

2022 LiveLaw (SC) 87

IN THE SUPREME COURT OF INDIA
DINESH MAHESHWARI; HRISHIKESH ROY, JJ.
Special Leave to Appeal (C) No(s). 21132/2021; 12-01-2022

ASSISTANT COMMISSIONER (ST) & ORS.

VERSUS

M/S SATYAM SHIVAM PAPERS PVT. LIMITED & ANR.

Goods and Services Tax - Non-extension of e-way bill would not automatically amount to evasion of tax, especially when the non-delivery of goods within the validity period of the e-way bill was due to external factors, like, traffic blockage.

(Arising out of impugned final judgment and order dated 02-06-2021 in WP No. 9688/2020 passed by the High Court for the State of Telangana at Hyderabad)

For Petitioner(s) Mr. P. Venkat Reddy, Adv. Mr. Prashant Tyagi, Adv. Mr. P. Srinivas Reddy, Adv. M/S. Venkat Palwai Law Associates, AOR

ORDER

Having heard learned counsel for the petitioners and having perused the material placed on record, we find no reason to consider interference in the well-considered and well-reasoned order dated 2nd June, 2021, as passed by the the High Court for the State of Telangana at Hyderabad in Writ Petition No. 9688 of 2020. Rather, we are clearly of the view that the error, if any, on the part of the High Court, had been of imposing only nominal costs of Rs. 10,000/- (Rupees Ten Thousand) on the respondent No. 2 of the writ petition, who is petitioner No.2 before us.

The consideration of the High court in the order impugned and the material placed on record leaves nothing to doubt that the attempted inference on the part of petitioner No.2, that the writ petitioner was evading tax because the e-way bill had expired a day earlier, had not only been baseless but even the intent behind the proceedings against the writ petitioner was also questionable, particularly when it was found that the goods in question, after being detained were, strangely, kept in the house of a relative of the petitioner No.2 for 16 days and not at any other designated place for their safe custody.

The High Court has, inter alia, found that:

“41.It was the duty of 2nd respondent to consider the explanation offered by petitioner as to why the goods could not have been delivered during the validity of the e-way bill, and instead he is harping on the fact that the e-way bill is not extended even four(04) hours before the expiry or four(04) hours after the expiry, which is untenable.

The 2nd respondent merely states in the counter affidavit that there is clear evasion of tax and so he did not consider the said explanations.

This is plainly arbitrary and illegal and violates Article 14 of the Constitution of India, because there is no denial by the 2nd respondent of the traffic blockage at Basher Bagh due to the anti CAA and NRC agitation on 4.01.2020 up to 8.30 pm preventing the movement of auto trolley for otherwise the goods would have been delivered on that day itself. He also does not dispute that 04.01.2020 was a Saturday, 05.01.2020 was a Sunday, and the next working day was only 06.01.2020.”

The High Court has further found and, in our view, rightly so thus:

“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 06.01.2020. On account of non-extension of the validity of the e-way bill by petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax”.

The High Court has also commented on blatant abuse of the power by the petitioner No.2 and has deprecated his conduct in the following words:

“43. We are also unable to understand why the goods were kept for safe keeping at Marredpally, Secunderabad in the House of a relative of 2nd respondent for (16) days and not in any other place designated for such safe keeping by the State.

44. In our opinion, there has been a blatant abuse of power by the 2nd respondent in collecting from the petitioner tax and penalty both under the CGST and SGST and compelling the petitioner to pay Rs.69,000/- by such conduct.

45. We deprecate the conduct of 2nd respondent in not even adverting to the response given by petitioner to the Form GST MOV-07 in Form GST MOV-09 and his deliberate intention to treat the validity of the expiry on the e-way bill as amounting to evasion of tax without any evidence of such evasion of tax by the petitioner.”

Having said so, the High Court has set aside the levy of tax and penalty of Rs. 69,000/- (Rupees Sixty-nine Thousand) while imposing costs of Rs. 10,000/- (Rupees Ten Thousand), payable by the petitioner No.2 to the writ petitioner within four weeks.

The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.

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.

Having said so; having found no question of law being involved; and having found this petition itself being rather misconceived , we are constrained to enhance the amount of costs imposed in this matter by the High Court.

The High Court has awarded costs to the writ petitioner in the sum of Rs. 10,000/- (Rupees Ten Thousand) in relation to tax and penalty of Rs.69,000/- (Rupees Sixty-nine Thousand) that was sought to be imposed by the petitioner No.2. In the given circumstances, a further sum of Rs. 59,000/- (Rupees Fifty-nine Thousand) is imposed on the petitioners toward costs, which shall be payable to the writ petitioner within four weeks from today. This would be over and above the sum of Rs. 10,000/- (Rupees Ten Thousand) already awarded by the High Court.

Having regard to the circumstances, we also make it clear that the State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person/s responsible for this entirely unnecessary litigation.

This petition stands dismissed, subject to the requirements foregoing.

Compliance to be reported by the petitioners.