

M/S S. V. Brothers v. State of U.P. and Another

WRIT TAX No. 1310 of 2023 | Decision: 2023-11-20 | Allahabad High Court

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Court No. - 21

Case :- WRIT TAX No. - 1310 of 2023

Petitioner :- M/S S. V. Brothers Respondent :- State of U.P. and Another Counsel for Petitioner :- Shubham Agrawal Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta,J. Hon'ble Donadi Ramesh,J.

1. The petitioner has challenged the seizure order dated 12.08.2023 passed by respondent no. 2 under the provisions of the Central Goods and Services Tax Act, 2017 (for short hereinafter referred to as 'the Act') as well as the penalty order dated 20.08.2023 also passed by the same respondent. The petitioner has also prayed for a direction to respondent no. 2 to drop auction proceedings of the seized goods as per notice dated 28.10.2023.
2. The second respondent had intercepted a consignment of Areca Nuts from truck bearing registration no. UP53 DT 9190. The petitioner, who is the consignee of the goods as mentioned in the bilty, invoice and e-way bill and is registered under the Act in Delhi applied for temporary registration. The petitioner after passing of the seizure order filed an application on 17.08.2023 for release of seized goods in its favour on the footing that he being the consignee, is entitled to release of the goods in terms of Section 129(1)(a) of the Act after payment of penalty equal to 200% of the tax payable on the seized goods. However, by order dated 28.08.2023, respondent no. 2 declined to release the seized goods in favour of the petitioner and also levied penalty by treating the case as one falling under clause (b) of sub-section (1) of Section 129 of the Act. The other finding is that on physical verification of the goods and documents, it transpired that there was variation in the description of good actually found with that mentioned in the documents and therefore, it would not be proper to hold the consignor or the consignee as actual owner of the goods.
3. Sri Shubham Agrawal, learned counsel for the petitioner

submitted that the respondents, at the time of seizure of goods, have prepared a seizure memo and according to it, the invoice and e-way Bill clearly mentions the petitioner as consignee of the goods; copies of the invoice and e-way Bills have been annexed in support of the claim. He also submits that the physical verification carried out by respondent no. 2 at the time of interception of the vehicle clearly reveals that the actual goods found in the vehicle tallied with the quantity mentioned in the invoice and as such the finding returned in the impugned order that the petitioner cannot be treated to be consignee is patently illegal. He further submits that the registration of the petitioner was cancelled much after the passing of the impugned order and therefore, according to his submission, at the time, the vehicle was intercepted the petitioner was holding a valid registration. He has relied on Circular dated 31.12.2018 issued by the department and points out that one of the aspects clarified in the said Circular is regarding person, who could be treated to be owner of the goods for purposes of Section 129(1) of the Act.

4. The clarification given by the department mentions that "if the invoice or any other specified document is accompanied the consignment of goods, then either the consignor or the consignee should be the owner. If the invoice or any other specified documents is not accompanied the consignment of goods, then in such case, a proper officer should determine, who should be declared as owner of the goods." In his submission since the invoice and e-way bill was accompanying the consignment of goods, therefore, as per own Circular of the department he was to be treated as owner of the goods.

5. Sri Ankur Agarwal, learned counsel appearing for the Revenue submitted that the order has rightly been passed by treating the case of the petitioner to be falling under Clause (b) of sub-section (1) of Section 129 of the Act. He has also relied on a judgment of learned Single Judge dated 27.01.2023 in Writ Tax No. 1014 of 2022 (Amil & Another vs. State of U.P. & Ors.) in submitting that the petitioner has rightly not been treated to be owner of the goods.

6. It is not disputed by Sri Ankur Agarwal, learned counsel for the respondent that as per the seizure memo prepared by respondent

no. 2, the goods were accompanied by invoice and e-way bill both of which duly disclose the petitioner as the consignee of the goods. He also does not dispute that as per physical verification report, no anomaly was found at the time of inspection between the documents and the goods actually seized. He also does not dispute that the Circular of the department dated 21.12.2018 clarifies that where the aforesaid documents were found accompanying the consignment of goods, the consignee would be deemed to be the owner of the goods for purposes of Section 129(1)(a) of the Act.

7. The facts of the case of Amil and another (supra) are distinguishable in as much as in that case the specific finding recorded was that the consignor firm was a non-existent and fake firm. It was found not to be in existence at the place it was registered. Thus, there was categorical evidence on record to establish that the firm was existing only on papers to reap benefit of inverse tax credit. The e-way bill was held to have been generated for transporting goods from non-bonafide dealer from undisclosed place. However, in the instant case, there is no such finding. Although, the registration of the consignor firm was suspended subsequently but it is not the case of the department that the firm does not exist. It is also not disputed that the registration of the petitioner firm was cancelled after the passing of the impugned order. It is also not the case of the respondents that the petitioner is a non-bonafide dealer. Therefore, in our opinion, the finding that the parties had under valued the goods or there was any intention to avoid payment of correct amount as tax may justify seizure and penalty but cannot be made ground to not treat the petitioner as owner of the goods. The respondents ought to have examined the documents accompanying the goods at the time of seizure in terms of their own Circular dated 31.12.2018 in determining the said issue.

8. Having not been done so, we are of considered opinion that the order to the extent it seeks to reject the prayer for release of goods in favour of the petitioner, cannot be sustained. It is accordingly quashed to the said extent only. The second respondent is directed to reconsider the issue relating to release of goods in favour of the

petitioner keeping in mind the Circular dated 31.12.2018 and the fact that invoice and e-way bill were found accompanying, the consignment of seized goods. In respect of all other question, it is left open to the petitioner to avail the remedy of appeal.

9. The petition stands disposed of, accordingly.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, J.)

Order Date :- 20.11.2023 Ruhi H.

2023-11-25T11:28:43+0530 High Court of Judicature at Allahabad