

Neutral Citation No. - 2023:AHC-LKO:66100

Court No. - 8**Case :-** WRIT - C No. - 1299 of 2020**Petitioner :-** M/S Sahib Furniture Thru Proprietor Kuldeep Kaur**Respondent :-** State Of U.P.Thru Secy.Institutional Finance Lko And Ors.**Counsel for Petitioner :-** Yogesh Chandra Srivastava,Shubham Agrawal**Counsel for Respondent :-** C.S.C.**Hon'ble Pankaj Bhatia,J.**

1. The present petition is being heard after exchange of pleadings.
2. This petition challenges the order dated 27.12.2017 whereby, an order came to be passed holding that the petitioner was liable to pay tax on the value of the goods assessed as Rs.9,70,000/-, the tax amount was quantified as 1,74,600/- and the penalty was imposed as 1,74,600/-. The petitioner also challenges the appellate order dated 23.11.2008 whereby, the appeal preferred by the petitioner was dismissed.
3. This Court had entertained the writ petition in view of the fact that the tribunal contemplated under the GST Act was not constituted. Even till date, the Tribunal has not been constituted. As the pleadings are exchanged in between the parties, the matter is being heard finally.
4. On perusal of the order passed under Section 129(3) of the UPGST Act, it appears that the petitioner was transporting the goods from Ludhiana to Kolkata and the truck carrying the goods was intercepted, vide Interception Memo dated 17.12.2017 and subsequently thereto, the goods were physically verified and a show cause notice was issued to the petitioner on 19.12.2017. The reasons for detention as elaborated in the order dated 27.12.2017 are that no TDF-01 form was not downloaded for carrying the goods from one State to another. It was also recorded that the goods are being transported to one Guru Nanak Institute of Technology who had no GST number. It was also recorded that the transportation of such huge quantity of PVC Panel and Angle to an institution made the whole transport suspected. The goods were also physically verified and a *prima facie* view was formed that the PVC Panel admeasuring 4500 sq.mt. are physically present whereas in the invoice, 11000/- sq.

mt. was shown, thus, the goods uploaded are different from the goods verified physically. The petitioner filed a reply to the abovesaid show cause notice taking a ground that the goods be transported from Ludhiana to Kalkota was liable for tax under the IGST or CGST and thus, the authorities were not empowered to take action as was proposed.

5. The said defence of the petitioner was considered and placing reliance on the provisions of Section 68 of the UPGST Act, a view was formed that powers of seizure was exceeded, moreso, when the E-way Bill in the form of TDS-01 was expected to be downloaded, which was not available and was duly accepted by the driver and thus, the authorities had the power to take action under Section 129 (1) of the UPGST Act.

6. Based upon the assessment with regard to the quantum of goods, the order impugned came to be passed proposing the levy of tax and the penalty. The appellate order, while dismissing the appeal, upheld the order passed against the petitioner by holding that the only conclusion that can be drawn was that the goods were being brought to be sold within State and thus, adequate powers were existed with the authorities concerned under Section 68 of the UPGST Act.

7. The contention of the Counsel for the petitioner is that on the date of interception of the goods i.e. 17.12.2017, the possession with regard to the E-way Bills were shown and this aspect was duly considered by this Court in the case of ***M/s Godrej and Boyce Manufacturing Company Limited vs State of U.P. and others (Writ Tax No.587 of 2018)***, decided on 18.09.2018 and the same was further noticed by this Court in the case of ***M/s H.B.L. Power Systems Limited vs State of U.P. and others (Writ-C No.33211 of 2018)***, decided on 27.07.2022.

8. Learned Standing Counsel, in all fairness while places reliance on the circular issued by the State of U.P. itself as is annexed as Annexure-CA-1 argues that in movement, the goods were not carrying the E-way Bill, the authority carrying the goods would be called upon to upload the E-way Bill. The action of the respondent in the present case is contrary to the circular issued by the State Government.

10. The facts as led to the passing of the abovesaid two judgments, as noticed above, are clearly applicable to the facts of the present case also, as the detention is fully based upon the foundation that the TDS-01 form was not accompanied along with the goods which were in transit. Thus, following the said two judgments, the impugned orders solely founded on the allegation of not carrying of TDS-01 from may not be

sustained, even otherwise, the reference to the powers under Section 68, only a power vests with the respondent authorities to inspect the goods in movement, however, the facts remain that the entire foundation for passing the order was not carrying the TDS-01 form, which issued was duly considered and decided by this Court in the case of **Godrej and Boyce Manufacturing Company Limited** and in the case of **H.B.L. Power Systems Limited** (*supra*), as such, the orders impugned dated 27.12.2017 and 23.11.2008 cannot be sustained and are quashed.

11. The writ petition is **allowed**. The respondents are directed to return the amount deposited by the petitioner within a period of two months from the date of production of certified copy of this order.months.

Order Date :- 11.10.2023

akverma