11.03.2024
SL.04, Ct.3
R.Bhar

In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Appellate Side

W.P.A. 365 of 2024

M/s. Tiwari Furniture
-Vs.-
State of West Bengal And Ors.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. Meghana Joshi
Ms. Khushi Kundu
……for the petitioner

Mr. Subir Kumar Saha
Mr. Dilip Kumar Agarwal
……for the State

The present writ petition has been filed challenging the physical inspection and verification report dated 21.12.2023, detention order dated 23.12.2023, penalty order dated 25.12.2023 and all other purported proceedings initiated therein.

Brief facts leading to the present case is as follows:-

The petitioner on 20.12.2023 purchased 23410.00 kgs of M S scrap from M/s. Abhigyan Hardware, Assam. The seller paid the tax for the said goods. The goods were transported to the petitioner's office at West Bengal through M/s. Ridhi Sidhi Roadways, the transporter. The petitioner had all the documents including tax receipts, e-way bills valid from the period 20.12.2023 to 25.12.2023. The goods were intercepted by the respondent no.2 at Ghoshpukur, Siliguri at 05.45 a.m. on 21.12.2023. Despite the fact that the driver of the vehicle provided all the necessary documents, the respondent no.2 conducted the physical verification of the said vehicle. During the physical verification, there was no mismatch in the quantity of the goods as mentioned in the document. The relevant portion of the said physical verification report reads as follows:-

> "I hereby declare that the physical verification of the goods and conveyance mentioned above has been conducted in my presence and I accept that the contents recorded in this report are true and correct."

The only reason the respondent no.2 had detained the goods is that the address of the consigner was not to be found during the inspection carried out at his place of business. Citing the said reasons, the respondent passed the impugned detention order dated 25.12.2023 imposing penalty on the petitioner. Left out with no option, the petitioner herein paid the said penalty and got the goods released.

Being aggrieved by impugned order, the petitioner has preferred the present writ petition challenging the same and seeking refund of the amount deposited.

Learned counsel for the petitioner submits that for invoking the proceeding under Section 129(3) of the CGST Act, the intent to evade payment of tax is mandatory. In the present case, the petitioner has already paid tax and hence the respondent ought not to have initiated proceedings under Section 129(3) of the CGST Act. Learned counsel for the petitioner has relied on a decision of a Co-Ordinate Bench of this Hon'ble Court cited as (2024) 159 taxmann.com 158 (Calcutta) in the matter of *Fairdeal Metals Ltd. v. Assistant Commissioner of Revenue, State Tax, Bureau of Investigation (NB).*

Learned counsel for the respondent points out that an alternative remedy of appeal is available to the petitioner and hence, the present writ petition is not maintainable.

This Court has heard the arguments advanced by both the parties and has gone through the documents produced before it. It is well settled principle of law that in order to invoke proceedings under Section 129(3) of the Act, the intention to evade tax is mandatory. In this context, the judgment of the Hon’ble Supreme Court in Special Leave Petition (C) No. 21132/2021 titled as *Assistant Commissioner (ST) & Ors. v. M/s. Satyam Shivam Papers Pvt. Limited & Anr.* decided on 12.01.2022 is relevant. The same view has been taken by different High Courts. It is also noted that under Rule 138A of the CGST Act, 2017, the person in charge of the conveyance shall carry (a) the invoice or bill of supply or delivery challan and (b) a copy of the e-way bill or the e-way bill number. In this case, the petitioner was carrying all the requisite documents as required in law at the time of carrying the goods.

It is the case of the petitioner that the seller has already made payments towards his tax liability. Hence, there is no question of any evasion of tax liability. This fact has not been disputed by learned counsel for the respondent.

In view of the settled position of law, this Court is of the considered view that no special purpose will be served by delegating the present matter to the appellate authority. In view thereof, this Court deems it appropriate to allow the present writ petition and set aside the impugned physical inspection and verification report dated 21.12.2023, detention order dated 23.12.2023, penalty order dated 25.12.2023 and all other purported proceedings initiated therein.

The respondents are directed to refund the amount recovered from the petitioner in pursuance of the impugned proceeding within a period of four weeks.

With the above direction, the writ petition is disposed of.

Affidavit of service is taken on record.

(Gaurang Kanth, J.)