

M/S Shahil Traders v. State Of U.P.And Another

WRIT TAX No. 178 of 2023 | Decision: 2023-05-25 | Allahabad High Court

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Court No. - 42

Case :- WRIT TAX No. - 178 of 2023

Petitioner :- M/S Shahil Traders Respondent :- State Of U.P.And Another Counsel for Petitioner :- Aditya Pandey Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J. Hon'ble Rajendra Kumar-IV,J.

1. Heard Sri Aditya Pandey learned counsel for the petitioner and Sri Ankur Agarwal learned counsel for the revenue.
2. Present petition has been filed to quash the order MOV-09 and the recovery notice GST DRC-07, both dated 16.1.2023 demanding Rs. 6,17,087/- by way of penalty under Section 129(1)(b) of the UPGST Act, 2012 (hereinafter referred to as 'the Act'). Further prayer has been made to quash the detention order dated 07.1.2023 on GST MOV-06.
3. At the outset, Sri Pandey learned counsel for the petitioner has confined the prayer in the writ petition to release of the goods and vehicle in accordance with provisions of Section 129(1)(a) of the Act. Prayer to quash the entire proceedings has not been pressed at this stage.
4. Briefly, petitioner claims to be a registered trader in iron scrap. It further claims to have dispatched certain goods to M/s Harshika Steel Sales against its regular tax invoice and E-way bill dated 02.1.2023, on truck bearing registration No. PB11-CQ-2981. Goods are thus claimed to have dispatched from Kanpur to Ludhiana in State of Punjab.
5. During the course of such transportation, the goods were detained by respondent No.2 on 04.1.2023. They were detained upon statement of the driver of the truck being recorded. It does not appear to be the case of the revenue that the tax invoice and E-way bill relied by the petitioner were not produced by the driver of the truck at the time of detention of the goods. Rather, it appears to be admitted case, such documents were produced at the time of first interception. However, the revenue

authorities entertained a doubt as to the genuineness of the consignee. Reference has been made to the tax invoice dated 02.1.2023 and E-way bill also dated 02.1.2023, found accompanying the goods.

6. Relying on Circular dated 31.12.2018 issued by Government of India, Clause 6, it has been submitted, in face of the tax invoice and the E-way bill produced by the petitioner, the goods may not have been treated as not traceable to a registered dealer. At most, security may have been demanded in terms of Section 129(1)(a) of the Act but not under Section 129(b) of the Act. Reliance has been placed on two earlier orders of coordinate bench of this Court in Writ Tax No. 1580 of 2022 (M/s Margo Brush India and Others Vs. State of U.P. and Others), decided on 16.1.2023 and Writ Tax No. 28 of 2023 (M/s Riya Traders Vs. State of U.P. and Another), decided on 17.1.2023.

7. On the other hand, learned Standing Counsel has referred to the averments made in the counter affidavit indicating certain other discrepancies noted in the transaction with respect to the place of origin and destination. Then, reference has been made to the fact that registration of the petitioner was suspended on 05.1.2023. Also, reference has been made to panchnama document whereunder allegedly the proprietor of the petitioner firm denied knowledge about the transaction.

8. Having heard learned counsel for parties and having perused the record, while the revenue seeks to raise disputes based on its ex parte enquiries and other circumstance, upon query made, learned Standing Counsel could not dispute that at present the revenue has not formed any opinion to falsify the genuineness of the tax invoice and the E-way bill claimed by the petitioner. It also does not dispute that those documents were found present on the vehicle in question at the time of its first detention. It is further not in dispute that the present petitioner claims to be the owner of the goods. Accordingly, petitioner may remain liable to pay security in terms of Section 129(1)(a) of the Act.

9. The coordinate bench in M/s Margo Brush India (supra),

observed as under:

"5. After hearing learned counsel for the parties, in our opinion, the present writ petition deserves to be allowed and the order impugned dated October 7, 2022 deserves to be set aside for the reason that the consignors and consignees are present and accepting ownership of the seized goods. The consignors are registered dealers in the State of U.P.

6. In view of the aforesaid fact and also the clarification given by the Board vide its Circular dated 31, 2018, in our opinion, levy of penalty under Section 129(1)(b) of the Act was not called for and could not be justified as Section 129(1)(a) of the Act provides that where owner of the goods comes forward for payment of penalty, the amount has to be two hundred per cent of the tax payable, whereas, in the case in hand, the penalty has been levied to the tune of hundred per cent of the value of the goods.

7. For the reasons mentioned above, the impugned order dated October 7, 2022 passed by respondent no. 2 is set aside. The writ petition is allowed. The matter is remitted back to the competent authority for passing fresh order within a period of two weeks from the date of receipt of copy of the order."

10. Again in M/s Riya Traders (supra), it has been observed as under:-

" 4. Once the documents clearly establish the name of the consignor, who is a registered dealer in the State, the proceedings should have been initiated against the owner of the firm instead of the driver, so as to enable him to respond to the notice. In any case, once from the facts on record, which have gone undisputed, the petitioner, who is consignor in the invoice and e-Way Bill, claims himself to be the owner of the goods, the provisions of Section 129(1)(b) of the Act could not be invoked for imposing penalty.

5. For the reasons mentioned above, the impugned order dated December 15, 2022 passed by the respondent no. 2, is set aside giving him the liberty to pass fresh order in accordance with law, after affording opportunity of

hearing to the petitioner."

11. We find ourselves in full agreement with the view expressed by the coordinate bench in the aforementioned two decisions.

12. Accordingly, present writ petition is allowed. The impugned order MOV-09 dated 16.1.2023 is set aside. Matter is remitted to the respondent No. 2 to pass fresh order within a period of two weeks from today treating the petitioner to be eligible to the benefit of Section 129(1)(a) of the Act.

Order Date :- 25.5.2023 Faraz

(Rajendra Kumar-IV, J) (S.D. Singh, J)

2023-05-30T10:43:16+0530 High Court of Judicature at Allahabad