

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION NO.2869 OF 2021

ORDER:

(Per Sri Justice M.S.Ramachandra Rao)

In this Writ Petition, the petitioner seeks Writ of Mandamus to declare (i) the action of the Deputy Commercial Tax Officer, Mahabubnagar, Telangana State (1st respondent) in illegally detaining the goods conveyance bearing No.AP13X 6980 on 29.12.2020 at Annasagar, Bhoothpur Mandal, Mahabubnagar District and (ii) collecting from the petitioner Rs.3,68,555/- towards GST and penalty of Rs.3,68,555/- on 04.01.2021 and then releasing the said vehicle, as illegal, arbitrary and violative of Articles 14 and 300A of the Constitution of India and (iii) for refund of the said amounts.

2. The petitioner is a trader in steel registered under the CGST Act, 2017 having registered office at Ranigunj, Secunderabad.

3. The petitioner in the course of business purchased stainless steel pipes and tubes from M/s. Santosh Steel and Pipes India Private Limited, Dadra and Nagar Haveli.

4. The petitioner hired M/s. Anmol Parcel Services for transporting the material from Dadra and Nagar Haveli to Secunderabad.

5. The said transporter also booked the material of M/s. Simi Steels, Adoni , Kurnool District from the same vendor M/s. Santosh Steels, Dadra and Nagar Haveli to it's business premises at Adoni, Kurnool District.

6. For carrying the material to these two destinations, one at Secunderabad and the other at Adoni, two waybills were generated, one from Dadra and Nagar Haveli to Secunderabad for a travel of 867 kms. and the other from Dadra and Nagar Haveli to Adoni which is at a distance of 940 kms.

7. The petitioner alleges that the transporter M/s. Anmol Parcel Services, while loading the goods on the goods vehicle AP13X 6980, loaded the material of the petitioner first, and then loaded the material of M/s. Simi Steels as the quantity of the petitioner amounting to 14320.90 kgs. was more and much heavier than the material of M/s. Simi Steels which was 2018.15 kgs.; and so the latter was loaded on top of the goods vehicle.

8. According to the petitioner, the transporter has done so for his operational convenience and it had intended to unload the material on the top of the goods vehicle at Adoni first; that the goods vehicle passed through Patancheru Ring road and crossed Jadcherla on its way to Adoni in Kurnool District; and while the vehicle was on its way to Adoni, it was intercepted at Annasagar, Mahabubnagar District by the 1st respondent on 29.12.2020 and detained by him on the ground that the 'documents of the vehicle were defective' and that 'the transaction in respect of the e-waybill No.601250640413 was concluded at Hyderabad, but they were further transported to Adoni without invoice and e-waybill' and proposed Rs.3,68,555/- as GST and Rs.3,68,555/- as penalty, and issued a show-cause notice to the petitioner on 31.12.2020.

9. The petitioner submitted a reply on 02.01.2021 stating that the goods were destined to Hyderabad and Adoni from Dadra and Nagar Haveli, and while loading the goods in the goods vehicle, the goods of the petitioner were loaded first and the goods of M/s. Simi Steels were loaded at the top, for operational convenience by the transporter; and that as the goods of M/s. Simi Steels were loaded on top, they would have to first deliver them at Adoni, and then only the balance material would be unloaded at Hyderabad. It was pointed out that therefore the goods vehicle passed through Patancheru ring road through Jadcherla on its way to Adoni and in the meanwhile it was intercepted and detained at Annasagar.

The contentions of petitioner

10. It is also contended that the vehicle was carrying valid documents like invoices and e-waybills and as the vehicle was carrying the same quantity of goods as mentioned in the invoice and e-waybill, the assumption of the authority about evasion of GST is imaginary and there was no violation of the CGST Act, SGST Act or IGST Act.

11. The petitioner alleges that the 1st respondent did not consider the reply of the petitioner and demanded the petitioner to pay tax and penalty for release of the vehicle, and the petitioner was forced to pay the same under protest on 04.01.2021 to secure release of the vehicle.

12. The petitioner contends that Section 129 of the GST Act would apply only in cases where it was established that there was intention or possibility of evading payment of tax in respect of the goods being transported, and even if some document such as waybill was missing at

the time of verification, it would only create a rebuttable presumption that there was intention to evade payment of tax; and if the taxable person was able to establish that there was no such intention of evading payment of tax, then Section 129 would not be applicable.

13. The petitioner contends that the truck was in transit towards its destination carrying valid tax invoice and e-waybill and the 1st respondent cannot therefore hold that there was any intention on the part of the petitioner to evade tax; and that there was also no material or evidence to show that the petitioner was unloading the material at some other place not mentioned in the invoice or the e-waybill and was trying to evade tax.

14. The petitioner contends that in spite of the driver explaining to the 1st respondent that, for operational convenience, the goods which were destined to Adoni were loaded on top for being delivered first, and that the vehicle was rightly proceeding towards Adoni, that he was a resident of Hyderabad and after delivering the goods at Adoni, he would then come back to Hyderabad, the 1st respondent did not consider his explanation and detained the vehicle.

The stand of the 1st respondent

15. Counter affidavit was filed by the 1st respondent stating that he had intercepted the vehicle on 29.12.2020, that he verified the documents with the driver such as tax invoice and e-waybills and he had noticed that there were two consignments which originated from Dadra and Nagar Haveli, which is Union Territory, where the consignee M/s. Santosh Steel and Pipes India Private Limited was located; and one of

the consignments was to the petitioner at Hyderabad and the other was destined to M/s. Simi Steels, Adoni, Andhra Pradesh; and that though the consignees are in two different States, the consignor was only one.

16. He contended that to go to Adoni, Andhra Pradesh, the conveyance has to first pass Hyderabad, Telangana and the goods destined to the petitioner in Hyderabad should be delivered to the petitioner first, and then only the goods vehicle/conveyance should have proceeded to Adoni subsequently for delivery; but the vehicle was carrying the goods of both the Hyderabad recipient (being the petitioner) and Adoni recipient (being M/s. Simi Steels) at the time of interception.

17. According to the 1st respondent, as per logic since Hyderabad comes first and not Adoni, when the vehicle comes from Dadra and Nagar Haveli, the consignment of 14.30 tonnes would be offloaded at Hyderabad, and then 2.01 tonnes consignment should proceed towards Adoni; and the vehicle was therefore rightly detained by him when it was more than 100 kms from Hyderabad and carrying the full load of 16.31 tonnes.

18. According to him, the load meant to the petitioner at Hyderabad was not offloaded and thereby it looked as if the said goods were also meant for another destination, that this is malpractice and violation of e-waybill rules and so the vehicle was detained rightly.

The consideration by the Court

19. We do not appreciate the stand taken by the 1st respondent for the reason that the quantity consigned to the petitioner at Hyderabad was

admittedly 14.30 tonnes and the quantity which was consigned to M/s. Simi Steels, Adoni was only 2.01 tonnes. Naturally for operational convenience the transporter would load the lesser quantity last and the larger quantity first, i.e. the larger quantity would then be at the bottom of the goods vehicle and the smaller quantity would be on top of it; and it would be convenient for the transporter to offload the lesser quantity first and then the larger quantity next.

20. If the contention of the 1st respondent is to be accepted, for delivery of 14.30 tonnes at Hyderabad to the petitioner first, the transporter would have to offload even the 2.01 tonnes which is on top of the consignment of 14.30 tonnes in the goods vehicle, and then reload it in Hyderabad, which would be a cumbersome process.

21. This fundamental issue the 1st respondent shockingly did not understand and simply went by the point that Hyderabad comes first and Adoni comes later ignoring the operational convenience of the transporter.

22. It is also not the case of the 1st respondent that there was any discrepancy in the total quantity of the load, as admittedly the total load on the vehicle corresponded to the quantity mentioned in the e-waybills and invoices. Therefore, no such conclusion could even be *prima facie* drawn by the 1st respondent that the load of 14.30 tonnes which were meant to the petitioner at Hyderabad would be offloaded at another destination.

23. We do not accept the plea of the 1st respondent that even if the goods meant to be delivered at Adoni were loaded on top of the

conveyance, the said goods should have been unloaded and then reloaded after unloading the goods intended for the petitioner at Hyderabad. Such view, in our opinion, is utterly perverse and cannot be accepted.

24. It is also not the case of the 1st respondent that there is any prohibition for a consignor to load the consignments to two different destinations intended for two different parties in two different States on a single conveyance; and there is any rule that consignments intended for a party at a shorter distance should be offloaded first.

25. In our considered opinion, the 1st respondent had acted mechanically without application of mind to the operational convenience of the transporter.

26. Also for the bonafide action of the transporter, the 1st respondent cannot mulct the petitioner with tax and penalty.

27. The petitioner cannot be said to have any intention to evade tax if any mistake is, for the sake of argument without conceding it, has been committed by the transporter.

28. The finding of the officer, the 1st respondent, in the impugned order that the transaction involving the petitioner was 'suspicious' and that the transporter was found 'without proper documents' is perverse and cannot be sustained in these circumstances.

29. We are also of the opinion that the collection of the amount of Rs.3,68,555/- towards GST and penalty of Rs.3,68,555/- from the petitioner on 04.01.2021 was by way of economic duress since the

petitioner had no choice but to pay it to secure release of the vehicle and so the petitioner is entitled to refund of the same.

30. Accordingly, the Writ Petition is allowed; the order of detention in Form GST MOV-06 on 29.12.2020 passed under Section 129(3) of the CGST Act, 2017 by the 1st respondent is set aside; it is declared that the action of the 1st respondent in detaining the goods conveyance No.AP13X 6980 on 29.12.2020 at Annasagar, Bhoothpur Mandal, Mahabubnagar District and demanding payment of GST and penalty is arbitrary, illegal and violative of Articles 14 and 300A of the Constitution of India; and the respondents are directed to refund to the petitioner within four (4) weeks the sum of Rs.3,68,555/- towards GST and penalty of Rs.3,68,555/- paid by the petitioner on 04.01.2021 with interest at 6% per annum from 04.01.2021 till the date of payment.

31. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed. No costs.

M.S.RAMACHANDRA RAO, J

T.VINOD KUMAR, J

Date: 28-04-2021

Svv