

Allahabad High Court

Vsl Alloys (India) Pvt. Ltd. vs State Of U.P. And Another on 13 April, 2018

Bench: Krishna Murari, Ashok Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

?A.F.R.

Court No. - 32

Case :- WRIT TAX No. - 637 of 2018

Petitioner :- VSL Alloys (India) Pvt. Ltd.

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Amit Mahajan

Counsel for Respondent :- C.S.C.

Hon'ble Krishna Murari,J.

Hon'ble Ashok Kumar,J.

(Per: Hon'ble Ashok Kumar, J.) We have heard the learned counsel for the petitioner and Sri C.B. Tripathi, learned Special Counsel for the State.

Brief facts of the case are that the petitioner is a private limited company and is engaged in manufacture and supply as well as export of industrial SS Tube, fittings and pipe fittings etc. The petitioner is registered under the provision of GST. The petitioner's office is situated at Industrial Area Sahibabad, District Ghaziabad. An order has been received by the petitioner from one M/s Kansara Laljibhai Mohanlal, 7, Parsana Society, R.K. Watch Stree, 50 Feet Road, Rajkot, Gujarat for supply of 4942 kg of stainless steel welded pipes against the tax invoice dated 07.04.2018. The goods were being sold to the consignee situated at Rajkot for a sum of Rs.5,43,631/-. The petitioner has charged the IGST @ 18% on the aforesaid amount. The aforesaid goods were booked through M/s Jai Hind Tempo Transport Service, Sahibabad, Ghaziabad. The goods were loaded in vehicle U.P.16- AT-5489 against the challan/GR no. 1116 dated 07.04.2018. The petitioner has downloaded e-way bill having Unique No.431003252396 dated 07.04.2018 at 08.05 P.M. from the web portal of

the Central Government and e-way bill consisted of all the details of the consignor, consignee, the challan number, its date, value of the goods, its HSN Code, the place of delivery of goods and the reason for its transportation.

It is submitted by learned counsel for the petitioner that the validity of the e-way bill showed that it is not valid for movement as Part B is not entered.

After loading the goods, the vehicle proceeded at about 8.33 P.M. on 07.04.2018 and the vehicle has procured a Kata Purchi and movement at about 9.20 P.M. from Sahibabad towards its destination namely Rajkot, Gujarat. During the course of transportation from Sahibabad i.e. from the factory of the petitioner upto the transporter, the vehicle has been intercepted at Mohan Nagar, Ghaziabad on 08.04.2018 by the respondent no.2, the Assistant Commissioner (in-charge), Commercial Tax, Mobile Squad, Unit-III, Ghaziabad at 12.15 A.M. and respondent no.2 issued interception memo which was drawn by the respondent no.2 under Section 129(1) of the UPGST Act, 2017 (hereinafter referred as 'the Act'). The respondent no.2 was of the opinion that the goods, namely Stainless Steel welded pipes which were found loaded on the vehicle during intra-state transportation, were accompanied with e-way bill having Unique Code, however, Part-B of the said e-way bill was not filled up and no vehicle number has been quoted/mentioned. The respondent no.2 has directed for physical verification of the goods.

On physical verification held on 09.04.2018, the respondent no.2 has found alleged irregularity, that Part-B of e-way bill was incomplete and, therefore, the respondent no.2 has detained the vehicle as well as goods by passing an order under Section 129(1) of the Act by which he has assessed the value of goods to the tune of Rs.5,43,631/-. Consequently, a notice under Section 129(3) of the Act has been issued by which the respondent no.2 has directed the petitioner to pay a sum of Rs. 97,854/- towards the tax liability as well as the same amount towards the penalty.

Aggrieved by the said seizure order and issuance of the penalty notice, the instant writ petition has been filed.

Learned counsel for the petitioner has submitted that though all the documents were accompanied the goods even then the same was intercepted and it has been categorically submitted before the respondent no.2 that both the consignor and consignee are registered dealers and IGST @ 18% has been charged by the petitioner and that petitioner is registered bonafide dealer, therefore, objection with regard to non filling Part-B of e-way bill is nothing but clearly an abuse of process of law.

The contention of the petitioner before the authority below was that there was no intention on the part of the petitioner to evade payment of tax during the course of intra-state sale of the goods. The contention of the petitioner before the authority below as well as before this Court is that, in fact, the goods loaded in vehicle No. U.P. 16-AT 5489 was only for the purpose of transporting the goods from petitioner factory up to transport company, and as such, the petitioner at the time of generation of national e-way bill could not fill the vehicle number in Part-B due to the fact and for the reason that after unloading of the goods at the transport company the same were to be loaded in another vehicle which was supposed to transport from the godown of the transport company to

place of consignee situate at Rajkot, Gujarat, by another vehicle the number whereof was not known to the petitioner.

Counsel for the petitioner has also placed reliance on a Notification No.12/2008-Central Tax dated 07.03.2018 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs which provides further to amend CGST Rules, 2017 and substituted Rule 138 which is quoted below;

"138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill".-

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, the transporter may, at his option, generated and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees.

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of upto fifty kilometres within the State or Union Territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation 1.- For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.- The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

The contention of the learned counsel for the petitioner is that as per the Notification No.12/2018 dated 07.03.2018 in Rule 138(3) third proviso which clearly states that where the goods are transported for a distance of upto 50 kms within the State from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, as the case may be, the transporter may not furnish the details of conveyance in Part-B of Form GST EWB-01. As such, at the time of filling of the e-way bill, the petitioner was not under an

obligation to fill Part-B of the e-way bill, therefore, the petitioner has not committed any error of law at the time of downloading e-way bill.

On the other hand, learned counsel for the respondent, though has supported the order of seizure but, has admitted that all the requisite documents were accompanied the goods when the vehicle has been intercepted and seizure order has been passed, but the Part-B of the e-way bill was found unfilled. He has also accepted that prima facie there appears no intention to evade payment of tax for the reason that in the invoice the petitioner has charged IGST @ 18%.

We have heard the learned counsel for the respective parties and perused the documents which are enclosed along with the writ petition.

We are in full agreement with the submission of learned counsel for the petitioner and after perusal of the relevant documents, we find no ill intention at the hands of the petitioner nor the petitioner was supposed to fill up Part-B giving all the details including the vehicle number before the goods are loaded in a vehicle, which is meant for transportation to the same to its end destination.

In the present case, all the documents were accompanied the goods, details are duly mentioned which reflects from the perusal of the documents. Merely of none mentioning of the vehicle no. in Part-B cannot be a ground for seizure of the goods. We hold that the order of seizure is totally illegal and once the petitioner has placed the material and evidence with regard to its claim, it was obligatory on the part of the respondent no.2 to consider and pass an appropriate reasoned order. In this case, no reasons are assigned nor any discussion is mentioned in the impugned order of seizure and notice of penalty. The respondent no.2 has also not considered the above notification dated 07.03.2018 In view of the aforesaid facts, the impugned seizure order dated 09.04.2018 passed under Section 129 (1) and also the consequential show cause notice dated 09.04.2018 passed/issued under Section 129 (3) of the Act are quashed. The respondents are directed to release the goods as well as vehicle, seized on 09.04.2018, forthwith in favour of the petitioner.

The writ petition stands allowed.

Order Date :- 13.4.2018 A.Kr.\* [Ashok Kumar, J.] [Krishna Murari, J.]