
(2020) 03 CHH CK 0075
In the Chhattisgarh High Court
Case No : WPT No. 36, 49 Of 2020

K.P. Sugandh Ltd.

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 16-03-2020

Acts Referred:

Central Goods And Service Tax Act, 2017 — Section 68, 129, 129(3)
Central Goods And Service Tax Rules Of 2017 — Rule 138, 139

Citation : (2020) 03 CHH CK 0075

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Rohit Sharma, Manoj Paranjpe, Jitendra Pali, Sunita Jain

Final Decision : Allowed

Judgement

@JUDGMENT-JUDGMENT

P. Sam Koshy, J

1. Since the facts and grounds raised in both these writ petitions and the dates also being identical and the impugned orders also being same, both these writ petitions are being decided by this common judgment.

2. The challenge in the present writ petition is to the order dated 17.01.2020 (Annexure P/1) passed by the respondents for the purpose of release of the vehicle carrying goods belonging to the petitioners from the manufacturing centers to the dealer.

3. The relevant facts, which are relevant for the adjudication of the present dispute is that the petitioners are the limited companies under the provisions of the Companies Act. The petitioners herein are the manufacturers of 'Pan Masala and Tobacco Products'. On 14.01.2020, the petitioners dispatched goods both Pan Masala and Tobacco Products to its customer vide Maxi Truck Plus 1.2 TPS No. CG 04 ME 3494 belonging to the transporter Shyam Transport Company. The

vehicle was being driven by one Shanker Yadav, resident of Ward No.3, Tilda, District Raipur. The customer to which the goods were being dispatched was M/s. Ravi Agency at Jhulelal Market, Raipur. While the goods were being transported, the petitioners/ establishment had issued with a tax invoice as well as e- way bill generated and handed the same to the Incharge of the conveyance i.e. the driver namely Shanker Yadav. When the said vehicle/conveyance left for Raipur on 14.01.2020, the vehicle was intercepted by the officials of the respondents/ Department and asked for the details of the consignment. The driver of the vehicle i.e. the person, who was Incharge of the conveyance at the time of interception produced before the authorities the relevant invoice bill and also produced the e-way bill as was required under the Act to the authorities concerned.

4. In spite of the Incharge of the conveyance producing the necessary invoice bill and the e-way bill the respondent authorities seized the vehicle and the goods on the grounds of there being discrepancies in the valuation of the goods and thereafter detained the vehicle and the goods. Subsequently, a notice (Annexure P/4) dated 14.01.2020 FORM GST MOV-07 under Section 129(3) of the Central Goods and Service Tax Act, 2017 was issued to the person Incharge of the conveyance i.e. the driver. Immediately, thereafter the petitioners moved an application for release of the vehicle vide their response dated 17.01.2020. Without considering any of the contentions raised by the petitioners in the said reply to the notice, the respondents have passed the impugned order (Annexure P/1) whereby they have assessed the tax payable on the goods as also the penalty applicable on the said assessment made for the purpose of releasing of the goods and the vehicle. It is this order which is under challenge in the present writ petition.

5. The contention of the petitioners primarily is that when a transport vehicle is intercepted by the authorities of the respondents all that person Incharge of the conveyance is required to keep along with him is the documents as is required under Section 68 of the Central Goods and Service Tax Act of 2017 and Rules 138 & 139 of the Central Goods and Service Tax Rules of 2017. According to the counsel for the petitioners, discrepancies in the valuation of the goods is not a ground, which would be available for the Department for detaining and seizure of the vehicle and goods. According to the counsel for the petitioners, while intercepting the transport vehicle carrying goods all that Inspector has to verify is that whether the person Incharge of the conveyance has the invoice bill for the goods being transported and whether the driver also has the e-way bill.

6. According to the petitioners, the respondents if at all in the course of inspection of the vehicle or the moment they find that there was discrepancy in the valuation, they could not have seized and detained the vehicle or the goods rather should have permitted the vehicle to proceed further to the destination of supply as per the invoice. It was the contention of the petitioners that as regards the dispute of valuation, the respondent authorities could have initiated a

proceeding against the petitioners in accordance with law as is applicable for evasion of tax. According to the petitioners, the item seized by the respondent authorities is also perishable and it has its own shelf life. It was further contended that in case if the goods are not immediately released, the petitioners shall be put to substantial irrecoverable loss for no fault of theirs. It was lastly contended by the petitioners that the plain reading of the notice under Section 129 issued vide Annexure P/4 and the order passed by the respondents (Annexure P/1) would clearly reveal that there is no specific details of the evasion of tax as such reflected from the notice except for a bald allegation of discrepancy in valuation.

7. The State counsel on the contrary opposing the petition submits that it is a case where during the course of inspection of the conveyance, the Inspecting Agencies found discrepancies in the valuation of the goods being transported and that was the reason for detention of vehicle and the seizure of the goods. According to the respondents, the respondent authorities had immediately issued a notice under Section 129 to which the petitioners also submitted their reply on 17.01.2020 and since the reply of the petitioners were not convincing, satisfactory or acceptable, the respondent authorities have passed the order under Section 129. The contention of the petitioners is that the impugned order under Section 129 is one which is appealable under Section 107, therefore the writ petition for this reason itself is not maintainable. The State counsel on instructions submits that as regards the discrepancy it has been informed that the price at which product was sold to the customer was not matching the MRP of the product, which reflected in the packet transported. The second ground raised by the respondents is that subject to the compliance of the order (Annexure P/1), the respondent authorities would release the goods and the vehicle seized and detained by the respondents and thus prayed for the rejection of the writ petition.

8. Having heard the contentions put forth on either side and on perusal of record, some of the undisputed rather admitted positions from the submissions made on behalf of either side is that the petitioners are in the business of manufacturing of Pan Masala and Tobacco Products since 14.01.2020 from the petitioners-establishment. Some consignments of goods were transported to the consumer at Raipur and the product was being transported on a Maxi Truck Plus 1.2 TPS bearing registration No. CG 04 ME 3494. The said vehicle belonged to the Shyam Transport Company. The vehicle was being driven by the Driver Shanker Yadav. What is further to be seen is that undisputedly when the vehicle was subjected to inspection, the person Incharge of the conveyance i.e. the driver had with him the invoice bill duly issued which matched the quantity found in the vehicle. In addition, the driver also was in possession of the e-way bill duly generated and which also was posted in the Web portal of the Department, which again had the details of the consignment and also the details of the tax paid and both of which was produced to the Inspecting Authorities, who had intercepted the vehicle on 14.01.2020. While the goods was being transported from the

petitioner/ manufacturer to its consumer at Raipur.

9. Thus, from the aforesaid factual admitted position, as it stands when the vehicle was intercepted from the 14.01.2020, the person Incharge of the conveyance was in fact carrying the requisite documents, which he was supposed to carry in the course of transportation of the goods. As regards the discrepancy found in the course of inspection, the only observation made by the authorities concerned is that the valuation does not seem to have been properly conducted.

10. Merely because the manufacturer sells his products to its customer or dealer at a price lower than the MRP, as such cannot be a ground on which the product or the vehicle could be seized or detained. If at all if this, according to the respondents, is contrary to the law, the authorities are supposed to draw an appropriate proceeding under the law. If at all what the State counsel has submitted is to be accepted, even then it would be only a case of an alleged sale of a product at a lower costs than the MRP. The Inspecting Authorities for the alleged discrepancy could have only intimated the Assessing Authority for initiating appropriate proceedings. What is more relevant to take note of is the fact that the details in the invoice bill as well as in the e-way bill matched the products found in the vehicle at the time of inspection except for the price of sale.

11. The High Court of Kerela in the case of "Alfa Group v. Assistant State Tax Officer" (2020) 113 taxmann.com 222 (Kerela) in an identical set of facts has held as under:

"On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that none of the reasons stated in Ext. P2 order justify detention of the goods. There is no provision under the GST Act which mandates that the goods shall not be sold at prices below the MRP declared thereon. Further, there is nothing in Ext. P2 order that shows that, on account of the alleged wrong classification of the goods there was any difference in the rate of tax that was adopted by the assessee. In my view when the statutory scheme of the GST Act is such as to facilitate a free movement of goods, after self assessment by the assessee concerned, the respondents cannot resort to an arbitrary and statutorily unwarranted detention of goods in the course of transportation. Such action on the part of department officers can erode public confidence in the system of tax administration in our country and, as a consequence, the country's economy itself. Under such circumstances, I quash Ext. P2 detention order and direct the respondents to forthwith release the goods belonging to the petitioner on the petitioner producing a copy of this judgment before the said authority. I also direct the Commissioner, Kerala State Taxes Department, Thiruvananthapuram to issue suitable instructions to the field formations so that such unwarranted detentions are not resorted to in future. The Registry shall communicate a copy of this judgment to the Commissioner, Kerala State Taxes Department, Thiruvananthapuram for necessary action."

12. A similar view has also been taken by the High Court of Gujarat for grant of

an interim relief in the case of "Sakul Naza Mohmd v. State of Gujarat" in Special Civil Application No. 15655/2019.

13. So far as the ground of an alternative remedy available to the petitioner as pleaded by the State Government is concerned, this Court is of the opinion that since the case of the petitioners at the outset itself was that the entire proceedings for detention of the vehicle and the seizure of the goods being in total contravention to the GST law, relegating the petitioners to avail the alternative remedy of appeal under Section 107 would not be proper, legal and justified. More particularly when this Court also finds that the proceedings of detention and seizure of the goods and the vehicle by the respondents is without any authority of law.

14. Given the said facts and circumstances of the case, this Court is of the opinion that under valuation of a good in the invoice cannot be a ground for detention of the goods and vehicle for a proceeding to be drawn under Section 129 of the Central Goods and Service Tax Act, 2017 read with Rule 138 of the Central Goods and Service Tax Rules, 2017. In view of the aforesaid the impugned order Annexure P/1 i.e. the order passed under Section 129 and the order of demand of tax and penalty both being unsustainable deserves to be and is accordingly set-aside/quashed. The respondents are forthwith directed to release the goods belonging to the petitioners based on the invoice bill as well as the e-way bill.

15. Quashment of the impugned order by itself would not preclude the State Authorities from initiating appropriate proceedings against the petitioners for the alleged act of under valuation of the goods as compared to the MRP on the product in accordance with law.

16. With the aforesaid observations, the present writ petitions stand allowed.