IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3372 of 2023

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Pradeep Pal, Son of Harvilas Pal, Resident of Mahrupur, Sahju, Fatehgarh, Farrukhabad, Uttar Pradesh- 209601.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its Office at Vikas Bhawan, Patna.
2. Asst. Commissioner of State Tax, Investigation, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Hiresh Karan, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-04-2023

1. The petitioner is aggrieved with the detention of the vehicle and goods by the Bihar Goods and Service Tax Authorities and the order passed at Annexure-7 series (within pages 45-53) dated 14.01.2023.

2. The petitioner's case is that the goods were transported on the basis of 3 invoices dated 28.12.2022, produced along with Annexure-1 series. It is also alleged that there were e-way bills with respect to the said invoices, which also stands produced along with Annexure-1 series. The goods, according to the petitioner, originated from Delhi and was moving to Assam. The e-way bill also shows the date as 28.10.2022 at 10:06 PM, and

the validity is up to 07.01.2023. The vehicle was seized at Bhagalpur in Bihar at 02:00 PM on 07.01.2023, pursuant to which the proceedings were issued.

3. Admittedly, the vehicle did not have any documents accompanying the goods, as is seen from Annexure-2 series, which are the statements made by the driver/person-in-charge of the goods and conveyance. The Detaining Authority took proceedings under Section 129 of the Bihar Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017 (hereinafter referred to as “Act”), and it culminated in the order referred to above, which is impugned in the instant proceedings. The order impugned also has directed payment of 50 percent of the value of the goods, which is greater than 200 percent of the tax payable on such goods.

4. Section 129 of the Act is a non-obstante clause, which empowers detention or seizure where any transport of goods is found to be in contravention of the provisions of the Act. Admittedly, no document accompanied the goods and hence there is contravention of the provisions of this Act, despite the fact that three invoices and three e-way bills are alleged to have been generated with respect to the very same goods.

5. In any event, on detention or seizure, the release is

permitted either at the option of the owner of the goods, as per sub-clause (a) of Section 129 of the Act or on the orders of the Detaining Authority under clause (b) of Section 129 of the Act. As far as clause (a) of Section 129 of the Act is concerned, when an option is exercised by the owner and he comes forward for payment of penalty, the penalty has to be equal to 200 percent of the tax payable on such goods; on payment of which the goods and the vehicle may be released. Admittedly, there was no option under clause (a) of Section 129 exercised by the petitioner, in which circumstances, there was a proceeding taken by the Detaining Authority, which culminated in the impugned order requiring payment of penalty as per clause (b) of Section 129. Clause (c) of Section 129 of the Act specifically indicates that upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) of Section 129 of the Act, there can be a release of the goods.

6. There is an appeal provided as against the impugned order, which the petitioner can avail of and it may not be proper for this Court to consider the validity of the penalty imposed and transgression, insofar as the provisions of the Act, which comes forth on transport being detained, in this petition under Article 226 of the Constitution of India.

7. In such circumstances, we direct the goods and vehicle to be released on the petitioner furnishing security equivalent to the amount payable under clause (b) of Section 129 of the Act, as ordered in the impugned order. The petitioner shall be left to the appellate remedy and the enforcement of the guarantee would be subject to the appellate order.

8. Writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	**NAFR**
CAV DATE	**NA**
Uploading Date	26.04.2023
Transmission Date	**NA**