकि वजन कराया जाना भी नामुमकिन कार्य है।"

10. One is unable to understand that after the Appellate Authority had come to the above finding that the stock was not weighed or counted, specifically when the same could have very well been done in the premises of the petitioner, why did the Appellate Authority subsequently reduce the penalty by making a fresh assessment. The calculation of the stock by the Appellate Authority on the basis of an estimate is without any basis in law. When the Appellate Authority had come to the finding that the officers in the survey did not carry out the quantification of the stock in the correct manner, there was no reason for the Appellate Authority to uphold the confiscation and penalty. It is to be further noted that the survey was carried out on October 26, 2018, immediately thereafter objection was raised by the petitioner on October 28, 2018 and the order of confiscation was passed by the Assessing Authority on September 25, 2019, almost after 11 months of the date of survey. From the record, I do not find any reason with regard to the delay in the confiscation and levy of penalty. In fact, the notice for confiscation was issued in August 2019, almost 10 months after the date of survey. This inordinate delay in issuing show cause notice goes to the root of the matter and is a factor to be considered. In my view, the delay leads to an inference that the authorities have acted in a callous manner.

11. This Court is of the view that the entire procedure followed by the authorities indicates not only a lackadaisical approach but also showcases the incompetence and inefficiency of the authorities that had carried out the survey in a shoddy manner and thereafter issued the show cause notice and passed order of confiscation and penalty belatedly.

12. It is trite law that the burden of proof for imposition of penalty and confiscation of goods is on the Department and the same cannot be done on estimates when it is clear that the Department could have carried out a

physical verification based on counting and weighing of the goods. In light of the same, the entire finding with regard to excess stock, that is based on estimate, is liable to be rejected outrightly.

13. In light of the above, the impugned orders in Writ Tax No.916 of 2022 with regard to penalty and confiscation are quashed and set aside.

14. Similarly, the entire proceedings that have been initiated under Section 74 of the Act that have culminated in the writ petition bearing Writ Tax No.1600 of 2022, wherein challenge has been raised against the order passed by the Assessing Officer and the order passed in appeal with regard to liability of tax under Section 74 of the Act are to be quashed and set-aside as the same are based on finding that there was excess stock. As the said finding of excess stock is clearly without any basis in law and illegal, the initiation of proceedings under Section 74 of the Act cannot stand on any footing.

15. Accordingly, the impugned orders in Writ Tax No.1600 of 2022 are quashed and set-aside. Consequently reliefs to follow. The amount, if any, deposited by the petitioner with the authorities, the same should be returned to the petitioner within a period of eight weeks from date.

16. Accordingly, both the writ petitions are allowed.

Order Date :- 3.4.2024

Rakesh

(Shekhar B. Saraf, J.)