HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28501-2022
Date of decision: 01.02.2023

M/s. Sodhi Cargo Movers Pvt. Ltd. ....Petitioner

V/s.

State of Haryana and others .....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rohit Mittal, Advocate
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

The petitioner is seeking writ of certiorari for quashing order in appeal dated 20.09.2022 (Annexure P-7) despite producing bills with respect to goods with further prayer to release the goods of which bills have been duly produced alongwith conveyance bearing No. UP-80-DD-7407.

The petitioner is a transporter duly registered under GST Act vide GST Registration No. 09AHEPS2308G1ZE and runs his transport company in the name and style of Sodhi Cargo & Movers. On 08.09.2021, the petitioner/Transporter/Cargo Movers was transporting the goods of the various consignors as per the bills and invoices. During the movement of goods from Delhi to Agra (UP), the goods were intercepted by Sh. Rajesh Kumar, Assistant Excise & Taxation (Enforcement) Faridabad South at Bata Chownk, Faridabad under the provisions of sub-section (3) of Section 68 of the CGST Act, 2017 read with sub-section (3) of Section 68 of the State/Union Territory of Goods and Services Tax Act or under Section 20 of the Integrated Goods and Services Tax Act, 2017. The driver did not produce E-way bills and, therefore, all the invoices he was carrying were not accepted to be complete and accurate. However, the complete set of invoices were submitted with the Appellate Authority later on. Copies of the bills dated 06/07.09.2021 are marked as Annexure P-1. The bills were not found in order and notice dated 08.09.2021 (Annexure P-2) was issued after detaining the goods vehicle. Vide order dated 29.09.2021 (Annexure P-3), tax and penalty under Section 129(1)(2) of the Haryana Goods & Service Tax Act, 2017 for Rs.5,66,740/- and Rs.32,58,639/- respectively were levied. Aggrieved from order dated 29.09.2021 (Annexure P-3), the petitioner had filed an appeal after depositing minimum penalty of Rs.54,642/- as per receipt dated 07.12.2021 (Annexure P-4). The appeal was not taken up for hearing and, thereafter, the petitioner filed CWP-12833-2022 seeking release of the goods. The said writ petition was disposed of vide order dated 02.06.2022 by giving direction to the Joint Commissioner, Excise and Taxation, Faridabad to decide the appeal within a period of 8 weeks, after affording an opportunity of hearing to the authorised representative/proprietor of the petitioner-firm. Finally vide order dated 20.09.2022 (Annexure P-7), the appeal was rejected being devoid of merits and, hence, the present petition has been filed.

A perusal of the order dated 20.09.2022 (Annexure P-7) shows that when the checking was done on 08.09.2021 at 08:30 a.m., the driver of the vehicle namely Maha Ram S/o Hans Raj, had produced challan No. 699 dated 07.09.2021. Thereafter, a committee was constituted for physical verification of the goods and physical verification report was prepared by the said committee in the presence of Sh. Pardeep Sharma, Person-in-charge of the goods on 10.09.2021 and it was found that 17 items (details of the items are at page No. 62 of the paper-book) were without documents and Polyester Fabric was also found in excess by 11,300 meters. Form GST MOV-04 and Form GST MOV-06 were issued and duly served upon the Person In-charge of conveyance and goods on 10.09.2021 and in reference to GST MOV-02, a notice under sub-section 3 of Section 129 of the Act for specifying the tax and penalty in Form GST MOV-07 was issued for 12.09.2021. Neither the Person In-charge of the goods/transporter and/or the owner of the goods appeared before the Proper Officer nor amount of tax alongwith penalty was deposited. In this backdrop, Form GST MOV-09 29.09.2021 (Annexure P-3) confirming tax and penalty as specified in Form GST MOV-07 was passed.

Before the Appellate Authority, the department representative produced the record and defended the impugned order dated 29.09.2021 (Annexure P-3). The Appellate Authority, thereafter, proceeded to decide the issue in appeal. On 08.06.2017, Haryana Goods and Services Tax Act, 2017 was published in the Haryana Gazette and came into force w.e.f. 01.07.2017 to make provisions for levy and collection of tax on inter and intra State supply of goods or services or both by the State of Haryana.

Section 68 of the Act, 2017 deals with the inspection of goods in movement which reads as under:-

> "(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices, as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner, as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods."

Section 122 of the HGST/CGST Acts, 2017 deals with the issue of imposition of penalty for certain offences. The said section reads as under:-

"**122. Penalty for certain offences.**

(1) Where a taxable person who--

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

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

(xv) suppresses his turnover leading to evasion of tax under this Act;

xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or **furnishes false information or documents during any proceedings under this Act;**

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or documents;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected 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."

Section 129 of the Act deals with detention, seizure and release of goods and conveyance in transit which reads as under:-

"129 Detention, seizure and release of goods and conveyance 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 the applicable tax and penalty equal to one hundred percent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two percent 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 tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty percent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five percent 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 tax and 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) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or 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 the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or

seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided 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 seven days may be reduced by the proper officer."

Section 130 deals with confiscation of goods or conveyances and levy of penalty.

"130 Confiscation of goods or conveyances and levy of penalty.

(1) Notwithstanding anything contained in this Act, if any person-

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act, or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided further that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest

in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government."

Pursuant to 101 of Amendment of the Constitution three enactments were passed by the Parliament i.e. the Integrated Goods and Services Tax Act, 2017, the Central Goods and Services Tax Act, 2017, the Union Territory Goods and Services Tax Act, 2017. In addition to the aforesaid three enactments, the Legislature of the State of Haryana on 08.06.2017 passed an enactment known as the Haryana Goods and Services Tax Act, 2017 (HGST Act). In matters of inter-State trade and commerce, including import into the territory of India and out of it, the IGST Act, 2017 applies, whereas in matters of intra-State trade and commerce "the CGST Act, 2017" and the State Goods Services Tax Act apply.

Reference was made to the pronouncement of Hon'ble High Court of Madhya Pradesh in the case of ***M/s. Advantage India Logistics Pvt. Ltd. vs. The Union of India and others*** dated 23.08.2018 ***in Writ Petition No. 16266 of 2018*** and Hon'ble Allahabad High Court in the case of ***M/s. Satyendra Goods Transport Corporation vs. State of U.P. And***

others dated 13.04.2018 reported as ***(2018) 54 GSTR 3 (All).***

The above said two judgments are on the proposition that cross empowerment under Section 4 of the IGST Act, 2017 and Section 6 of the CGST Act, 2017 means that State Authorities are empowered under the HGST Act, 2017 can also enforce the provisions of the CGST Act, 2017 or IGST Act, 2017.

Applying the ratio to the facts of the present case, the conveyance bearing No. UP-80-DT-7407 was checked in transit by the Proper Officer on 08.09.2021. The driver-cum-person in-charge of the goods produced Challan No. 699 dated 07.09.2021 of the appellant-transporter alongwith 11 (eleven) goods receipt and corresponding 11 invoices but only 8-E way Bills for transportation of goods from Delhi to Agra (U.P.) and the following documents were not proper:-

1. 3 Invoices/GRs were without E-way Bills.
2. 4 E-way Bills were not valid as Part-B not entered.
3. 4 E-way Bills were not proper as Vehicle Numbers were different and not same as actual vehicle No. UP-80-DT-7407

After going through the departmental record, the Proper Officer had not imposed taxes and penalty upon the goods which were accompanied with aforesaid 11 invoices and GRs inspite of the fact that 3 invoices are without E-way bills and remaining 8 invoices having E-way bills which were also invalid due to non-entering of Part B or entering different conveyance number.

Hence, on account of the above facts, tax and penalty were not imposed upon the goods which were accompanied with 11 invoices and GRS and tax and penalty were imposed only upon the goods which were not accompanied with any document i.e. GRs, Invoices and/or E-way bills. Tax and penalty had also been calculated upon Polyster Fabric which was also found in excess by 11,300 meters to that shown in the invoice No. 140/06.09.2021 of M/s. Jai Enterprises. The list (bearing No. 1 to 17 of goods which were without any document was also made reason for imposing penalty.

The petitioner transporter had submitted photocopies of 18 GRs and 18 invoices in respect of goods under dispute alongwith appeal in form APL-01, the details of which are mentioned on page No. 91 of the paper-book. The Appellate Authority did not accept invoices and GRs on the following grounds:-

i. The appellant has failed to produce E-way bills in respect of these invoices and GRs

ii. Eleven GRs of the appellant transporter produced at the time of checking were of 3200 series however eighteen GRs produced at this stage are of 5600 series.

iii. 12 invoices out of 18 invoices are of M/s Kanahiya Overseas. Out of remaining 6 invoices 4 are of M/s. Addu Bags House and two invoices are of M/s Shree Ganpati Cosmetics and M/s. Shree Balaji Cosmetics.

iv. These 18 invoices related to following 8 (eight) goods only.

Sr.No.	Description of goods	HSN Code	Quantity	Value
1.	Polyester Fabric	54076190	11300 Mtrs.	197750
2.	Floor Rubbing Machine	680422000	06 Pcs	300000
3.	Nickal Plates	7506	520 Kgs.	1040000
4.	Copper Wire	7408	991.610 Kgs.	892449
5.	PVC Water Pipes	3917	24 Bundle	96000
6.	PVC Footwears	6403	3700 Pcs	111000

7.	Nail Polish	33049920	576 Pcs	14976
8.	Liquid Lipstick	330410	2880 Pcs	126720

The appellant/petitioner failed to reproduce invoices and GRs in respect of following 9 goods:-

Sr.No.	Description of goods	HSN Code	Quantity	Value
1.	Led Flood Lights	94051090	96 Pcs	216000
2.	Bathroom Fittings	7418	04 CN	80000
3.	Cosmetic Lipstick	330410	648 Pcs	67392
4.	Lipstick	330410	288 Pcs	29952
5.	Ladies Purse	42023120	08 Pcs	25000
6.	Sports Goods	9506	01 CN	15000
7.	Fridge Stand	9506	24 Pcs	20000
8.	Mobile Charger	8504	500 Pcs	12000
9.	LED Lights	94051090	360 Pcs	14400

The Appellate Authority further observed that these 18 invoices were never produced by the driver before the Proper Officer and only 11 invoices, 11 GRs and 8 E-way Bills were produced before the Proper Officer. Since, on physical verification, there were 16 goods without any document and one item i.e. Polyester Fabric was in excess by 11,300 Mtrs. Moreover, the appellant/petitioner did not appear before the Proper Officer at the time of passing impugned order and it was only at the stage of appeal, he produced 18 invoices and 18 GRs without E-way bills to cover up the goods without documents and excess quantity of Polyester Fabric. These 18 invoices related to 8 goods only. The appellant had failed to produce invoices and GRs in respect of remaining 9 goods even at the stage of the appeal.

The defence taken by the appellant/petitioner/transporter that the driver Maha Ram had not informed the company about the checking done on 08.09.2021, was also discarded by the Appellate Authority as penal proceedings were attended by Maha Ram and Pardeep Kumar, person in charges of the goods and, hence, the penalty order was passed in the absence of any representative of the company since no one chose to appear and it was intentional.

On 17.01.2023, this case was adjourned to enable learned counsels for the petitioner to get instructions whether details of 9 items given at page No. 92 of the paper- book for which invoices and GRs were not produced, were these items part of any other invoice which the driver had produced.

On 01.02.2023, learned counsel for the petitioner was not able to inform the Court whether 9 items reflected at page No. 92 of the paper-book were part of any other invoice which had been found at the time of inspection. Since from the date of inspection i.e. 08.09.2021 and even before the Appellate Authority, invoices of 9 goods and GRs were never produced by the driver when the goods were checked. Moreover, the driver had produced only 11 invoices and 11 GRs and 8 E-way bills and out of these 11 invoices, even 3 invoices were without E-way bills. Even the remaining 8 invoices having E-way bills were also invalid due to non-entering of Part B or entering different conveyance number, still the tax and penalty were not imposed upon the goods which were accompanied with 11 invoices and GRs and tax and penalty were imposed only for non-producing invoices and GRs with respect to 9 items and Polyester Fabric which was found in excess by 11,300 meters to that shown in the invoice No. 140/06.09.2021 of M/s. Jai Enterprises.

Learned counsel for the petitioner has not been able to dispute the fact that invoices relating to 9 items were never produced before the

Proper Officer and Polyester Fabric was also found in excess by 11,300 meters to that shown in the invoice No. 140/06.09.2021.

Hence, no case to quash order in appeal dated 20.09.2022 (Annexure P-7) is made out. Appeal is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

01.02.2023 **(MANISHA BATRA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No