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Neutral Citation No. - 2023:AHC:220665

Court No. - 37**Case :-** WRIT TAX No. - 1031 of 2023**Petitioner :-** Hemant Taneja**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Praveen Kumar,Damodar Singh**Counsel for Respondent :-** C.S.C.**Hon'ble Ajay Bhanot,J.**

1. Heard Shri Praveen Kumar, learned counsel for the petitioner and Shri Rishi Kumar, learned Additional Chief Standing Counsel for the State.

2. The petitioner is aggrieved by the order dated 04.01.2023 whereby the Assistant Commissioner, Commercial Tax, Mobile Squad-VII, Ghaziabad in purported exercise of powers under Section 129 (3) of the GST Act has imposed a penalty of Rs.1,83,442/-. The order of the penalty was carried in appeal by the petitioner.

3. The appellate authority/Additional Commissioner, State Tax, Mobile Squad, Unit-7, Ghaziabad by the impugned order dated 09.05.2023 upheld the findings of the authority of first instance and confirmed the penalty so imposed upon the petitioner.

4. Being aggrieved by the order dated 09.05.2023 passed by the respondent No.3 / Additional Commissioner, State Tax, Mobile Squad, Unit-7, Ghaziabad and the order dated 04.01.2023, the petitioner has assailed the same in

the writ petition.

5. The petitioner is a proprietor running under the name and style of 'M/s. J.S. Enterprises' in trading of taxable goods falling under Chapter-74 of the Goods and Service Tariff Act.

6. The petitioner is duly registered as a trader under the GST Act and has been issued a GST Identification Number i.e. 07AECPT6934N1ZU by the competent authority.

7. The petitioner received an order from one M/s. Vaishnavi Electronics, Ghaziabad for supply of Copper Clad Laminte, etc. Upon receipt of the said order the petitioner prepared an e-Invoice No.766/2022-23 dated 04.01.2023 at 10.10 a.m. The e-Way Bill bearing No.721309051066 dated 04.01.2023 was auto generated at 10.13 a.m. after the petitioner had got the aforesaid invoice registered on the common GST portal.

8. According to the petitioner, both the e-Invoice as well as e-Way Bill were provided to the vehicle driver in the digital mode. The vehicle proceeded to its destination after the goods were loaded and the driver was provided with the necessary documentation. When the vehicle was intercepted by the revenue authorities, the driver produced e-Invoice as well as e-Way Bill. However, the revenue authorities conducted the physical inspection of the goods under transportation. At the time of the physical verification of the goods the representative of the petitioner firm appeared before the revenue

authorities and presented hard copies of the e-Invoice No.766/2022-23 dated 04.01.2023 and e-Way Bill No.721309051066 dated 04.01.2023. The representative of the petitioner firm sought to demonstrate that the goods being transported were fully supported by valid documentation contemplated under the GST Act. However, the revenue authorities passed a detention order detaining the vehicle and the goods.

9. Thereafter, the show cause notice was issued to the petitioner on 04.01.2023.

10. The show cause notice records that the vehicle driver had produced a tax invoice No.766/2022-23 dated 04.01.2023, but the said tax invoice did not bear the signatures of the authorized signatory. Further, the driver of the vehicle was failed to produce other valid documents. In this manner according to the show cause notice, the goods were transported without the valid and complete documentation in violation of relevant provisions of the GST Act. The show cause notice also records that at the time of inspection the representative of the petitioner was present and had duly produced e-Invoice No.766 dated 04.01.2023 and generated the same at 10.10 AM. and also e-Way Bill dated 04.01.2023 generated same at 10.13 AM. According to the show cause notice further enquiries revealed that the said e-Invoice and e-Way Bill so produced disclosed the goods which were being transported. However, in view of the fact that the said documents were not produced at the time of interception of the vehicle violation of provisions

of Section 138 of the GST Rules was made out and appropriate action was liable to be taken.

11. The petitioner was keen to honour the business transaction and hence paid the penalty to get the goods released for onward transportation to the buyer. The order dated 04.01.2023 purportedly passed under Section 129(3) of the GST Act also finds that the petitioner had produced the said e-Invoice as well as e-Way Bill which clearly disclosed the goods which were being transported and were intercepted. However, since the driver of the vehicle had failed to produce the relevant documents at the time of interception, the violation of provisions of the GST Act read with Rules was established and penalty was liable to be imposed. The impugned order thereafter imposes the aforesaid penalty in purported exercise of Section 129(1)(a) of the GST Act and penalty was imposed.

12. The petitioner carried the said order in appeal before the appellate authority by instituting an appeal under Section 107 of the GST Act.

“Section 107. Appeals to Appellate Authority

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(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed:

[PROVIDED that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.]

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.”

13. The consistent case of the petitioner before the appellate authority as well as this Court is that the driver had produced the e-Invoice as well as e-Way Bill which were stored in his mobile number. However, the authorities failed to verify the same and initiated the impugned proceedings. Further, it is an admitted case that the hard copies of the tax Invoice as well as e-Way Bill were duly produced when the representative of the petitioner appeared before the Mobile Squad of the Revenue Department during the proceedings.

14. The impugned order while upholding the order of penalty reiterates the reasoning in the order passed by the Mobile Squad of the revenue authorities of the first instance.

15. The appellate authority/respondent No.3 in the impugned order dated 09.05.2023 has recorded these findings. The petitioner had failed to generate and download the e-Way Bill before transporting the goods. The petitioner failed to produce any document apart from tax invoice at the time of the interception of the vehicle. The order further notices the submission of the appellant/petitioner that the e-Invoice as well as e-Way Bill were uploaded in the mobile of the driver of the

vehicle. The e-challan was digitally signed by the petitioner. Hence, the appellate authority records his submission to the effect that since the digital documents were produced hard copies with signatures were not required to be presented to the officers.

16. On the footing of the aforesaid discussion, the appellate authority in the impugned order has found that the appellant/petitioner did not generate e-Way Bill with a view to evade tax and thus violated the provisions of the GST Act read with GST Rules and was liable to pay the penalty. The appeal was thus rejected.

17. Shri Praveen Kumar, learned counsel for the petitioner submits that:

I. The petitioner had generated the relevant documents, namely, e-Invoice and e-Way Bill as per the provisions of the GST Act.

II. The said documents were produced before the Revenue Authorities at the time of inspection of the vehicle.

III. The petitioner was not intent to evade tax.

18. Shri Rishi Kumar, learned Additional Chief Standing Counsel submits that:

I. The driver of the vehicle was not in a possession of the forms, and hence the production of the aforesaid forms at the time of inspection is of no avail.

II. The intent to evade tax is established.

19. For adjudicating the submissions made at the Bar, it

would be apposite to reproduce and reflect some relevant provisions of the GST Act. The detention, seizure and release of goods is contemplated in Section 68 read with Section 129 of the GST Act which are reproduced heredunder:

“Section 68 – Inspection of goods in movement

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

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 the applicable tax and 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 tax and

penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the 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 tax and 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 specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(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 the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the good 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) of 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.”

20. The documents which are required to be carried by the persons incharge of the conveyance are set out in Rule 138A (1), (2) and (3). The provisions/Rules insofar as they are relevant to the controversy are reproduced as under:

“Rule 138A. Documents and devices to be carried by a person in charge of a conveyance.

(1) The person in charge of a conveyance shall carry-

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.

(2) In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply.”

21. The verification of documents which provides for issuing invoices states thus:

“Rule 48 – Manner of issuing invoice

.....

(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an **Invoice Reference Number** by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

“Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified

in the said notification”.

.....

(6) The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4).”

22. The verification of documents and responsibilities of the revenue authorities are stated in Rule 138 (b) which is reproduced as under:

“Rule 138B. Verification of documents and conveyances-

(1) The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all interState and intraState movement of goods.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

(3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.”

23. The aforesaid statutory scheme discloses the following the requirements which are relevant to the controversy:

I. While transporting goods for purposes of trade, the driver and or the owner should be in possession of an e-Invoice as well as e-Way Bill.

II. The assessee has an option to produce physical or digital copies of the aforesaid documents.

III. The procedure for generating the digital documents is spelt out in the aforesaid provisions.

IV. The e-Invoice is to be generated in the manner provided under Rule 48(4)(6) of the GST Act.

24. The e-Invoice in Form GST Invoice-I is auto populated / generated on the common platform after e-Invoice is uploaded on the said portal in the manner prescribed in the said Rules. Further Part-B of the e-Way bill has been uploaded after filing up the relevant details of the vehicle transporting the goods. In the facts of this case it is not disputed that the e-Way Bill contained the complete details in Part-A and Part-B. Most importantly once these documents are produced, statutory duty is cast upon the revenue authorities to verify the authenticity of the said documents. All the documents (soft copies/e-invoices & e-way bills) are in the official reach of the department. Hence, the verification is a very simple procedure which is required to be executed by the revenue authorities. Evidently in this case they failed to do so.

25. Under Chapter VI of the C.G. & S.T. Rules, 2017 relevant parts of the Rule 46 which reads Tax invoice are extracted hereunder:

“**Rule 46 (q)**. signature or digital signature of the supplier or his authorised representative.”

26. From the preceding discussion, the following facts are established.

I. Firstly, even as per the case of the revenue the driver of the vehicle was in possession of a digital tax invoice without signatures of the authorised signatory. The objection is misconceived, inasmuch as, the requirement of signatures is dispensed with as regards digital invoice by virtue of operation of the 5th proviso to Rule 46 of the C.G. & S.T. Rules, 2017 quoted above.

II. Secondly, it is common ground between the parties that the petitioner had produced authentic tax invoice and e-Way Bill at the time of inspection of the goods. Incidentally the seizure of the goods, inspection of the e-Way Bill carrying the goods, production of requisite documents by the petitioner and the imposition of the penalty happened on the same day i.e. 04.01.2023.

III. Thirdly, once the authentic documents have been produced to the satisfaction of the authorities, there was no cause for imposition of penalty and no case for admit to evade tax is made out.

IV. The authenticity of the said documents is not disputed.

27. The case of the petitioner is consistent that the driver was carrying digital copies of the tax invoice as well as e-Way Bill on his mobile number. The Revenue did not verify the digital device of the driver. If the assessee always had relevant documents in his favour, it stands to reason that there was no cause for him not to provide the

digital copy of the e-Way Bill to the driver when the goods were being transported. After the driver had produced the digital copy of the tax invoice, it was the responsibility of the revenue to verify the same from the portal. The portal also contains the e-Way Bill which is auto populated after the e-Invoice uploaded. Evidently the Revenue failed to do so. The revenue cannot fasten the penalty upon the tax payers for its own default.

28. The argument on behalf of the revenue to the effect that once the demand raised on the assessee was satisfied by making of payment, the assessee could not carry the order of penalty in appeal and is liable to be rejected.

29. The assessee under Section 129(1) of the GST Act, 2017 has an option either to provide security or to make payment and satisfy the demand in full. However, the mere fact that the assessee has made payment will not disentitle him for carrying the order imposing the penalty in appeal.

30. The narrative can now be fortified by authorities in point. The Kerala High Court in **Hindustan Steel & Cement v. Asstt. State Tax Officer, State GST Department, Kozhikode**¹ while considering the same issue held as under:

“5.A reading of sub-section (3) of Section 129 of the CGST/SGST Acts, the provisions of Rule 142 referred to above and the provisions of the circular, cumulatively, compel me to hold that whether or not a person opts to make payment under section 129(1)(a) or to provide security under Section 129(1)(c), the responsibility of the officer to pass an order under sub-section (3) of Section 129 and to upload a summary of the

¹ 2022 (65) G.S.T.L. 133 (Ker.)

order/demand in Form DRC-07 continues. The provisions of sub-section (5) or Section 129 which were pointed out by the learned Senior Government Pleader only contemplate that the procedure for detention on seizure of goods or documents or conveyances come to an end and it is always open to the person who suffers proceedings under 129 of the CGST/SGST Acts to challenge those proceedings if he feels that the demand has been illegally raised on him. This can be the only reasonable interpretation that can be placed on the provisions referred to above. Any other interpretation would clearly violate Article 265 of the Constitution of India. Further, Section 107 of the CGST Act is widely worded and provides that any person aggrieved by any decision, or order passed under the CGST/SGST Acts or Union Territory Goods and Services Tax Act, by an adjudicating authority, may appeal to such appellate authority as may be prescribed, within three months from the date on which such decision or order is communicated to such a person. It is obvious that the learned counsel for the petitioners in these cases is correct and contenting that whether or not a payment is made under Section 129(1)(a) or security is provided under Section 129 (1) (c), the person who is the subject matter of proceedings under section 129 of the CGST Act has the right to challenge those proceedings, culminating in an order under sub-section (3) of Section 129, before the duly constituted Appellate Authority under Section 107 of that Act. The fact that the culmination of proceedings in respect of a person who seeks to make payment of Tax and Penalty under Section 129(1)(a) does not result in the generation of a summary of an order under Form DRC-07 cannot result in the right of the person to file an appeal under Section 107 being deprived. The fact that the system does not generate a demand or that the system does not contemplate the filing of an appeal without a demand does not mean that the intention of the legislature was different.”

31. The aforesaid judgment squarely applicable to the facts of the case and the appeal is held to be maintainable.

32. This Court in **M/s Galaxy Enterprises v. State of U.P. and 2 others**² held that if rectified documents were produced before the authorities before the seizure order was passed, the same were liable to be considered.

33. The case of the petitioner stands on a better footing.

34. Since all the documents have been admittedly produced before the authorities at the time of inspection, there was no cause for detention, seizure or imposition of the penalty as has been done by the authorities in this case.

35. It is noteworthy that the revenue is not challenged the authenticity of the bills or the fact that they were not duly filled it or the details were absent in the said bills. No irregularity in the bills have been pointed out on behalf of the revenue.

36. The bills contained all relevant details of the goods and the tax are liable to be paid.

37. The impugned order dated 04.01.2023 whereby the Assistant Commissioner, Commercial Tax, Mobile Squad-VII, Ghaziabad as well as the order dated 09.05.2023 passed by the respondent No.3/learned appellate authority/Additional Commissioner, State Tax, Mobile Squad, Unit-7, Ghaziabad are liable to be quashed and are quashed.

38. The amount deposited shall be forthwith refunded to the petitioner in accordance with law.

39. The writ petition (tax) is allowed.

40. The case at hand reflects that not only the mobile squad had misdirected itself in law but the appellate authorities have failed to redeem the errors. The Court has no hesitation to observe that a honest tax payer in the facts of this case has been unnecessarily harassed by

the revenue authorities. The Court will say no further. However, it is for the revenue authorities to ensure that the officers are properly trained and alerted to the relevant provisions of law.

41. It is open to the revenue authorities to conduct regular courses for upgrading the domain knowledge of the officers in the field and the appellate authorities also to circulate relevant judgments on a regular basis to the officials.

Order Date :- 21.11.2023
Ashish Tripathi