

Court No. - 17

Case :- WRIT - C No. - 33211 of 2018

Petitioner :- M/S H.B.L.Power Systems Ltd Thru Authorised Signatory

Respondent :- State Of U.P.Thru Prin.Secy.Dept Of Tax And Registration And Ors

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

The present petition has been filed challenging the judgment and order dated 19.03.2018 passed by the Adjudicating Authority under the U.P. G.S.T. Act in exercise of powers under Section 129 (3), whereby the goods have released in favour of the petitioner subject to deposit of Rs. 10,46,780/- as tax and a further penalty of Rs. 10,46,780/- as well as the Appellate Order dated 06.11.2018, whereby the appeal preferred by the petitioner was dismissed.

The contention of learned counsel for the petitioner, in brief, is that the petitioner is a dealer duly registered under the provisions of G.S.T. Laws and has its principal place of business in the State of U.P. at Gomti Nagar, Lucknow. The petitioner is involved in the business of manufacturing, sale, supply and installation of renewable energy systems, batteries etc. He further states that Modern Coach Factory, Raebareli, which is a Government of India undertaking, has placed purchase order upon the Hyderabad Office of the petitioner on 27.12.2017 for purchase of Battery Sets etc. The said supply was to be made in four lots. In pursuance to the said order, the petitioner by means of a Tax Invoice dated 26.02.2018 dispatched 25 numbers of battery sets to the Modern Coach Factory of the petitioner situate at Mahaboobnagar, District Telangana and a copy of the Tax Invoice is on record.

In terms of the said Invoice, it is clear that while raising an Invoice, the petitioner had levied and deposited I.G.S.T at the rate of 28%. He states that in pursuance to Rule 138 of the G.S.T. Rules, an E-way bill is required where the consignment value is more than Rs. 50,000/-. The petitioner for obtaining E-way bill, uploaded prescribed details on the portal of the G.S.T. and generated the E-way bill for the goods in question. It is stated that the details of dispatched goods were also entered on the portal and the same was also printed on the E-way bill.

It is stated that when the goods reached at Lucknow, it was intercepted by Mobile Squad, Unit-3 of the Commercial Tax Department on 08.03.2018 and a seizure order in purported exercise of powers under Section 129 (1) of the U.P. G.S.T. Act was passed on 08.03.2018 (Annexure-7). The reason as recorded for passing the seizure order was that the E-way bill system, as introduced by the Central Government under the C.G.S.T., was replaced by the State E-way bills, which had been suspended by the Central Government w.e.f. 02.02.2018. Thus, the State was of the view that once the Central Government had suspended its E-way bill, the requirement of the State E-way bill stood revived automatically and as the petitioner was not carrying the State E-way bill, the seizure order came to be passed.

Aggrieved against the same, the petitioner submitted a reply highlighting that the tax has been paid and were accompanied by an E-way bill on the portal of the C.G.S.T. Despite the reply of the petitioner, an order came to be passed directing the petitioner to deposit Rs. 10,46,780/- as tax and Rs. 10,46,780/- as penalty under Section 129 (3) of the U.P. G.S.T. Act. The petitioner has submitted a bank guarantee for the total amount of Rs. 20,93,560/- and in pursuance to the said bank guarantee,

the goods were released to the petitioner.

The petitioner preferred an appeal against the order dated 19.03.2018 under Section 107 of the U.P. G.S.T. Act. The said appeal was filed after the petitioner deposited 10% amount imposed vide order dated 19.03.2018.

It is argued that in terms of the provisions of Section 107 (6) of the U.P. G.S.T. Act, only 10% of the amount was to be deposited and the balance amount would remain stayed in terms of the statutory provisions, however, the State Authorities proceeded to encash the bank guarantee. As such, the petitioner approached this Court by filing Writ Petition No. 24677 (MB) of 2018, wherein directions were issued for deciding the first appeal itself. In pursuance to the said order, the appeal has been decided against the petitioner upholding the order dated 19.03.2018.

Learned counsel for the petitioner argues that this question raised in the present writ petition is identical to the one raised in **Writ Tax No. 587 of 2018 (M/S Godrej and Boyce Manufacturing Co. Ltd. Vs. State of U.P. and Others)**, which has been decided by this Court vide judgment dated 18.09.2018, wherein the Court had gone through the entire statutory provisions and had noticed discrepancies prevalent at that point of time with regard to the E-way bill. He argues that in any event, it is well known that at that point, the G.S.T. was in its infancy and the Governments were taking all steps to solve the confusion, which was prevalent. He further argues that even this Court in Writ Tax No. 748 of 2017 (M/S Manju Nath Trading Co and Others Vs. State of U.P. and Others), placing reliance on the 22nd Meeting of the G.S.T. Council held on 6th October, 2017 to the effect that E-way bill shall not be demanded till 31st March, 2018, had passed an order in favour of the petitioners

therein. He further argues that in any case admittedly the goods were being transported from Telangana to Uttar Pradesh and thus there was no liability upon the petitioner to pay the tax under the U.P. G.S.T. Act, as it was a case of inter-state transfer of goods. He further argues that in any event, the fact remains that the petitioner had deposited the tax and had taken an E-way bill also, thus, the levy of penalty was not at all justified.

Learned Standing Counsel on the other hand argues that in pursuance to the circular issued by the State Government, as contained in Annexure-1, wherein directions were issued that the provisions of mandatory E-way bill stood revived from the night of 09.02.2018 and directions were issued for taking steps to check the violations thereof, the State Authorities were justified in passing the order, as admittedly the petitioner did not have the G.S.T. bill as was required under the provisions of U.P. G.S.T. Act and the Rules framed thereunder. He, thus, prays that the writ petition is liable to be dismissed.

It is common ground that the Tax Invoice, based upon which the goods were sent, was dated 26.02.2018 and was issued in compliance of Rule 46 of C.G.S.T. Rules. The said Invoice clearly indicates that I.G.S.T. at the rate of 28% was charged and paid, the goods were dispatched from Telangana and were seized at Lucknow on 08.03.2018 while they were being transported to the Rail Coach Factory, Raebareli.

The G.S.T. was introduced in India w.e.f. 2017 and in terms of the constitutional mandate, the Central Government framed the C.G.S.T. Act, I.G.S.T. Act as well as the Union Territory Goods and Service Tax Amendment Act, 2018. In terms of the scheme of the Act, as noted by this Court in its judgment dated 18.09.2018 passed in the case of **M/S Godrej and Boyce Manufacturing Co. Ltd. (supra)**, the Court had noticed the

serious confusion that was prevalent, as the Act and the Rules were at its infancy and the teething problem arising out of the enforcement of the new G.S.T. Act and the Rules were being sorted out by the Government keeping in view the hardship faced by the dealers across India. The G.S.T. Council noticing the said hardship faced by the assesses had postponed the enforcement of the requirement of E-way bill till 31st March, 2018 in pursuance to the recommendation of the G.S.T. Council.

The whole basis based upon which the order has been passed that the petitioner was not carrying the E-way bill as are required under the U.P. G.S.T. Rules, loses significance as the petitioner were not liable to be taxed under the U.P. G.S.T. Act being an inter-state supply and further the requirement of E-way bill was recommended to be not enforced till 31st March, 2018, in view of the recommendation of the G.S.T. Council.

Thus, on both the reasonings, as recorded above, the demand as raised in the order dated 19.03.2018 and as affirmed vide order dated 06.11.2018 are clearly not sustainable and are hereby set aside. Thus the writ petition is allowed with directions to refund the 10% amount deposited by the petitioner while preferring the appeal, in accordance with law, within a period of two months from today. The bank guarantee given by the petitioner shall also be released to him.

The petition stands **allowed** in terms of the said order.

Order Date :- 27.7.2022
Shafique