

Court No. - 10

Case :- WRIT TAX No. - 1384 of 2022

Petitioner :- M/S D And D Construction And Developers Company

Respondent :- Additional Commissioner And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 1383 of 2022

Petitioner :- M/S D And D Construction And Developers Cmpny

Respondent :- Additional Commissioner Grade 2 (Appeal 3) And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Mr. Suyash Agarwal, learned counsel for the petitioner and Mr. Ravi Shanker Pandey, learned ACSC for the State-respondents.

2. Similar controversy is involved in both the writ petition, therefore, with the consent of the parties, both the writ petitions are being decided by a common order treating Writ Tax No. 1384 of 2022 as leading case.

3. By means of Writ Tax No. 1384 of 2022, the petitioner is assailing the order dated 8.4.2022 passed by respondent no. 1 in GST Appeal No. 31/2021 (A.Y. 2019-20) and the penalty order dated 20.3.2020 passed by respondent no. 2 in GST MOV 09.

4. Learned counsel for the petitioner submits that the petitioner is registered construction and developers company having its head office at Jodhpur Rajasthan and having GSTIN 08AFEPT3780M1ZS. The petitioner has made transfer of one old Compactor Machine vide delivery challan no. 2 dated 17.3.2020 for the purpose of its own use at its branch location at Auraiya (UP) for completion of a work order (earth work) secured by the petitioner for development of Bundelkhand Expressway IV from Bakhariya (Distt. Auriaya) to Kudrail (Distt. Etawah) in the State of UP. He submits that on 16.3.2020, the truck in question carrying old compactor machine was intercepted on the ground that goods in question were being transported without any invoice / bilty and E-way Bill. He submits that before the seizure as well as penalty order could be passed, the petitioner has presented all the documents however being not satisfied with the same, the goods were seized and proceedings under Section 129 of the Act was initiated in which the impugned orders have been passed.

5. Learned counsel for the petitioner further submits that it is a transfer of

machinery from head unit at Rajasthan to its work place at Auraiya, Uttar Pradesh and no element of sale is involved in the present transaction, therefore, the entire proceeding ought not to have been initiated under the Act. He further submits that even assuming without admitting, the same could be treated as stock transfer.

6. In support of his argument, learned counsel for the petitioner has relied upon the judgement of this Court in the case of **M/s Vacmet India Ltd. Vs. Additional Commissioner, Grade -2 and others (Writ Tax No. 687 of 2019) Neutral Citation No. 2023: AHC:200160**. He prays for allowing the writ petitions.

7. *Per contra*, learned ACSC has supported the impugned order.

8. After hearing learned counsel for the parties, the Court has perused the records.

9. The record shows that the goods were intercepted on the ground that same were being transported without having necessary documents, however before the seizure as well as penalty order could be passed, all the required documents were produced. The records shows that the compactor machine was transported from head office at Rajasthan to work place at Uttar Pradesh for completion of work. The delivery challan and e-way bill were not produced at the time of interception but along with the notice, the same were produced in which no other discrepancy was pointed out. The delivery challan itself shows that goods were transferred from head office Rajasthan to its work place at Uttar Pradesh. Further there is no element of sale involved in the present transaction hence no tax evasion can be attributed.

10. The record further reveals that the goods were sent from one unit to another unit, and there is no provision under the Act for charging any tax in such transaction. The respondent authority has utterly failed to prove any intent of tax evasion in the present case.

11. This Court in **Shyam Sel & Power Limited [(2023) 11 Centax 99]** has held as under:-

"9. Admittedly, the goods in question were coming from West Bengal to Kanpur, along with tax invoice of the petitioner, consignment note of the transporter and e-way bill of the purchaser. Though the e-way bill was cancelled by the purchaser, but it is stated that the same has not been intimated to the petitioner. Once the goods were seized and the petitioner, after inquiring the fact from the purchaser about the attending fact which led to cancellation of e-way bill by the purchaser, it was communicated to the respondents, but not being satisfied, the goods were detained and the seizure order was passed. While issuing notice or seizing or passing the demand order under section 129(3) of the CGST Act, no observation had been made with regard to intent to evade payment of tax. Section 68 of the CGST Act requires the person in-charge of the vehicle carrying certain documents accompanying the consignment of goods above Rs. 50,000/- such as, tax invoice and e-way bill. On inspection of the vehicle, e-way bill of the purchaser was not found OK and therefore, proceedings have been initiated under section 129(3) of the CGST Act.

10. For invoking the proceeding under section 129(3) of the CGST Act, section 130 of the CGST Act was required to be read together, where the intent to evade payment of tax is mandatory, but while issuing notice or while passing the order of detention, seizure or demand of penalty, tax, no such intent of the petitioner was observed. Once the dealer has intimated the attending and mediating circumstances under which e-way bill of the purchasing dealer was cancelled, it was a minor breach. The authority could have initiated proceedings under section 122 of the CGST Act instead of proceedings under section 129 of the CGST Act. Section 129 of the CGST Act must be read with section 130 of the said Act, which mandate the intention to evade payment of tax. Once the authorities have not observed that there was intent to evade payment of tax, proceedings under section 129 of the CGST Act ought not to have been initiated, but it could be done under section 122 of the CGST Act in the facts & circumstances of the present case. It is also not in dispute that after release of the goods, the same were sold to P.L. Trading Company.

11. Section 129 of the CGST Act deals with detention, seizure and release of goods in case violation of the provisions of the CGST Act is found. Section 130 deals with confiscation of goods or conveyance and levy of penalty. Both the sections revolve around a similar issue and provide for the proceedings available at the hands of the proper Officer upon him having found the goods in violation of the provisions of the Act, Rule 138 of the Rules framed under the CGST Act being one of them. Upon a purposive reading of the sections, it would suffice to state that the legislation makes intent to evade tax a sine qua non for initiation of the proceedings under sections 129 and 130 of the CGST Act.

12. This aspect is no more res integra and the same stands finalized in the judgement of the Apex Court in *M/s Satyam Shivam Papers Private Limited* (supra); wherein, it has been categorically stated that:-

"As notices hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioners 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 petitioners."

12. Further, the High Court of Telangana in **M/s Same Deutzfahr India P Limited** (Writ Petition No. 13392/2020 , decided on 23.9.2020) has held as under:-

"14. Once it is clear that petitioner has additional place of business in the State of Telangana in Bongalur village, Ibrahimpatnam Mandal and the goods were being transported to that address from its Corporate office at Ranipet, Tamil Nadu State, it cannot be said that the petitioner was indulging in any illegal activity when the tax invoice shows that the supplier is the petitioner's Corporate office in Ranipet, Tamil Nadu State and that it was shipped to its Depot in Bongalur village in Ibrahimpatnam Mandal.

15. There was no occasion for the 3rd respondent to collect tax and penalty from the petitioner on the pretext that there is illegality in the transport of goods as it would merely amount to stock transfer and there is no element of sale of goods or services in it."

13. This Court in the case of **M/s Vacmet India Ltd. (supra)** has held as under:

"14. Since the goods in question were stock transfer from one Unit to another within the State of Uttar Pradesh (Agra to Mathura) and in absence of any provision being pointed out by the learned ACSC or any authority below that the goods (stock transfer) in transit were liable for payment of tax, no evasion of tax could be attributed to the goods in question. Once there was no intention to evade payment of tax, the entire proceedings initiated against the petitioner are vitiated and are liable to be set aside.

15. In view of the aforesaid facts & circumstances of the case, the order dated 23.02.2019 passed by the Additional Commissioner, Grade – 2 (Appeal), State Tax, Mathura as well as the order dated 16.05.2018 passed by the Assistant Commissioner, State Tax, Mobile Squad, Unit – 4, Mathura cannot be sustained in law and the same are hereby quashed."

14. In view of the aforesaid discussion as well as law laid down as referred herein in above, the impugned orders passed in both the writ petitions, cannot be sustained in the eyes of law and same are hereby quashed.

15. Both the writ petitions are **allowed**.

16. The fine/penalty, if any, deposited by the petitioner pursuant to the impugned orders shall be refunded to the petitioner within a period of one month from the date of receipt of a certified copy of this order, failing which the petitioner shall be entitled to interest @ 4% per annum from the date of deposit of the amount till the actual payment made to the petitioner.

Order Date :- 8.4.2025

Rahul Dwivedi/-