

Court No. - 1

Case :- WRIT TAX No. - 1146 of 2021

Petitioner :- S/S Shri Surya Traders

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Aditya Gupta, Harsh Vardhan Gupta

Counsel for Respondent :- A.S.G.I., C.S.C.

Hon'ble Piyush Agrawal, J.

1. Heard Sri Aditya Gupta, learned counsel for the petitioner and Sri Jagdish Prasad Mishra, learned Standing Counsel for the State.

2. With the consent of the parties, the present writ petition is being decided finally without calling for the affidavits.

3. The present petition has been filed assailing the order dated 8.4.2021 passed by the respondent no. 3 by which the appeal of the petitioner has been rejected and the order dated 16.10.2019 under Section 129 (3) of UPGST Act, 2017 was confirmed.

4. Counsel for the petitioner submits that petitioner is a registered dealer and engaged in the business of selling Ankle (Sweet Supari) and Varanasi Ashik (Betel Nut Product). In the normal course of business, 90 bags of Betel Nut Product were sold to two different registered dealers by issuing two tax invoices, were being transported to its destination and the same were along with tax invoices & e-way bill. The said goods were intercepted by the proper officer on 9.10.2019 around 17:33 hours at Varanasi. On the physical verification, three bags of Betel Nut Product were found without tax invoice and a show cause notice was issued to the petitioner and in reply to the show cause notice, the petitioner has submitted tax invoice issued in the name of M/s Lal Ji Pan Bhandar, Tikona Park, Nawabganj, Gonda. He further submitted that the said tax invoice was handed over to the transporter but by mistake he

left it behind. He further submits that since the value of the goods was less than Rs. 50,000/-, therefore, e-way bill was not generated. He further submits that so far as the consignment of 87 bags sold to M/s Karuna Nidhan Agency are completed in all respect, the said goods should have not been seized to that extent. If any, discrepancy can be attributed it should be with regard to three bags only. He prays that the goods be released without security and writ petition be allowed.

5. Per contra, Sri Jagdish Prasad Mishra, learned Standing Counsel has tried to justify the impugned order and submitted that in view of Section 129(3) read with Rule 138 providing for issuance of e-way bill which requires that all transaction accompanying the goods, e-way bill must be issued. He further submits that the case in hand, only one e-way bill was issued for 87 bags but with regard to three more bags no e-way bill was there and tax invoice was submitted along with the reply to the show cause notice, therefore, there was contravention of the provisions of the Act. He further submits that in the event, if the consignment of various dealers were going and there were any discrepancy with regard to any of the consignment, the consignment as a whole has to be seized and therefore tries to justify the seizure order and demand of security.

6. The Court has heard the parties and perused the record.

7. Admittedly, the petitioner have sold the goods to two different registered dealers. The petitioner being a registered dealer have duly issued two tax invoices of the goods in question. The authorities have not disputed the issuance of tax invoices. An adverse view has been drawn that after interception, another tax invoice for three bags of Betel Nut Product in favour of M/s Lal Ji Pan Bhandar, Tikona Park, Nawabganj, Gonda have been submitted along with the reply to

the show cause notice just to cover the transaction in question. It is a matter of common knowledge that after the detention, show cause notice was issued and in reply to the show cause notice, bill/tax invoice no. 19-20/950 dated 9.10.2019 was submitted in which all details were mentioned as required under the Act and no discrepancy whatsoever have been pointed out by any of the authorities in it. If the dealer has submitted the tax invoice along with the reply to the show cause notice, no adverse inference can be drawn. If before the seizure order, the documents were submitted and if the same is not accepted, mere issuance of show cause notice will be redundant. It is well settled that the quasi judicial authority while exercising of its statutory powers must have to act fairly with open mind in the proceedings. The person who is subjected to the show cause notice must get an impression that the reply to the show cause notice will be not an empty ceremony and he will mere knock his head against the impenetrable wall. Once along with the reply to the show cause notice tax invoice was submitted for three bags of Betel Nut Product in the name of M/s Lal Ji Pan Bhandar, Tikona Park, Nawabganj, Gonda, the authorities must have to act fairly while adjudicating the same specially when have the powers to take punitive step against a person, whom show cause notice was issued.

8. Once along with the reply, the tax invoice was submitted the value of which was less than fifty thousand and as per Rule 138, there was no requirement for generating of e-way bill to the said transaction. If the authorities were of the opinion that the transaction were not duly recorded in the books of account or had committed any contravention of the provisions of the Act, they are well equipped with all the provisions to make an inspection/survey at the business premises of the petitioner in accordance with law but the authorities were not justified in

detaining / seizing and demanding the security of the goods as documents accompanying the goods as well as submitted along with the reply fully covers the transaction in question and by no stretch of imagination it can be attributed any contravention of the provisions of UPGST Act or Rule.

9. The submission of learned Standing Counsel to the extent that if the goods are in transit and any transaction is less than fifty thousand and then too, the whole transaction are required to be covered by e-way bill. If the said submission so advanced by the learned Standing Counsel is taken to be correct then sealing provided in Rule 138 that if the goods or transaction having value of more than fifty thousand only required for generating of e-way bill will be redundant.

10. Further the submission of the learned Standing Counsel that if any discrepancy is found in the consignment being transported, may be of various dealers, whole consignment can be detained/seized and security can be demanded, is of no substance and he has also failed to show any authority or provision of the Act in support thereof. Every transaction has to be looked into independently. In case sales were made to one registered dealer then something can be said but not otherwise.

11. More precisely perusal of Rule 138-way bill requires if the value of the transaction is more than Rs. 50,000/- then only e-way bill is required. So far as the consignment of 87 bags are concerned which was duly accompanying with all proper documents as prescribed under the Act/Rule, the authorities were not justified in seizing and demanding security for release of the same.

12. The record further reveals that so far as 87 bags of Betel Nut product were accompanying with all proper documents.

The documents of 3 bags were produced along with the reply of the show cause notice but the authorities below were not justified in detaining / seizing the goods and demanding of security as there was no contravention of the provision of the Act. The authorities have illegal and in arbitrary manner have referred the various discrepancies such as the pouches were not having batch number, packing date, expiry date, manufacturing date and referred that under the Food Safety Regulation, the said dates / details were required. But so far as the G.S.T. is concerned, the authorities have failed to record any provision for justification of the seizure of the goods in question.

13. A pointed query was put to Sri Jagdish Prasad Mishra, learned Standing Counsel to show the provisions on the said ground whether seizure can be made but the answer was in negative and accepted that in the absence of any specific contraventions or the provision of the Rules, the seizure of the goods as well as demand of security for release of the same, cannot be justified.

14. In view of aforesaid, the orders dated 8.4.2021 passed by respondent no. 3 and order dated 16.10.2019 passed by respondent no. 5 are hereby quashed.

15. Before parting with the judgment, the Court is constrained to observe that the State Government have tried to create an atmosphere for free flow of trade and commerce so that a good business environment can be developed in the State of Uttar Pradesh which can be used for development purpose but the State Authorities in their whims and fencings are bend upon to harass the trading community of the State. The present case is a glaring example of the mischievous of the State Authorities which needs to be checked at the end of the State Government immediately.

16. The writ petition is allowed with cost of Rs. 20,000/- (twenty thousand) payable to the petitioner. The cost shall be paid within a period of one month from today. The respondents are at liberty to recover the said cost from the erring officer.

17. Any amount deposited in terms of impugned order, the same shall be refunded in accordance with law within a period of two months from today.

18. Copy of this order be sent to the Chief Secretary, Commissioner Commercial Tax, Uttar Pradesh, Lucknow for necessary action.

Order Date :- 6.1.2022

SA