

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4924 of 2023

M/S Sangam Wires a partnership firm, having its office at 133, Lohanchal Colony, Sector 12, B S City, Bokaro, Jharkhand- 827001 through its authorised representative, Mr. Yenduri Vinaya Kumar, aged about 38 years, Gender- Male, son of Tenduri Pitcheswara Rao, resident of 3/46, Vill-Hanumanthapuram, Pamidimukkala Mandal, Dist- Krishna, Andhra Pradesh- 521246.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of State Tax, Patna, Bihar.
2. The Additional Commissioner of State Tax (Appeals), Magadh Division, Gaya, Bihar.
3. The Joint Commissioner of State Tax, Bureau of Investigation, Magadh Division, Gaya, Bihar- 824234
4. The Assistant Commissioner of State Tax, Bureau of Investigation, Magadh Division, Gaya, Bihar- 824234.
5. The Union Bank of India, Gaya Branch, Gaya, through its Branch Manager

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Sr. Advocate Mr. Nikhil Kumar Agrawal, Advocate Ms. Aditi Hansaria, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 24-04-2023

1. The petitioner's vehicle was intercepted on 23.02.2022 at 09:55PM on Gaya-Dobhi Road. The e-way bill (EWB) was found to be expired. Since the goods were in movement without a valid e-way bill, the proper officer, under the Central Goods and Services Tax Act (hereinafter referred to as "Act") has levied a penalty on the petitioner under Section 129(3) of



the Act vide order dated 28.03.2022 (Annexure-6). The same is preceded by issuance of a notice dated 28.03.2022, directing the petitioner to appear before the proper officer on 05.04.2022 at 11:00AM.

2. The order of the proper officer imposing penalty has thereafter been assailed in appeal. The first appellate authority under order dated 24.03.2023 has rejected the petitioner's appeal (Annexure-9).

3. By way of the instant writ petition, the petitioner has assailed the two orders i.e. Annexure-6 and Annexure-9 issued by the proper officer and the appellate authority.

4. Learned senior counsel for the petitioner has made two fold submissions. First submission is that due to a breakdown of the vehicle, the same could not move through the State of Bihar within the currency of its validity. The *bona fides* of the petitioner was thus required to be considered. Without doing so, the proper officer could not have imposed the penalty by impugned order dated 28.03.2022.

5. The second submission is that the notice under Section 129(1)(a) of the Act and the order determining penalty under Section 129(3) of the Act are issued simultaneously on the same date. The appellate authority has mechanically affirmed the order dated 28.03.2022 of the proper officer



without considering the fact that requirement of opportunity of show cause and hearing was mandatory under the provisions of the Act.

6. The order of the proper officer dated 28.03.2022 and the order of the appellate authority dated 24.03.2023 are, therefore, illegal and unsustainable, being in contravention of the statutory requirement.

7. Learned counsel for the State on the other hand submits that the e-way bill was valid up till 16.03.2022. Seven (7) days thereafter, the petitioner's vehicle has been intercepted on 23.3.2022, while the goods were in movement. Interception and detention of the petitioner's vehicle, therefore, is much after lapse/expiry of the e-way bill. The extension of the e-way bill was permissible only within a period of 8 hours from the time of its expiry. No application for extension of the e-way bill was ever made by the petitioner. The petitioner, therefore, is not in a position to take any advantage of the third proviso to Rule 138(10) of the Act, which provides for extension of validity of the e-way bill within 8 hours of its expiry.

8. This Court has gone through the notice under Section 129(1)(a) as well as the order imposing penalty on the same date i.e. 28.03.2022, contained in Annexure-6, both these orders have been issued by the proper officer simultaneously. It



is *ex facie* evident that the notice and order have been recorded simultaneously by the same authority. The order imposing penalty does not record the fact of the petitioner's appearance or hearing prior to passing of the order.

9. This Court would find that the notice issued under Section 129(1)(a) was nothing more than an empty formality as no time/opportunity has been allowed pursuant to the notice, and immediately, on the same date, penalty has been recorded under Section 129(3). The determination of penalty under Section 129(3) is, therefore, in contravention of the statutory requirement under Section 129 of the Act. The requisite compliance with principles of natural justice, inherent in Section 129(4) has thus been violated.

10. We, therefore, are in agreement that the order imposing penalty is unsustainable and is hereby quashed. The matter is remanded to the Joint Commissioner of State Tax, Magadh Division, Gaya.

11. Learned senior counsel for the petitioner submits that the petitioner would present himself before the authority on 05.05.2023, along with his response to the show cause issued under Section 129(1)(a).

12. The petitioner's response to the show cause is required to be considered after due opportunity of hearing, in



accordance with the statutory provisions, which the Joint Commissioner of State Tax, Magadh Division, Gaya, must comply.

13. It is not in dispute that the petitioner is entitled to refund of 25 percent, amount deposited earlier by him for the purposes of maintaining his appeal. That being so, this Court would direct for refund of the amount to the petitioner within a week from his appearance before the proper officer on 05.05.2023.

14. Writ petition is allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.05.2023
Transmission Date	NA

