

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 26591 of 2024

Reserved on : 04.12.2024
Pronounced on: 17.12.2024

Ashok Sharma

...Petitioner

-Vs-

The State of West Benal & Ors.

...Respondents

Present:-

Mr. Himangshu Kumar Ray
Mr. Subal Saha
Mr. Subhasis Podder
Mr. Sushant Bagaria

... for the petitioner

Mr. A. Ray
Mr. Md. T.M. Siddiqui
Mr. D. Sahu
Mr. S. Sanyal

... for the State

Rajarshi Bharadwaj, J:

1. The petitioners seek the quashing of the appellate order dated 04.10.2024 passed by Respondent No. 6, the show cause notice in Form GST MOV-07 dated 27.06.2024, the unsigned summary of the show cause notice in Form GST DRC-01 dated 05.07.2024 issued by Respondent No. 4, the order of demand for tax and penalty dated 15.07.2024 in GST Form MOV-09 as well

as the summary of the order dated 16.07.2024 passed by Respondent No. 3 under Section 129(3) of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the 'WBGST Act') and Section 129(3) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act'). The petitioner contends that the penalty has been imposed illegally, arbitrarily and without applying due consideration, as the physical verification of the goods after detention tallied with the measurements mentioned in the supply invoices and the tax rate was accurately stated as 18%. Moreover, the show cause notice is a result of non-application of mind, and the order issued is without jurisdiction.

2. The facts in a nutshell are that the petitioner carries on business under the name and style of Ekta Trading Co., with a registered office in Liluah, West Bengal. The petitioner is engaged in the business of trading iron and steel and is registered under the GST Act with registration number 19AYPPS0020H1ZC, effective from 01.07.2017. The petitioner raised invoices for the sale of M. S. TMT Bars and Shutter Profiles to M/s. New Binodray Traders in Odisha, with the corresponding e-way bills issued for the goods on 13.06.2024 and 15.06.2024. The goods were loaded onto the same vehicle (WB-41E-3476) for transportation.

3. On 17.06.2024, the vehicle was intercepted by the State Tax Officer, Respondent No. 5, at Panskura, East Medinipur, NH-06. The vehicle was detained and FORM GST MOV-01 (Statement of Owner/Driver/Person-in-charge) was issued. However, the form was unsigned and lacked necessary details such as the date and driver's signature, rendering it invalid. The petitioner states that at the time of interception, the driver presented all required documents, including invoices and e-way bills. However, the documents were not handed over to the driver and the annexure was incorrectly recorded as "N.A." in the document column.

4. On 17.06.2024, Respondent No. 5 conducted a physical verification and issued a report in Form GST MOV-04, which found discrepancies only in the description of the goods but no mismatch in quantity. The billed weight in the invoices matched the weight recorded during the verification, confirming the goods' quantity was correct. The description mismatch, however, was solely based on categorization differences, such as "M.S. TMT Bar" being described as different sizes in the report, which did not constitute any unlawful intent to evade tax.

5. Despite the verification results, Respondent No. 4 issued a detention order on 20.06.2024 under Section 129(1) of the WBGST Act, alleging violations of Rule 46 of the WBGST Rules, 2017 and Rule 138A of the CGST Rules, 2017. Respondent No. 4 also issued Form GST MOV-06 on 20.06.2024, uploading it online without handing over a copy to the driver.

6. On 27.06.2024, Respondent No. 4 issued MOV-07, followed by the summary of the show cause notice in Form GST DRC-01 on 05.07.2024 by Respondent No. 3. The petitioner states that these notices were issued without proper application of mind, as the goods were accompanied by valid invoices, e-way bills, and the quantity matched. The notices also erroneously stated that the goods' description was mismatched, ignoring the legal and factual position of the goods in transit.

7. The petitioner also challenges the detention of vehicle WB41E3476 under Section 129 of the WGST Act, asserting that there was no violation of GST rules. The vehicle was carrying valid invoices and e-waybills during interception, as stipulated in Section 138A of the GST Rules, and the necessary documents were presented during the inspection. This ensures compliance with the law, and there was no contravention of GST provisions. The discrepancies between the descriptions of goods on the invoices and the physical verification report are minimal. While the invoices described the goods as M.S. Pipe, G.I. Pipe, and M.S. TMT Bar, the physical verification

noted slight differences in terms of shape and size. These differences do not indicate an intention to evade taxes, as the appellant is a legitimate trader, and such variations in description are common in the trade.

8. The investigation authorities wrongly assumed different fair market values based on minor differences in the size of goods such as TMT bars. The petitioner asserts that the authorities improperly split the shutter profile into different components and applied different fair market values, which is not supported by the law. The petitioner's business operates under standard trade practices and the authorities' conclusions regarding tax evasion were unfounded.

9. The Learned Counsel appearing for the petitioner submits that the actions of the respondents in detaining the vehicle, issuing multiple notices, and imposing penalty are illegal and arbitrary. The detention was conducted under Section 129 of the WBGST Act, which mandates detention of goods only when goods are transported without valid documents or in contravention of the Act. However, in this case, all the required documents, including tax invoices and e-way bills, were presented at the time of interception. The petitioner further argues that the discrepancy noted in the description of goods is a mere categorization difference and does not indicate any attempt to evade taxes.

10. The petitioner also highlights that the physical verification report conducted by Respondent No. 5 on 17.06.2024 confirms that there were no discrepancies in the quantity of the goods. The weight of the goods recorded in the physical verification report matches the weight mentioned in the invoices, further solidifying the petitioner's claim that there was no violation of law. The mismatch in the description of goods is attributed to categorization differences, which cannot be construed as fraudulent intent.

11. The petitioner asserts that the penalty imposed is arbitrary, as the tax rate was correctly declared in the invoices and e-way bills. Moreover, the

notices issued by Respondent No. 4 and Respondent No. 3 are flawed, as they were issued without due consideration of the petitioner's submissions and the evidence provided. The petitioner claims that the proceedings were initiated against the driver of the vehicle, rather than in the name of the petitioner, despite the invoices and e-way bills being in the petitioner's name. The petitioner further contends that the show cause notice issued under Section 129(3) is erroneous, as it fails to acknowledge the legal and factual position.

12. Furthermore, the petitioner argues that the rate of goods involved in the case can be easily verified through the purchase invoices, and hence, the rate determined by Respondent No. 4 is unreasonable and cannot be accepted. The source of the rate used by Respondent No. 3 has not been specified in the Show Cause Notice and as a result, it could not be verified. The purchase invoices presented by the petitioner clearly show that there was no intention to conceal the value of the supply and there was no wilful attempt to evade tax, as stipulated under Section 129 of the WBGST Act.

13. Finally, the petitioner invokes Article 19(1)(g) of the Constitution of India, which guarantees the fundamental right to carry on trade and business. The petitioner asserts that under this provision, they are entitled to sell goods without being required to specify the size of the goods in the invoice and the Respondents' insistence on segregating the components of the goods for valuation purposes is legally untenable.

14. Therefore, the petitioner submits that the detention of the goods, the demand for penalties, and the entire legal process are based on incorrect assertions, procedural violations, and a failure to understand the legal framework. As a result, the petitioner requests the immediate release of the goods and the quashing of all subsequent proceedings. The petitioner maintains that no evasion of tax occurred, and therefore, no penalties should be imposed under Section 129 of the CGST Act.

15. Submissions of the Learned Counsel appearing for the respondent is that the seized goods exhibit a substantial deviation in both their description and quantity compared to what was declared. This discrepancy has directly resulted in a difference in the transaction value, pointing towards a deliberate attempt to evade tax by the Registered Taxable Person (hereinafter referred to as 'RTP') herein the petitioner. Such deviations undermine the accuracy and reliability of the declarations made by the taxpayer, which are foundational for assessing tax liability.

16. Further, the valuation of the physically verified goods was conducted based on available market information at the relevant time. This valuation revealed that the actual value of the goods was significantly higher than what was declared by the taxpayer. Consequently, the proportional tax derived from the declared value was much lower than the actual tax liability, which reinforces the inference of tax evasion.

17. It is also submitted that the RTP wilfully misdeclared the description and quantity of the goods in the tax invoice with the intent to reduce its tax liability. This misdeclaration is a deliberate violation of tax laws, clearly reflecting the taxpayer's mala fide intent. Such actions directly impact the integrity of the tax system and the accurate collection of revenue.

18. Additionally, the manner in which the RTP maintains its stock inventory after such outward supplies further raises serious questions. There appears to be a lack of consistency and transparency in the inventory records, which casts doubt on the taxpayer's claim of compliance. This failure to properly account for goods in stock suggests a deliberate attempt to conceal the true state of business affairs from the taxing authority.

19. The RTP has also failed to represent the actual state of its business operations before the tax authorities. Such non-disclosure and lack of transparency are clear indicators of the taxpayer's intent to evade taxes and

21. In light of the above, the appellate authority's decision to affirm the adjudication order is entirely justified. The findings are based on substantial evidence and legal principles. Therefore, it is submitted by the respondent authorities that the writ petition lacks merit and is liable to be dismissed as the petitioner has failed to demonstrate any substantive reason to challenge the appellate order.

22. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court finds the detention of goods and the vehicle under Section 129 of the WBGST Act to be lawful. The petitioner's claim of procedural violations, including an unsigned MOV-01 form and errors in other documentation, was noted. However, this Court holds that these irregularities did not render the detention and subsequent proceedings invalid, as the core findings of the case remained unaffected.

23. The Court observed that the discrepancies between the declared description of goods and the physical verification report were significant. While the petitioner argued that the differences were minor trade variations, this Court concluded that the mismatch, coupled with a substantial gap between the declared and verified valuation, indicated a deliberate misrepresentation. Such discrepancies undermined the accuracy of the petitioner's declarations, which are crucial for determining tax liability, justifying the imposition of penalties under the GST framework.

24. The petitioner's failure to maintain consistent and transparent inventory records further supported the inference of intent to evade taxes. This Court emphasized that under the GST laws, the burden of proof lies on the taxpayer to demonstrate compliance with statutory provisions. In this case, the petitioner failed to substantiate claims of legitimate trade practices or demonstrate that the valuation applied by the authorities was unreasonable.

25. Therefore, this Court upheld the orders passed by the adjudicating and appellate authorities, noting that they were based on substantial evidence and a proper application of legal principles. The appellate authority's reliance on market valuation and the evidence presented was deemed reasonable and the petitioner failed to establish any procedural or legal infirmities in these orders.

26. Furthermore, the petitioner's invocation of Article 19(1)(g) of the Constitution, claiming that the actions of the tax authorities infringed upon the fundamental right to carry on trade, is rejected as regulatory measures under the GST laws are necessary to ensure compliance and prevent tax evasion and do not constitute a violation of fundamental rights.

27. For the foregoing reasons, this Court dismissed the writ petition, affirming the validity of the detention order, the tax demand as well as the penalties imposed under the WBGST and CGST Acts.

28. All pending applications are accordingly disposed of.

29. There shall be no order as to costs. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

17.12.2024

PA (BS)