M/S Bharat Precision Instrument Co. v. Additional Commissioner Grade 2 And Another

WRIT TAX No. 321 of 2019 | Decision: 2024-01-18 | Allahabad High Court

Neutral Citation No. - 2024:AHC:9574

Court No. - 1

Case :- WRIT TAX No. - 321 of 2019

Petitioner :- M/S Bharat Precision Instrument Co. Respondent :- Additional Commissioner Grade 2 And Another Counsel for Petitioner :- Ankur Agarwal,Suyash Agarwal Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner and Sri Bipin

Kumar Pandey, learned Additional Chief Standing Counsel for the respondents.

2. This is a writ petition under Article 226 of the Constitution of India wherein the

petitioner has assailed the order dated August 30, 2017 passed by the respondent

No.2 and the order dated November 22, 2018 passed by the respondent No.1.

3. The first impugned order dated August 30, 2017 was passed under Section

129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred

to as 'the Act') and the second impugned order was passed in appeal.

4. Mr. Suyash Agarwal, learned counsel appearing on behalf of the petitioner

submits that during the relevant period there were successive changes in the

notification and due to the said fact, the Division Bench of this Court in Godrej

Boyce Manufacturing Co. Ltd. vs. State of U.P. and others reported in 2018 NTN

(68) 53 held as under:

"50. It appears that legislative changes were made in such a quick succession that field authorities could not track themselves with such changes and, hence, adhered to compliance of provisions which stood already substituted by new provisions and earlier ones had become otiose. Insistence upon petitioners, at the time of issue of seizure memos and show-cause notices to have downloaded e-way-bill 01 and/or 02 and its non compliance by referring to Government's notification dated July 21, 2017 read with Commissioner's circulars dated July 22, 2017 and August 9, 2017 and also rule 138 as substituted vide Government notification dated September 20, 2017, though it was never imposed and

made operative, was/is clearly erroneous and illegal. Notification dated January 31, 2018 whereby rule 138 was completely changed by substitution and made effective from February 1, 2018, it appears, escaped attention of authorities concerned, though it is this provision which had to be complied by petitioners. Unfortunately, authorities concerned have completely failed to observe the same. It appears that for the field authorities there was a gross chaos on account of quick changes in relevant provisions, hence, authorities concerned could not appreciate, what provision is supposed to be followed by concerned person and what is actual default, if any, which has been committed by such person. The petitioners (except Writ Petition No. 87 of 2018) in the present cases, when goods in transit were intercepted and impugned orders were issued, met an unauthorised act and suffered illegal order.

51. To complete the story, we may observe that rule 138 again stood substituted by notification dated March 26, 2018 which has come into force on April 1, 2018 but here also sub-rule (7) has not been made effective.

52. Counsel for the petitioners contended that notification dated September 20, 2017 having been rescinded subsequently will not result in revival of earlier provision but the submission, in our view, does not arise at all in view of discussions made above, showing that rule 138 as substituted by U.P. GST (Fourth Amendment) Rules, 2017 (Notification dated September 20, 2017), as a matter of fact, never became operative. The first amendment by substitution of rule 138 is by way of the U. P. GST (Thirteenth Amendment) Rules, 2018 vide notification dated January 31, 2018 which came into force on February 1, 2018 and it continued up to March 31, 2018. Thereafter, it stands substituted by another rule 138 vide U. P. GST (Fourteenth Amendment) Rules, 2018, notification dated March 26, 2018, made effective from April 1, 2018. Probably, the above pace of change derailed respondent authorities also in their understanding as to which provision has to be followed and implemented and what has to be observed/applied/ obeyed by petitioners and their transporters. That is how impugned orders have been passed under a clear misconception of non-downloading of e- way bill 01 or 02, as the case may be, though under rule 138, which had come into force on February 1, 2018, the form(s) required to be downloaded by dealers or transporters are different.

53. In these peculiar facts and circumstances of the case, in our view, neither it can be said that Petitioners have deliberately committed any fault or disobeyed law intentionally or fraudulently, particularly when respondent- authorities themselves were not very clear. It also cannot be said that there is/was any intention of evasion of tax on the part of these petitioners. In the facts and circumstances, in all the writ petitions

(except Writ Petition No.87 of 2018), we are clearly of the view that seizure orders, show-cause notices, issued under section 129(3) and final orders, if any, are not sustainable in law."

5. Similar order has been passed by the Division Bench of this Court in Harley

Foods Products Ltd. vs. State of U.P. reported in 2018 NTN (68) 53.

6. Upon perusal of the record, I find that neither in the show cause notice nor in the

order under Section 129(3) there was any allegation that non downloading of E-

way Bill-01 was done with intention to evade tax. In spite of the same, the

respondent authorities have chosen to impose maximum penalty whereas the law

provides for lesser penalty under Section 122 of the Act.

7. The issue in the present petition is covered by the above two Division Bench

judgments of this Court and I do not find any case made out with regard to evasion

of tax.

8. In light of the same, the impugned orders dated August 30, 2017 and November

22, 2018 are quashed and set-aside. The writ petition is allowed. Consequential

reliefs to follow.

Order Date :- 18.1.2024 Rakesh

(Shekhar B. Saraf, J.)

2024-01-22T10:58:32+0530 High Court of Judicature at Allahabad