
[2022] 144 taxmann.com 146 (Andhra Pradesh)[16-09-2022]

GST : Order confirming tax and penalty being appealable, writ petition was to be disposed of with direction to petitioner to file appeal

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[2022] 144 taxmann.com 146 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Bitumon Corporation India (P.) Ltd.

v.

State of Andhra Pradesh*

C. PRAVEEN KUMAR AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 17061 OF 2022

SEPTEMBER 16, 2022

Writ jurisdiction - Maintainability - Existence of alternative remedy - Seizure of goods due to mismatch of company's name in tax invoice - Issues raised in writ petition was to be dealt with basing on factual aspects - Order confirming tax and penalty was appealable - Petition was to be disposed of with direction to petitioner file appeal [Section Article 226 of Constitution Of India - Section [107](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 9, 10 and 11] [In favour of revenue]

ORDER

C.Praveen Kumar, J. - Heard Sri P.S.P Suresh Kumar, learned counsel for the petitioner, and Sri T.C.D.Sekhar, learned Government Pleader for Commercial Taxes appearing for the respondents. With their consent and as the pleadings are complete, the writ petition is being disposed of at the admission stage.

2. The present writ petition came to be filed seeking issuance of a Writ of Mandamus declaring the action of the 3rd respondent in detaining the goods belonging to the petitioner vide order dated 28-3-2022 and collecting an amount of Rs.4,87,694/- on the ground of mismatch of the company's name in the tax invoice as illegal, arbitrary and violative of principles of natural justice.

3. The petitioner - M/s Bitumon Corporation India Pvt., Ltd., is engaged in the business of Bitumen products and sale of the said products within India. It is said that Bitumen is being imported to India and is sold to regular customers in India. In the instant case, the Bitumen Grade VG 30 of 28.540 MT was dispatched from a godown at Karnataka, under stock transfer and necessary tax invoice to be delivered at BITCOL, Kakinada. During the transit of the said material, the vehicle and the material were detained at Vijayawada check-post on 28-3-2022 due to defective documents.

4. The averments made in the affidavit filed in support of the writ petition would show that the defective document pointed out by the 3rd respondent is that the delivery point in the tax invoice is shown as BITCOL, Kakinada and not Bitumen Corporation India Private Limited. It is said that since the vehicle and goods detained are very much essential, the petitioner has paid an amount of Rs.4,87,694/- as penalty and got released the vehicle and the goods and thereafter, the present writ petition came to be filed challenging the seizure of the goods and collection of penalty.

5. Reiterating the averments made in the affidavit filed in support of the writ petition, learned counsel for the petitioner would submit that the 3rd respondent has not followed the procedure contemplated under law, more particularly Section 129 of Central Goods and Services Tax Act, 2017 [for short, 'GST Act'] while seizing the goods and the vehicle. Insofar as the ground of detention that Bitumen is being transported with defective

document, he would submit that the understanding of the authority detaining the vehicle is incorrect. In other words, he submits that Bitumen Corporation India Private Limited and BITCOL are one and the same and the abbreviated form of Bitumen Corporation of India i.e., BITCOL is shown in the tax invoice. He further submits that a notice ought to have been issued at-least after seizure, explaining the reasons for seizure, which is also not done.

6. A counter came to be filed by the 3rd respondent disputing the averments made in the affidavit filed in support of the writ petition. The Deputy Assistant Commissioner, who filed the counter-affidavit, categorically stated that the vehicle was intercepted on 28-3-2022 and it was found that conveyance is not accompanied by proper details in the tax invoice. As such, the vehicle was detained and enquiry was conducted wherein it was found that the buyer's name mismatched with the tax invoice. Notice was also given to the driver on the same day. Basing on the statement made by the driver, that the vehicle was transporting goods to a destination which is not reflected in the invoice, the same was seized. It is further stated that the 3rd respondent issued FORM GST MOV-07 [Notice under Section 129(3) of the Central Goods and Services Tax Act, 2017 and the State/Union Territory Goods and Services Tax Act, 2017/under Section 20 of the Integrated Goods and Services Tax Act, 2017] to the person in charge of the conveyance, proposing penalty of Rs.4,87,694/- [CGST of Rs.2,43,847/- and SGST of Rs.2,43,847/-] and the petitioner was allowed to represent its case in defence.

7. As seen from the record, in response to the notice issued in Form GST MOV-07, the owner of the goods/person in charge of the conveyance has come forward and paid tax and penalty as proposed. Therefore, the applicable tax and penalty proposed were confirmed vide order of the 3rd respondent, under Section 129(3) of the GST Act, and vide release order in Form GST MOV-05 dated 28-3-2022 the goods and conveyance were released.

8. Learned counsel for the petitioner submits that because of the need of the vehicle and the material, the amount was paid, however on protest, and hence, the present writ petition came to be filed questioning the seizure and penalty imposed.

9. At this stage, learned Government Pleader would contend that since the amount has been paid and the vehicle and the material were released, if the petitioner has any grievance with regard to the procedure followed by the 3rd respondent, it may have to prefer an appeal questioning the factual aspects involved as to why the vehicle was detained and under what circumstances, the penalty came to be paid, in the absence of any default. The said argument of learned Government Pleader cannot be brushed aside, having regard to the factual position.

10. The issues raised in this writ petition have to be dealt with basing on the factual aspects. Since the Statute provides an appeal under Section 107 of the GST Act, the petitioner can as well avail the same.

11. For the aforesaid reasons, the Writ Petition is disposed of directing the petitioner to avail the alternative remedy of appeal, under Section 107 of the GST Act before Joint Commissioner concerned. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

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*In favour of revenue.