

(2022) 08 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12324 Of 2022

M/S Daya Shanker Singh

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Goods And Services Tax (CGST) Rules, 2017 — Rule 138A
Central Goods And Services Tax Act, 2017 — Section 29, 68
Telangana Goods And Services Tax Act, 2017 — Section 126, 126(1), 126(1)(3), 129
West Bengal Goods And Services Tax Act, 2017 — Section 129

Citation : (2022) 08 MP CK 0014

Hon'ble Judges : Sujoy Paul, J;Prakash Chandra Gupta, J

Bench : Division Bench

Advocate : Abhishek Kumar Dhayani, Darshan Soni

Final Decision : Allowed

Judgement

Sujoy Paul, J

1. This petition filed under Article 226 of the Constitution of India takes exception to the notice dated 25.05.2022 (Annexure-P/10) and another order of same date (Annexure-P/11).
2. In short, the case of petitioner is that petitioner is a registered Government contractor and registered dealer holding Goods and Service Tax Identification No as 23BDRPS9015A1ZK.
3. The petitioner received a work order from Divisional Project Engineer of Public Works Department (PIU), Dindori for construction of additional laboratory and class room at Chandravijay College, Dindori. This work order dated 21.04.2022 is filed by petitioner as Annexure P/1.
4. The petitioner received quotation (Annexure-P/2) from Mittal Steels for supply of TMT bars. In turn, petitioner placed order to Mittal Steels, Raipur for supply of

TMT bars.

5. Mittal Steels in furtherance of petitioner's order/demand raised commercial invoice on 17.05.2022 (Annexure-P/3) charging IGST @ 18% i.e. Rs. 3,41,011.37/-.

6. Mittal Steels being supplier of goods in compliance of Section 68 of the Central Goods and Services act R/W Rule 138-A generated an E-Way Bill for movement of goods from Raipur to Dindori on 17.05.2022 on 06:08 PM. The E-Way Bill No 8212 2755 0219 is filed as Annexure-P/4.

7. The vehicle which was carrying TMT bars on 18.05.2022 and was travelling from Raipur to Dindori suffered a problem and clutch-plates of vehicle got damaged. The proprietor of 'Maa Rewa Transport' sent a vehicle for servicing to 'Rama Moto Cooperation', Raipur on 18.05.2022. Copy of Customer Job Card is filed as Annexure-P/5.

8. On 19.05.2022, the vehicle bearing No. CG04MW3477 got repaired and tax invoice raised for changing parts is filed as Annexure-P/6. The vehicle after getting gate pass, started movement with related documents from Raipur to Dindori . The gate pass is also placed on record as Annexure-P/7.

9. It is averred in the petition that said vehicle reached Dindori on 19.5.2022 between 10.30 to 10.45 pm well within the time mentioned in the E-Way Bill. After reaching the destination, i.e. Dindori, the truck driver called the petitioner and informed that the truck has reached the destination. The petitioner told the truck driver to take the vehicle to Weigh Bridge. While the vehicle was moving towards Weigh Bridge, the Assistant Commissioner at 4.35 AM on 20.5.2022 stopped the vehicle and demanded the relevant documents. The truck driver produced all the relevant documents necessary for the purpose of transportation. The Assistant Commissioner was satisfied by all the documents produced by truck driver except the E-way Bill. The Assistant Commissioner opined that E-way Bill got expired on 19.5.2022 at 12:00 AM. The repeated requests of truck driver and transporter to Assistant Commissioner that the goods reached Dindori before 12:00 AM and unintentional delay occurred thereafter went in vain. The Assistant Commissioner issued FORM GST MOV-02 stating that E-way Bill got expired. The vehicle was detained in the custody of the City Police Station, Dindori.

10. The petitioner submitted his written reply on 24.5.2022, (Annexure P/9) and requested that material detained be supplied to him which is necessary for construction of the class room and laboratory. The said written submission was not accepted and FORM GST MOV-06 was issued. The same was followed by GST FORM MOV- 07 specifying the penalty amount of Rs.6,82,030.00, (Annexure P/11).

11. Criticizing the impugned notice and order Shri Abhishek Dhyani, learned counsel for the petitioner urged that proceedings initiated under Section 29 of the GST Act were not justifiable. The respondents have not followed the

principles of natural justice, which is part of statutory requirement of Section 126 of the said Act which clearly provides that no penalty should be imposed for 'minor breaches' or procedural requirements or omission etc. The petitioner was not found guilty of any fraudulent intent or gross negligence. Thus, imposition of penalty to the tune of Rs.6,82,030.00 was totally disproportionate and unwarranted.

12. The respondents have failed to see that there was no revenue loss. The intention of introducing E-Way Bill mechanism was to keep a check on the movement of goods without tax invoice or and to regulate tax evasion but penalty notice issued for expiry of E-Way Bill was unjustifiable and runs contrary to the scheme and object of said mechanism.

13. In support of his contention Shri Dhyani placed reliance on a judgment of Telangana High Court reported in (2021) 5 GSTJ Online 174 (TG) (Satyam Shivam Papers Pvt. Ltd. Vs. Asst. Commissioner, ST & Others). It is urged that in the aforesaid case, the High Court set aside FORM GST MOV-09 and action of levying tax and penalty on the petitioner because the department could not establish any evasion of tax by the petitioner. Mere lapsing of time mentioned in the E-Way Bill is not sufficient for invoking penalty clause. It is urged that this judgment of Telangana High Court was unsuccessfully challenged by the Revenue and in (2022) 7 GSTJ Online 16 (SC) (Assistant Commissioner (ST) & Others Vs. Satyam Shivam Papers Pvt. Ltd. & Another) the judgment got a stamp of approval from Apex Court.

14. Learned counsel for the petitioner then placed reliance on a judgment of Calcutta High Court in (2022) 7 GSTJ Online 78 (Cal) (Ashok Kumar Sureka Vs. Asst. Commissioner, State Tax, Durgapur Range) and urged that the facts of the present case have similarity, if compared with the facts involved in the case before Telangana High Court and Calcutta High Court.

15. The next contention of Shri Dhyani is based on a Circular No.64/38/2018-GST, dated 14.9.2018. On the strength of this circular, which was considered by the Division Bench of this court in (2021) 5 GSTJ Online 81 (MP) (Robbins Tunnelling & Trenchless Technology (India) Pvt. Ltd. Vs. State of Madhya Pradesh & Others) and it was held that imposition of penalty tax and penalty for clerical error is bad in law. The Division Bench judgment of this court was not interred with and Special Leave to Appeal (C) No.(S) 14196/2021 (The State of Madhya Pradesh & Ors. Vs. Robbins Tunnelling & Trenchless Technology (India) Pvt. Ltd.) was dismissed by the Supreme Court. Thus, the impugned notice and penalty order may be set aside. Since the petitioner has deposited the amount of penalty before the department in obedience of court's order dated 30.5.2022, the department be directed to refund the same.

16. Shri Darshan Soni, learned counsel for the Department/respondents supported the impugned notice/order. On a specific query from the Bench, Shri Soni, categorically admitted that singular flaw/deficiency found in the documents

provided by the truck driver was that E-way Bill stood expired on 19/05/2022 and vehicle was intercepted almost 4-5 hours thereafter at 4.35 A.M. on 20/05/2022. No other discrepancy/deficiency was found in the documents produced by the truck driver.

17. Shri Darshan Soni, learned counsel for the respondents urged that the action taken by the Department is in consonance with the enabling provisions and no fault can be found in the impugned notice/order.

18. Learned counsel for the parties further apprised the Court that the Statutory Appellate Forum under the GST Act has not been constituted till date. Thus, the only remedy at present available to the petitioner is the remedy before this Court.

19. No other point is pressed by learned counsel for the parties.

20. We have heard learned counsel for the parties and perused the record.

21. In view of aforesaid stand of parties, it is clear that the E-way Bill of the petitioner was valid upto 19/05/2022 and truck was intercepted on 20/05/2022 at Dindori at 4.35 A.M. The specific contention of learned counsel for the petitioner that there was no element of tax evasion, fraudulent intent and negligence on his part was not rebutted by learned counsel for the respondents. It is apt to reproduce the relevant para of judgment of Telangana High Court in (2021) 5 GSTJ Online 174 (TG) Satyam Shivam Papers Pvt. Ltd. vs. Asst. Commissioner, ST & others (W.P.No.9688 of 2020), which reads as under :-

"42. How the 2nd respondent could have drawn an inference that petitioner is evading tax merely because the E-way Bill has expired is also nowhere explained in the counter-affidavit. In our considered opinion, there was no material before the 2nd respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the E-way Bill because even the 2nd respondent does not say that there was any evidence of attempt to sell the goods to somebody else on 6.1.2020. On account of non-extension of the validity of the E-way Bill by petitioner or the auto trolley driver, no presumption can be draw that there was an intention to evade tax."

(Emphasis supplied)

22. The writ petition was allowed by the High Court and action of levying of tax and penalty was set aside. The respondents were directed to refund the said amount with interest.

23. This judgment of Telangana High Court was put to test before the Apex Court and Apex Court in (2022) 7 GSTJ Online 16 (SC),

Assistant Commissioner (ST) & others vs. Satyam Shivam Papers Pvt. Ltd. & Another, opined as under:-

"8. Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the

operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic."

(Emphasis supplied)

24. Similarly Calcutta High Court in (2022) 7 GSTJ Online 78 (Cal), Ashok Kumar Sureka vs. Asst. Commissioner, State Tax, Durgapur Range, opined as under :-

"2. In this writ petition, petitioner has challenged the impugned order of the appellate Commissioner dated March 18, 2021 confirming the original order dated September 11, 2019 passed by the adjudicating authority under Section 129 of the West Bengal Goods and Services Tax Act, 2017 for detention of the goods in question on the grounds that the E-way Bill relating to the consignment in question had expired one day before i.e. in the midnight of September 8, 2019, and that the goods was detained in the morning of September 9, 2019 on the grounds that the E-way Bill has expired which is even less than one day and extension could not be made and petitioner submits that delay of few hours even less than a day of expiry of the validity of the tenure of the E-way Bill was not deliberate and willful and was due to break down of the vehicle in question and there was no intention of any evasion of tax on the part of the petitioner.

3. The petitioner in support of his contention has relied on an unreported decision of the Supreme Court dated January 12, 2022 passed in Special Leave Appeal (C) No(s). 21132/2021 (Assistant Commissioner (ST) & Ors. v. Satyam Shivam Papers Pvt. Limited & Anr.).

4. Learned advocate appearing for the respondent could not make out a case against the petitioner that the aforesaid violation was willful and deliberate or with a specific material that the intention of the petitioner was for evading tax.

5. Considering the submission of the parties and the facts and circumstances of the case, this writ petition being WPA No.11085 of 2021 is disposed of by setting aside the impugned order of the appellate authority dated March 18, 2021 as well as the order of the adjudicating authority dated September 11, 2019 and as a consequence, the petitioner will be entitled to get the refund of the penalty and tax paid on protest subject to compliance of all legal formalities."

(Emphasis supplied)

25. We find substantial force in the arguments of learned counsel for the petitioner that present case has similarity with that of the above cases decided

by Telangana and Calcutta High Court. The respondents could not establish that there exist any element of evasion of tax, fraudulent intent or negligence on the part of the petitioner. In this backdrop, the impugned notice/order could not have been passed.

26. The principles of natural justice were statutorily recognized and ingrained in Section 126(1)(3) of the Act. The Law Makers have taken care of doctrine of proportionality while bringing sub-section (1) of Section 126 in the Statute Book. The punishment should be commensurate to the breach is the legislative mandate as per sub-section (1) of Section 126.

27. In the instant case, the delay of almost 4:30 hours before which E-way Bill stood expired appears to be bonafide and without establishing fraudulent intent and negligence on the part of petitioner, the impugned notice/order could not have been passed.

28. Resultantly, the penalty imposed by the order dated 25/05/2022 (Annexure P/11) is set aside. The amount of penalty already deposited by the petitioner be refunded back to him within 30 days failing which it will carry 6% interest till the time of actual payment.

29. The writ petition is allowed.