

**226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.21246 of 2020 (O&M)

Reserved on : 04.08.2022

Pronounced on : 03.02.2023

M/s Sterile India Pvt. Ltd.

..... Petitioner

versus

Union of India & ors.

..... Respondents

**CORAM : HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR.JUSTICE PANKAJ JAIN**

Present :- Ms. Shweta Jain, Advocate and
Ms. Anshul Mittal, Advocate
for the petitioner.

Mr. Anshuman Chopra, Senior Standing Counsel
for respondent No.1-UOI.

Ms. Shruti Jain Goyal, DAG, Haryana
for respondents No.2 & 3.

PANKAJ JAIN, J.

By way of present writ petition the petitioner has challenged the order dated 19.06.2018 passed by Proper Officer-cum-Excise and Taxation Officer, Rohtak (for short 'Proper Officer') (Annexure P-13) and that dated 12.03.2020 passed by the Appellate Authority (Annexure P-18) whereby the order passed by the Proper Officer-cum-Excise and Taxation Officer (Annexure P-13) has been affirmed.

The petitioner claims himself to be engaged in manufacturing of Pharmaceuticals. Petitioner is an Assessee under Goods & Service Tax Tariff-Goods. The goods belonging to the petitioner were apprehended while in transit in Vehicle No.HR-61C-7811 by the Proper

Officer on 23.05.2018 at 11.15 PM. On the asking of the Proper Officer the person incharge of the conveyance i.e. Driver produced documents. Along with the tax invoices and delivery challans, following six E-way bills were produced :-

“(a) E-way Bill No. 301016489219 dated 23-05-2018 bearing HSN Code 29419090 amounting to Rs. 50,97,600/-.

(b) E-way Bill No. 301016486025 dated 23-05-2018 bearing HSN Code No. 29411030 for Rs. 2,15,19,159.

(c) E-way Bill No. 311016488235 23-05-2018 bearing HSN Code No. 29419090 for Rs. 4,49,580/-

(d) E-way Bill No. 321016485101 23-05-2018 bearing HSN Code No. 29419090 for Rs. 10,59,624.66.

e) E-way Bill No. 301016478992 dated 23-05-2018 bearing HSN Code No. 29411030 for Rs. 2,94,19,090/-

f) E-way Bill No. 36101652070 dated 23-05-2018 bearing HSN Code No. 29419090 for Rs. 31,86,000/-.

The Driver/person carrying the goods also produced the tax invoices and delivery challans (P-4) of M/s Sterile India (P) Ltd, Kundli, District Sonapat.”

On verification it was found that the Part-B of the E-Way bill was not entered as contemplated under provisions of Section 20 of the Integrated Goods and Services Tax Act, 2017 (hereinafter called IGST Act, 2017) read with rule 138 of the CGST/SGST Rules, 2017 (for short 2017 Rules). Proper Officer-cum-Excise and Taxation Officer further noticed that :-

“that all tax invoices and delivery challans of the petitioner company were generated on 23-05-2018 and contained vehicle No.HR-69 B-9756 and name of transport company as by Car/Patel Retail Ltd. But in the Goods Consignment Notes of M/s Patel Retail, no vehicle number was mentioned although E-way bill numbers were mentioned there. But

physically the goods were found carrying in vehicle Number HR-61C-7811. Another discrepancy which was noticed was that in all the six E-way Bills, the name of the transporter was mentioned as M/s Patel Integrated Logistics Limited (Division PAF) GSTIN- 29AAACP6445K1Z1. Therefore, the Proper Officer issued Form GST MOV-2 (P-5) under Section 68(3) of CGST/HGST read with Section 20 of the IGST Act and carried out physical verification of goods.”

Consequently, the conveyance carrying the goods was detained under Section 129 (1) of the CGST/SGST Act, 2017. Order of detention was issued in the prescribed format vide Annexure P-7. Further notice in Form GST MOV-07 was issued on 28.05.2018 determining Tax and Penalty to the tune of Rs.43,85,068/-. The notice was duly served on the authorized representative of the petitioner-company. On furnishing of Bank Guarantee by the petitioner the goods along with conveyance were released on 30.05.2018. After none appeared and no reply was received to Annexure P-8, Proper Officer passed impugned order dated 19.06.2018. Bank Guarantee furnished by the petitioner was encashed on 04.07.2018.

Aggrieved by the orders and the action of the Proper Officer, the petitioner challenged order dated 19.06.2018 before the Appellate Authority, Haryana. The Appellate Authority vide order dated 12.03.2020 rejected the appeal. The petitioner by way of present petition has laid challenge to the aforesaid action and orders passed by the authorities.

At the outset counsel for the petitioner submits that the petitioner does not dispute that the case of the petitioner would fall within Section 129 of the CGST/SGST Act, 2017 for having violated

relevant provisions of Section 68 of the CGST/SGST Act, 2017 as the E-Way bill was not as prescribed under law. However, she seriously disputes the quantum of the tax imposed and the liability saddled upon the petitioner. She submits that there was no intention on part of the petitioner to evade tax and thus penalty ought not have been levied.

Per contra counsel for the respondents submit that it is a case where the vehicle in question started its movement from the premises of the factory of the petitioner and thereafter from the godown of the transporter without filling up the details in Part-B of the E-Way Bill. Thus she submits that in view of established fact that the petitioner was in violation of the provisions of Section 68 of the CGST/SGST Act, 2017 and rule 138 of the 2017 Rules, no fault can be found with the orders passed by the authorities. She further submits that the petitioner cannot fall back upon rule 138(3) of the 2017 Rules as the goods were already handed over to the transporter at Kundli. She further submits that the distance between Kundli i.e. from where the goods started and Farukh Nagar, District Gurugram where the vehicle was intercepted is around 80 kms. which is beyond the exemption limit of 50 kms. as prescribed under rule 138(3) of the 2017 Rules. Counsel further submits that once the counsel for the petitioner herself admits that the case would fall within the ambit of Section 129 of the CGST/SGST Act, 2017, no fault can be found with the orders passed by the authorities.

We have heard learned counsel for the parties and have carefully gone through the records of the case.

In our considered opinion, counsel for the petitioner is wrong in contending that since there was no intend to evade tax the impugned

orders passed under Section 129 of the CGST/SGST Act, 2017 cannot be sustained. It will be apposite to read Section 129 of the CGST/SGST Act, 2017 :-

“SECTION 129. Detention, seizure and release of goods and conveyances in transit. - (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) [***].*

(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).

(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 (3) 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 depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”

For the purpose of Section 129 of the CGST/SGST Act, 2017 there is no requirement that there should be intention to evade tax. The authorities are not required to establish intention to evade payment of tax. Section 129 of the CGST/SGST Act, 2017 has been enacted to check evasion of tax. If the goods are intercepted during transit and the documents accompanying the goods are not in compliance with the

provisions of the Act, authorities are within their power to detain the goods and demand payment of tax and 100% penalty under the provisions. Moreover, the petitioner does not deny that payment under Section 129(3) of the CGST/SGST Act, 2017 has been made.

Keeping in view the bare provision of Section 129 (5) all proceedings in respect to the notice are deemed to have been concluded. As a sequel of discussion held hereinabove, there is no ground to interfere in the impugned order.

Consequently, the present petition is dismissed being without merits.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

03.02.2023

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No