

Faruk Rathore Prop. Of M/S Hindustan ... vs Dy. Commissioner on 15 April, 2024

Author: Pushpendra Singh Bhati

Bench: Pushpendra Singh Bhati

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

D.B. Civil Writ Petition No. 13473/2022

Faruk Rathore Prop. Of M/s Hindustan Trading Company,
Karamchari Colony, Gigasar Road, Deshnoke, Distt. Bikaner
334801 (Rajasthan).

----Petitioner

Versus

Dy. Commissioner, Central Goods And Service Tax, Division - F,
Opposite Chetan Mahadev Temple, Jaipur Road, Bikaner 334001
(Rajasthan)

----Respondent

For Petitioner(s) : Mr. Shafi Mohammad Chouhan
(through VC).
Mr. V.R. Choudhary
For Respondent(s) : Mr. Mukesh Rajpurohit, Dy.S.G.

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN

Judgment

Reportable

15/04/2024

Per Dr. Pushpendra Singh Bhati, J:

1. This writ petition has been preferred under Article 226 of the
Constitution of India claiming the following reliefs:

"It is, therefore humbly prayed that Your Lordships
may graciously be pleased to accept and allow this writ

petition and by an appropriate writ, order or direction:-
i) To quash and set aside the notice issued u/s 129(3) of CGST Act, 2017 (Ann.-3) as such is out of jurisdiction, ultra virus, arbitrary, unfair and unreasoned.

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ii) To quash and set aside the order passed u/s 129(3) of CGST Act, 2017 (Ann.-4) as such is out of jurisdiction, ultra virus, arbitrary, unfair and unreasoned.

iii) To quash and set aside the order of the Appellate Authority i.e. the Addl. Commissioner (Appeals) GST, dated 24.05.2022 (Ann.-7).

iv) Any other suitable order or direction, which the Hon'ble Court may deem just and proper in the facts and circumstances of the case, may kindly be passed in favor of the Petitioner."

2. Brief facts of the case, as placed before this Court by learned counsel for the petitioner, are that the petitioner is a dealer of Iron items and conducting his business from Deshnok, District Bikaner and the petitioner-Firm is registered under the Central Goods & Services Tax Act, 2017 (hereinafter referred to as 'CGST Act, 2017') having registration No.08BFWPR2595M1Z8. During the course of its business, the petitioner purchased goods amounting to Rs. 9,43,993/- i.e. Iron Channel, Beam and angles from R.K. Steels, Jaipur on 25.02.2021 and an e-way bill No.781176882246 (valid upto 27.02.2021) was generated accordingly at 05:03 a.m. on 25.02.2021, whereafter, the said goods were loaded in a truck, along with the goods of one other Mahaveer Iron Store by the transporter and the vehicle started its journey late evening on the date of purchase.

2.1. However on the way from Jaipur to Bikaner, the truck's tyre

got punctured resulting in the vehicle reaching Bikaner late at night on 26.02.2021 thereby resulting in delay in unloading of the truck at Mahaveer Iron Store due to unavailability of labour, and thus, unloading could be done only at 6 p.m. on 27.02.2021.

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Thereafter, the petitioner was informed that the truck would reach late evening around 9 p.m. on 27.02.2021, however due to unavailability of labour to unload the goods, it was decided that the truck should reach on 28.02.2021, thus the driver stayed in Bikaner during the night.

2.2. On the night of 27.02.2021, inspection of the vehicle (bearing registration No.RJ 14 GE 1832) was conducted by the Inspector, Central Goods & Services Tax (CGST) Department at about 12:44 a.m. on 28.02.2021, during the course of which, the documents and goods were checked, however it was found that the e-way bill had expired on 12 a.m. on 27.02.2021, and accordingly, the proceedings were initiated and the goods were detained under Section 68 (3) of the CGST Act, 2017.

2.3. Thereafter, a notice in the Form of MOV-07 under Section 129(3) of the CGST Act, 2017 dated 01.03.2021 was issued by the Deputy Commissioner, CGST, Division-F, Bikaner to both the petitioner as well as the driver, whereafter the petitioner deposited tax and penalty for release of the goods, and accordingly, the respondent released the goods vide order dated 01.03.2021;

thereafter the petitioner preferred an appeal

(No.GST/BK/16/IV/2021) before the learned GST Appellate Authority against the said order, and vide order dated 24.05.2022 the appeal was dismissed. Aggrieved of the notice & order dated 01.03.2021 and the appellate order dated 24.05.2022, the present petition has been preferred claiming the afore-quoted reliefs.

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3. Learned counsel for the petitioner submits that the petitioner has duly complied with the provisions of GST specifically Rule 138 A of the CGST Rules, 2017; further, the requisite documents such as e-way bill were accompanied with the goods and though it had expired on 27.02.2021, however the maximum distance had been covered i.e. 331 kms out of 361 kms.

3.1. Learned counsel further submits that the driver informed the petitioner regarding the delay, however as the required labour was not available during night of 27.02.2021, it was decided to unload the truck the next morning.

3.2. Learned counsel also submits that the delay occurred was beyond the control of both the petitioner as well as the driver, thus on a mere delay of 44 minutes, the tax and penalty in question was imposed upon the petitioner; in furtherance, the e-way bill is to protect the revenue of the Government, and since the GST was already levied upon the goods, no loss of revenue had been incurred by the Government.

3.3. Learned counsel further submits that in the given circumstances and as per the conduct of the petitioner, the penalty in question could not have been imposed under Section 129 (3) of CGST Act, 2017, and thus, the impugned orders are arbitrary and not justified in law.

3.4. In support of such submissions, learned counsel placed reliance on the judgment rendered by a Division Bench of the Hon'ble Gujarat High Court in the case of Shree Govind Alloys Pvt. Ltd. Vs. State of Gujarat (R/Special Civil Application No. 23835 of 2022 decided on 01.12.2022).

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4. On the other hand, learned counsel for the respondents while opposing the submissions made on behalf of the respondents submits that the distance from Raisar to Bikaner is around 20 km and can be covered within 30 minutes by truck, however it took more than 12 hours for the truck to cover the said distance; in furtherance, as per the e-way bill portal, the transporting vehicle had crossed the Toll Plaza, Lakhasar at 7:14 p.m. on 26.02.2021 and the distance between the said Toll plaza and Bikaner can be covered within 60-80 minutes, thus the contention of the petitioner in this regard is in no terms justifiable.

4.1. Learned counsel further submits that the petitioner was required to either apply for extension of the validity of the e-way bill or the driver should have parked the truck in the premises of the firm if space was available but neither of the two courses had

been resorted to by the petitioner.

4.2. Learned counsel also submits that as per Rule 138 A of the CGST Act, 2017, the person incharge of a conveyance was required to carry with him all requisite documents including invoice or bill of supply or delivery challan and a copy of e-way bill in physical form or e-way bill number in electronic form, and though the driver of the vehicle was carrying with him an e-way bill, however the same was an expired one, thus the contention of the petitioner that all provisions of the CGST Act, 2017 had been duly complied with is not tenable.

4.3. Learned counsel also submits that the e-way bill is a mechanism to ensure goods being transported comply with the

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GST Law and is an effective tool to track movement of goods and check tax evasion.

5. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgment cited at the Bar.

6. This Court observes that the petitioner-Firm purchased iron items from RK Steels, Jaipur for the aforesaid amount on 25.02.2021 and an e-way bill was accordingly generated with the expiry date of 27.02.2021, whereafter the goods were loaded on a truck for transporting the same alongwith the goods of one other Mahaveer Iron Store; during the journey, the tyre of the truck got punctured causing delay in reaching Bikaner, resulting in non

availability of the required skilled labour for unloading of the truck at night in Deshnok, thus a decision was taken to stay in Bikaner and do the unloading work in the morning of 28.02.2021.

6.1. However, at 12:44 a.m. on 28.02.2021, an inspection was conducted by the Inspector, GST Department, wherein it was found that the e-way bill had expired 44 minutes ago, and accordingly, the proceedings in question were initiated and the impugned notice as well as the impugned order under Section 129 (3) of the CGST Act, 2017 was issued on 01.03.2021, whereafter an appeal was preferred by the petitioner which came to be dismissed vide the impugned order dated 24.05.2022 by the appellate authority.

7. This Court is conscious of the order passed by the Hon'ble Apex Court in the case of Assistant Commissioner (ST) and Ors. vs. Stayam Shivam Papers Private Ltd. & Ors. SLP (c)

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No. 21132/2021, decided on 12.01.2022, the relevant portion

whereof is reproduced as hereunder:

"6 . 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.

7. 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.

8. 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.

12. This petition stands dismissed, subject to the requirements foregoing."

8. This Court is further conscious of the order passed by a Division Bench of the Hon'ble High Court of Gujarat in the case of Shree Govind Alloys Pvt. Ltd. (supra), the relevant portion whereof is reproduced as hereunder:

"6. We have heard learned advocates on both the sides and also have considered the material on the record. We notice section 129, which provides as under:

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"Detention, seizure and release of goods and conveyances in transit

129(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released.-

(a) on payment of penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case

of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) xxx xxx xxx

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1)

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(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section(1), all proceedings in respect of the notice specified in sub-section(3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3); Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section 93) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to deprecate in value with passage of time, the said period of fifteen days may be reduced by the proper officer."

7. It is not in dispute that in the instant case, e-Way Bill had expired 41 hours before and the release of goods of conveyance and transit through the authority

concerned.

8. We could notice that the detention is also on the ground that the goods are of expiration of the e-Way bill number, which had expired during the transit and the same cannot be the ground for detaining and seizure of M.S. Billet along with the vehicle truck.

9. This Court in Govind Tobacco Manufacturing Co. vs. State of U.P., [2022] 140 taxmann.com 383 (Allahabad) has held that as there is expiry of e-Way bill on transit, the seizure of said vehicle and the goods is not permissible under the law. In the case before the High Court of Madhya Pradesh at Jabalpur in M/s. Daya Shaker Singh vs. State of Madhya Pradesh passed in Writ Petition No. 12324 of 2022 on 10.08.2022, where also the Court had intervened

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considering the fact that the respondent could not establish any element of evasion of tax with fraudulent intent or negligence on the part of the petitioner. Delay was of almost 4 ½ hours before the e-Way bill could expire. It appeared to be bona fide and without establishing any fraudulent intention. Here also what is found is that there is no fraudulent intention for this to happen.

10. Resultantly, present petition stands allowed. The impugned order dated 04.11.2022 demanding the sum of Rs. 7,53,364/- is quashed and set aside. The order of detention dated 19.10.2022 as well as the notice issued under section 129(3) of the Act dated 19.10.2022 are also quashed and set aside."

9. At this juncture, this Court considers it appropriate to reproduce the relevant portion of the judgment rendered by a Division Bench of the Hon'ble Madhya Pradesh High Court in the case of M/s. Daya Shaker Singh vs. State of Madhya Pradesh

(Writ Petition No. 12324 of 2022, on 10.08.2022), as hereunder:

"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

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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 drawn that there was an intention to evade tax."

(Emphasis supplied)

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

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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

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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 subsection (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."

10. This Court further observes that the only fault lying with the petitioner was that the e-way bill with regard to the goods that were being transported had expired 44 minutes before the inspection took place due to the delay caused resulting from the tyre puncture for no fault of either of the petitioner or the driver of the truck, thus it cannot be said that there existed an intention to evade tax or any fraudulent intention on part of the petitioner; the only issue lied with expiry of the e-way bill and not renewing the same. It is not in dispute that all taxes under the regime of CGST/SGST were paid for.

10.1. This Court is conscious of Section 122 of the CGST Act, 2017, the relevant portion whereof is reproduced as hereunder:

"Section 122. Penalty for certain offences.
(1) Where a taxable person who--
.....

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
.....

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but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher."

11. This Court further observes that the impugned notice was issued and the impugned order dated 01.03.2021 was passed under Section 129 (3) of the CGST Act, 2017, the same being completely unjustified in the eye of law as the issue was not one of there not being an e-way bill, but one of the existing e-way bill having expired during transit, thus imposition of such a heavy penalty for a minor offence is unacceptable and the penalty imposed should have been as per Section 122 of the CGST Act, 2017 of Rs.10,000/-, as there is no apparent case of tax evasion.

12. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case as well as the afore-quoted precedent laws, this Court is of the opinion that the impugned notice and the impugned orders dated 01.03.2021 and 24.05.2021 deserve to be quashed and set aside and the same are hereby quashed and set aside. This Court is also conscious of the fact that the petitioner has already paid tax so also the penalty for release of detained goods, thus the same be returned to the petitioner, while adjusting/deducting the penalty of Rs.10,000/- under Section 122 of CGST Act, 2017, within a period of three months from the date of receipt of a certified copy of this judgment.

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13. The instant writ petition accordingly stands partly allowed in the above terms. All pending applications stand disposed of. (MUNNURI LAXMAN),J (DR. PUSHPENDRA SINGH BHATI),J 22-SKant/-

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