

Court No. - 38

Case :- WRIT TAX No. - 1006 of 2022

Petitioner :- M/S AA Plastics Pvt Ltd

Respondent :- Additional Commissioner Grade 2 And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

1. Present petition has been filed against the order of the First Appeal Authority. Since the Tribunal has yet not been constituted, the present petition is being entertained at this stage.

2. Matter requires consideration.

3. All respondents may file counter affidavit within a period of six weeks. Petitioner shall have two weeks' thereafter to file rejoinder affidavit.

4. List thereafter.

Order Date :- 1.8.2022

Abhilash

Court No. - 10

Case :- WRIT TAX No. - 1006 of 2022

Petitioner :- M/S Aa Plastics Pvt Ltd

Respondent :- Additional Commissioner Grade 2 And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

Passed over on the illness slip of Sri Suyash Agarwal, learned counsel for the petitioner.

Order Date :- 19.1.2023

Shekhar

Court No. - 2

Case :- WRIT TAX No. - 1006 of 2022

Petitioner :- M/S Aa Plastics Pvt Ltd

Respondent :- Additional Commissioner Grade 2 And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner and Sri Rishi Kumar, learned Additional Chief Standing Counsel for the State respondents.

2. By means of instant writ petition, the petitioner has assailed the order dated 16.03.2022 passed by the Additional Commissioner Grade-2 (Appeal) 2, Commercial Tax/State Tax, Agra.

3. Learned counsel for the petitioner submits that the petitioner, having GSTIN, is engaged in the business of manufacturing and supply of LD Polythene Sheets and LD Polythene bags. On 05.08.2021, the petitioner dispatched the LD Polythene sheets and LD Polythene bags from their unit to M/s Benara Udyog Limited, Agra through Tax Invoice No. AAPL/21-22/0622 and AAPL/21-22/0623 respectively, which was transported through M/s New Mallik Transport Commission Agency, Ghaziabad through Transport GR No. 110090 dated 05.08.2021. The goods in question was in transit, the same was detained on 09.08.2021 on the ground that the time mentioned in E-way bill has expired, to which the reason given by the petitioner was that truck driver received a call from his native place, which falls on the route, he went there without informing the consignor & consignee about the same. To the notice, the petitioner submitted his reply stating therein that an amended E-way bill dated 08.08.2021, generated on 08.08.2021 night and 09.08.2021 morning, which was presented on the very next day. Not being satisfied from the reply of the petitioner, the impugned order was passed on 17.08.2021 seizing the goods and levied the penalty against which the petitioner filed appeal, which has also been rejected without considering the material available on record. Hence the present writ petition.

4. He further submits that there was no variation in the quantity of goods as mentioned in the accompanied documents, yet the goods in question were detained. He next submits that before passing of the seizure order, an amended E-way bill was produced. He further submits that there is no intention to avoid the payment of tax, which is mandatory for seizing/detaining of goods.

5. In support of his submission, he has placed reliance upon the judgment of this

Court passed in the case of ***Shyam Sel and Power Ltd. Vs. State of U.P., (2023) 11 Centax 99 (All.)***.

6. Per contra, learned Additional Chief Standing Counsel supports the impugned order.

7. In the case in hand, the goods were detained and the order dated 17.08.2021 was passed on the ground that E-way bill had expired. It is not the case of the revenue that before passing of the seizure order, an amended E-way bill was not produced. It is also not the case of the revenue that any finding of *mens rea* with regard to intention to evade payment of tax, was recorded as even the revenue authority before this Court fails to show the same.

8. This Court in the case of ***Shyam Sel (supra)*** in para nos. 10, 11 & 13 has held as under:-

"10. For invoking the proceeding under section 129(3) of the CGST Act, section 130 of the CGST Act was required to be read together, where the intent to evade payment of tax is mandatory, but while issuing notice or while passing the order of detention, seizure or demand of penalty, tax, no such intent of the petitioner was observed. Once the dealer has intimated the attending and mediating circumstances under which e-way bill of the purchasing dealer was cancelled, it was a minor breach. The authority could have initiated proceedings under section 122 of the CGST Act instead of proceedings under section 129 of the CGST Act. Section 129 of the CGST Act must be read with section 130 of the said Act, which mandate the intention to evade payment of tax. Once the authorities have not observed that there was intent to evade payment of tax, proceedings under section 129 of the CGST Act ought not to have been initiated, but it could be done under section 122 of the CGST Act in the facts & circumstances of the present case. It is also not in dispute that after release of the goods, the same were sold to P.L. Trading Company.

11. Section 129 of the CGST Act deals with detention, seizure and release of goods in case violation of the provisions of the CGST Act is found. Section 130 deals with confiscation of goods or conveyance and levy of penalty. Both the sections revolve around a similar issue and provide for the proceedings available at the hands of the proper Officer upon him having found the goods in violation of the provisions of the Act, Rule 138 of the Rules framed under the CGST Act being one of them. Upon a purposive reading of the sections, it would suffice to state that the legislation makes intent to evade tax a sine qua non for initiation of the proceedings under sections 129 and 130 of the CGST Act.

13. Recently, the Division Bench of this Court in Writ Tax No. 600 of 2022 (M/s Gobind Tobacco Manufacturing Company & Another Vs. State of U.P. & Others) quashed the levy of penalty under section 129 of the GST Act with heavy costs upon the Revenue for abuse of their powers."

9. In view of the above facts as stated as well as law laid down in the aforesaid

judgment, the impugned order cannot be sustained in the eyes of law and the same is hereby quashed.

10. Accordingly, the writ petition is ***allowed***.

11. Any amount deposited by the petitioner during the pendency of the instant writ petition, shall be refunded to him within a month from the date of production of certified copy of this order.

Order Date :- 2.8.2024

Pravesh Mishra