

Court No. - 6

Case :- WRIT TAX No. - 1464 of 2022

Petitioner :- S/S S.K. Trading Co And Another

Respondent :- Additional Commissioner Grade 2(Appeal)
And Another

Counsel for Petitioner :- Bipin Kumar Pandey, Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

Present petition has been filed by the petitioners with the allegations that petitioner no.1 placed an order for supply of mixed ready-made garments, which were being transported by petitioner no.2. It is stated that on 13.09.2022 the goods while in transit were intercepted and a physical verification report was prepared on 17.09.2022 in form GST MOV-04 and no discrepancy was found in the quantity of the goods in question.

It is stated that on 21.09.2022, a detention order was passed detaining the goods in question mainly on the ground that the goods were without E-Way bill. It is argued that although under Section 129(3) of U.P. GST Act (hereinafter referred to as 'the Act'), there is a prescription for issuance of a notice in Form GST MOV-07, however, the notice was not issued in the format as prescribed but was issued by an authority whose name is not even specified as the order itself recorded that the same was issued for the authority and not by the authority.

It is stated that in reply to the letter issued to the petitioner, the petitioner filed a detailed reply denying the allegations which led to passing of an order dated 26.09.2022 (Annexure - 6). Aggrieved against the said order, the petitioner preferred an appeal which too was dismissed by means of an order dated 19.10.2022. The said two orders are under challenge in the present petition.

Contention of learned counsel for the petitioner is that in the event Part - B of the E-Way Bill was not being carried, no penalty is imposable. He further argues that in any event, the detaining authority does not have the jurisdiction to value the goods as has been done. In support of the same, he places reliance on the Circular dated 09.05.2018.

In the light of the said two submissions, learned counsel for the

petitioner argues that the order imposing the penalty that too on valuation without jurisdiction is wholly bad in law.

He further argues that even for the sake of arguments, it is presumed that the petitioner is liable, the provisions of Section 129(1)(a) of the Act can be attracted in this case and not Section 129(1)(b) of the Act as admittedly the petitioner is the owner of the goods in terms of the invoice issued in favour of the petitioner. He further argues that it is well settled that if the petitioner is either a consignor or a consignee, he has to be treated as a owner of the goods and thus, the provisions of Section 129(1)(b) of the Act are not invocable as has been done by the department.

In view of the said submission, he places reliance on the judgment of this Court in the case of ***M/s Riya Traders v. State of U.P. & Ors.; Writ Tax No.28 of 2023*** decided on **17.01.2023** as well as in the case of ***M/s Margo Brush India and Others v. State of U.P. & Anr.; Writ Tax No.1580 of 2022*** decided on **16.01.2023**. This Court in Para - 3 of the judgment in the case of ***M/s Margo Brush India (supra)*** has held as under:

"3. The argument is that it is a case in which the goods in transit were accompanied by proper documents. When show cause notice was issued to the driver of the vehicle, the petitioners had filed their replies. In terms of the provisions of Section 129(1)(a) of the Act, in case, the owner of the goods comes forward, the penalty is to be levied upon him. The penalty can be levied under section 129(1)(b) of the Act, only if the owner of the goods does not come forward. In the case in hand, vide impugned order the penalty has been levied under Section 129(1)(b) of the Act, which is not applicable. He has also referred to Circular dated December 31, 2018 issued by the Central Board of Indirect Taxes and Customs (hereinafter referred to as 'Board'), whereby a clarification has been issued as to who is to be treated as owner of the goods for the purpose of Section 129(1) of the Act. It provides that if the goods are accompanied with invoices then consignor should be deemed to be the owner. In the case in hand, the petitioner nos. 1 and 2 are the consignors, whereas petitioner nos. 3 to 5 are consignees, hence, in their presence and accepting the ownership of the goods, the impugned order should not have been passed under Section 129(1)(b) of the Act."

In view of the submissions as made, this Court is to analyze whether the orders passed against the petitioner are sustainable or not?

Section 7 of the Act provides for levy and collection of tax and Chapter IV provides for determination of value of supply. Section 15 of the Act provides for value of taxable supply, Section 15(4) makes it clear that if the value of the supply of goods or services or both cannot be determined under Section (1), the same shall be determined in such manner as may be

prescribed.

In respect of the goods seized while in transit, Rule 138 of Chapter XVI of CGST Rules provides for the valuation; Explanation 2 to the said rules reads as under:

"Explanation 2.-For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union Territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods."

In view of the said Explanation 2, as quoted above, it is clear that the value of the goods in transit is to be determined in accordance with the provisions of Section 15 declared in an invoice or a bill of supply or a delivery challan in respect of the consignment. Even Section 15 Sub-Section 1 of the Act prescribes that the value of the supply of goods or services shall be the transaction value which should include the amounts as clarified under Section 15(2) and the benefits as contained in Section 15(3). Recourse to Section 15 Sub-Section 4 can be taken only when the value of the supply of goods cannot be determined under Sub-Section 1.

In the present case, the value of the supply of goods is clear from the transaction value as indicated in the tax invoice which is on record and there being nothing on record to demonstrate that the said tax invoice was not acceptable to the respondents for any reason, as such, I have no hesitation in holding that in view of Explanation 2, Rule 138 read with Section 15(1), the transaction value is the value which is indicated in the invoice.

Considering the fact that the petitioner has to be treated as the owner of the goods in view of the law laid down in the case of ***M/s Margo Brush India (supra)***, I have no hesitation in holding that the orders impugned insofar as it imposes the burden on the petitioner to get the goods released in terms of Section 129(1)(b) of the Act is bad in law.

As such, on both the grounds, the impugned orders dated 26.09.2022 and 19.10.2022 cannot be sustained and are set aside.

The matter is liable to be remanded to the Assessing Authority to pass fresh orders treating the petitioner to be the owner of the goods in terms of the mandate of Section 129(1)(a) of the Act treating the valuation of the goods as specified in the invoice,

however, as the petitioner is ready and willing to pay the liability in terms of Section 129(1)(a) of the Act, instead of remanding, I deem it appropriate to direct the respondents to release the goods to the petitioners if the petitioners offer to pay two hundred percent of the tax payable on the goods valuing the same on the basis of the valuation as shown in the invoice.

As soon as the petitioner tenders the amounts as is required under Section 129(1)(a) of the Act, the goods shall be released to the petitioner.

Needless to say that the proceedings shall thereafter culminate in view of the mandate of Section 129(5) of the Act.

The vehicle detained by the respondents shall also be released on payment of the amounts as indicated above.

The writ petition is ***allowed*** in above terms.

Order Date :- 16.3.2023

nishant