

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (T) No. 2312 of 2022

M/s. AMI Enterprises Pvt. Ltd.

.....Petitioner

Versus

1. Union of India through its Commissioner, Central Goods & Services Tax and Central Excise, District- East Singhbhum, Jamshedpur
 2. Joint Commissioner(Appeals), Central Goods & Services Tax, Ranchi
 3. Assistant Commissioner, Central Goods & Services Tax and Central Excise (Hqrs.), Jamshedpur
 4. Inspector, Central Goods & Services Tax and Central Excise, Jamshedpur
-Respondents

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Ms. Amrita Sinha, Advocate

For the Respondents : Mr. Amit Kumar, Advocate

07/10.08.2022 Heard learned counsel for the parties.

2. On the alleged violation of Section 129 of Central Goods and Services Tax Act, 2017 read with Rule 68 thereof as E-Way bill had expired at 11.59 p.m. on 17th September, 2021, the vehicle bearing no. JH05 AF 0361 was intercepted at 08:20 a.m. on 18th September, 2021. However, the entire proceedings starting from detention of the vehicle by issuance of Form GST MOV-06, show-cause notice in GST Form MOV-07 and the adjudication order in Form GST MOV-09 were passed on the same date i.e., 20th September, 2021. Petitioner went in appeal but lost there also vide order dated 17th February, 2022 (Annexure-9) passed by respondent no. 2. Petitioner had deposited the entire tax amount with interest and got the vehicle released on 21st September, 2021. Being aggrieved, writ petitioner has approached this Court.

3. Learned counsel for the petitioner submits that the entire proceedings were held *ex parte*. No proper opportunity of furnishing reply or hearing was accorded to the petitioner or his driver. There was no intention to evade tax. The vehicle was seized in teeth of Section 129(1) of CGST Act. Learned counsel for the petitioner has relied upon a decision of the Apex Court in the case of **Assistant Commissioner (ST) & Ors. Vs. M/s. Satyam Shivam Paper Ltd. & another passed in Special Leave to Appeal (C) No(s). 21132 of 2021** in support of her contention that there is no intention to evade the tax.

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Therefore, the entire liability of tax along with interest would be vitiated. Respondents have also not alleged any intention to evade the tax.

4. Respondents have filed their counter affidavit. Perusal of the statements made at paragraphs-7, 8 and 11 indicate that the vehicle was intercepted on 18th September, 2021 since E-the Way bill had expired at 11:59 pm on 17th September, 2021 and no extension have been sought of the E-Way bill by moving an application under Rule 138(10) of CGST Rule, 2017. According to the respondents, notice with seven days' time to submit reply was served on the authorized person of the company on 20th September, 2021, who was also directed to appear at 11: 30 a.m. on the said date, but he did not appear. On the request of the tax payer, the vehicle was released on payment of tax and interest as they did not want to submit anything on the issue. Therefore, the case was adjudicated ex parte. The vehicle has been released.

5. Learned counsel for the Respondent-CGST submits that the provisions of Section 129 do not contemplate the requirement of an intention to evade tax for imposing liability of tax, interest and penalty. Therefore, the adjudication order dated 20th September, 2021 and the appellate order dated 17th February, 2022 do not suffer from any legal infirmity. Learned counsel for the respondent submits that the proceedings were expedited on the request of tax payer himself.

6. We have considered the submission of learned counsel for the parties and taken note of the pleadings on record. The provisions of Section 129 of CGST Act and Rule 68 are quoted hereunder:

Section 129. Detention, seizure and release of goods and conveyances in transit.

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-

(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the

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value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).

(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3).

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

A bare perusal of the provisions of Section 129 shows that no goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods on the allegation of making transit in contravention of the provisions of the Act or Rule made thereunder. Sub-section (3) indicates that the proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1). Sub-section (6) provides that where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section

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(3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty. Apparently, the proceedings have been initiated on the same date and concluded also on the same date. Though, learned counsel for the respondent has stated that the proceedings were expedited at the instance of the tax payer on the same date, but there is nothing to substantiate such contention. The impugned adjudication order and the appellate order therefore both suffer from procedural infirmities and lack of proper opportunity to the petitioner or the person transporting to defend himself. As such, the impugned order dated 20th September, 2021 (Annexure-6) issued in Form GST MOV-09 and the appellate order dated 17th February, 2022 (Annexure-9) are set aside. However, the respondents are at liberty to take a fresh decision after due opportunity to the petitioner as provided under the Act.

7. Writ petition is accordingly allowed in the manner and to the extent indicated hereinabove.

(Aparesh Kumar Singh, J)

(Deepak Roshan, J)