IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA No. 1219 of 2023

Gurbux Singh Gupta

Versus

The State of West Bengal & Ors.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Mr. Sarthak Mondal

.....For the petitioner.

Hearing Concluded On : 12.12.2024

Judgment on : 16.01.2025

Krishna Rao, J.:

1. The petitioner has filed the present writ application challenging the order passed by the Assistant Commissioner of Revenue (WBGST) under Section 129(3) of the West Bengal Goods and Services Tax Act, 2017 directing the owner of the goods to pay penalty of Rs.33,82,000/-.

2. One Shifting Gears, Assam had purchased a second hand car (Ford Endeavour) having registration No. AS06AE2114 from Mr. Marto Lollen, Proprietor of M/s MMD & Brothers Enterprises, Arunachal Pradesh for a total sum of Rs. 26,00,000/- on 6th May, 2023. The petitioner having its office at Mumbai, had purchased the said vehicle from Shifting Gears in Assam for a total sale consideration of Rs. 26,75,000/- inclusive of all taxes on 13th May, 2023.

3. On 14th May, 2023, the Shifting Gears informed Mr. Marto Lollen that the car was to be delivered and handed over in Haryana and at that time, the previous owner was in Assam. On the same day, an e-way bill was generated at 11:20 p.m. which was valid upto 24th May, 2023. The transporter was authorised by the previous owner for transportation of the said vehicle through a conveyance having registration no. NL01Q1559 from Assam to Haryana.

4. On 15th May, 2023, the conveyance was intercepted by the respondent no.2 at Hasimara, NH31C at 23:55 hrs and on 16th May, 2023, the goods in movement were physically inspected and a report was prepared and uploaded. On 17th May, 2023, the vehicle of the petitioner was detained under Section 129(1) of the Act. On 23rd May, 2023, notice was issued to the petitioner and on 26th may, 2023, the petitioner has submitted his reply. On receipt of reply, the impugned order is issued by the respondent no.2.

5. Mr. Dhiraj Lakhotia, Learned Advocate representing the petitioner submits that the car was a second hand car and the petitioner has purchased the said car from Shifting Gears, Assam who has purchased the same from the registered owner of the vehicle, namely, Mr. Marto Lollen. He submits that invoice-cum-bill of supply was issued in favour of the petitioner wherein taxes @ 9% SGST and 9% CGST were deducted by Mr. Marto Lollen. He submits that taxes were paid on the margin value of Rs. 41,114.28/-.

6. Mr. Lakhotia submits that the car was transported by Mr. Marto Lollen for delivery to the petitioner at Haryana but the vehicle was intercepted on 15.05.2023 at NH31C and detained under Section 129 for alleged discrepancies in transportation documentation and invoice. He submits that the respondents misclassified the car as a new car valued at Rs. 33.82 lacs and calculated 28% IGST and 22% Cess and illegally imposed penalty of Rs. 33,82,000/-. He submits that the proceedings initiated against the petitioner are illegal, arbitrary and beyond the jurisdiction under Section 129 of the Act.

7. The petitioner in support of his submissions has relied upon the following judgments:

i. *Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and Others reported in 2023 SCC OnLine SC 95.*

ii. *Goutam Bhowmick vs. State of West Bengal reported in (2024) 158 taxmann.com 399 (Calcutta).*

iii. Asian Switchgear (P.) Ltd. –vs- State Tax Officer reported in (2023) 157 taxmann.com 90 (Calcutta).

iv. Qfroz Trades (P.) Ltd. –vs- Assistant State Tax Officer reported in (2023) 154 taxmann.com 83 (Kerala).

v. Bharti Airtel Ltd. –vs- State of U.P. reported in 2022 SCC OnLine ALL 741.

vi. M/s Skipper Limited vs. Union of India in Writ Tax No. 344 of 2018.

vii. Assistant Commissioner (ST) and Others vs. Satyam Shivam Papers Pvt. Ltd. & Anr. reported in 2022 SCC OnLine SC 115.

viii. Assistant Commissioner, State Tax vs. Ashok Kumar Sureka reported in 2022 SCC OnLine Cal 1654.

ix. N.V.K. Mohammed Sulthan Rawther and Sons and Wilson –vs- Union of India reported in (2019) 101 taxmann.com 24 (Kerala).

x. Hindustan Coca Cola (P.) Ltd. –vs- Assistant State Tax Officer reported in (2020) 122 taxmann.com 35 (Kerala).

xi. Suncraft Energy Private Limited & Anr. vs. Assistant Commissioner, State Tax, Ballygunge reported in 2023 SCC OnLine Cal 2226.

xii. Deputy Commissioner of Revenue –vs- State Tax & Ors. in MAT 1011 2023 [Calcutta High Court (Division Bench)].

xiii. Usha Martin Limited & Anr. –vs- The Deputy Commissioner of State Tax in MAT 1032 of 2023 [Calcutta High Court (Division Bench)].

xiv. M/s Shyam Sel and Power Limited –vs- State of U.P. and 2 Ors. in Writ Tax No. 603 of 2023.

xv. *J.K. Cement Ltd. –vs- State of U.P. & 3 Ors. in Writ Tax No. 44 of 2023.*

xvi. *M/s Perfect Enterprise –vs- State of West Bengal & Ors. in WPA 532 of 2023 (Calcutta High Court at Circuit Bench Jalpaiguri).*

xvii. *Mohammad Shamasher vs. The State of West Bengal & Ors. in WPA 85 of 2024 (Calcutta High Court at Circuit Bench Jalpaiguri).*

None appears on behalf of the respondents but the respondents have filed their affidavi-in-opposition and as per the case made out in the affidavit-in-opposition, the petitioner was registered under the GST law with the trade name and style of Car Zone at Sterling Centre, Next to Courtyard Marriott, Chakala Andheri (E) Mumbai, Maharashtra, Pin - 400093. But the GST registration was cancelled suo-moto on 28th December, 2020, on the ground of non-filing of GST returns for the period more than six months.

8. It is sated in the affidavit-in-opposition that the driver of the conveyance transporting the instant vehicle was not carrying any tax invoice relating to the supply of the said car at the time of interception which leading to contravention of the provision of Section 68(1) of the WBGST Act, 2017 and CGST Act, 2017 read with Rule 138A of the Rules framed thereunder. The e-way bill produced by the driver of the conveyance at the time of interception dated 14th May, 2023 which was generated by Delivery Relocation Services of Gurgaon against the document no. 1028 dated 14th May, 2023 in support of the movement of the car.

9. It is stated that as per e-way bill, the car is being transported from Mr. Marto Lollen, Assam to Mr. Marto Lollen, Haryana which is not correct and not valid as the petitioner admitted that the car is being supplied by Shifting Gears, Assam to the petitioner at Mumbai. As the e-way bill is not valid to cover the movement which violate the provisions of Section 68(1) of the CGST Act, 2017 and SGST Act, 2017 read with Rule 138A and read with Section 20 of the IGST Act, 2017, due to which provisions of Section 129 were invoked.

10. It is further stated that the car has been supplied by Shifting Gears, Assam and on verification of the GST registration details of Shifting Gears, Assam, it was found that Shifting Gears is a supplier of Motor Car and Motor Vehicle other than old and used Motor car.

11. The only question in the present writ application is whether the respondents have rightly invoked the provisions of Section 129 of the West Bengal Goods and Services Tax Act, 2017 or not?

12. Section 129 of West Bengal Goods and Services Tax Act, 2017 reads as follows:

> *"**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 the applicable tax and penalty equal to one 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 tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. 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 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 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) ****

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detention or seizure, specifying the penalty payable and thereafter, pass an order within seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of subsection 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 the 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 penalty as provided in sub-section (1) within fifteen days from the date of receipt of the copy of the

> *order passed under subsection (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 lakhs 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 fourteen days may be reduced by the proper officer."*

13. The invoice-cum-bill of supply dated 13th May, 2023, issued by Shifting Gears in favour of the petitioner reveals that the petitioner has purchased the said car from Shifting Gears, Assam. In the said invoice, the address of the petitioner is mentioned as "C/o Car Zone, Sterling Centre, Next to Courtyard Marriot, Chakala, Andheri (E), Mumbai and the cost of the said vehicle was Rs. 26,00,000/- and paid CGST and SGST at the rate of 9% each, total amounting to Rs. 26,75,000/-. The e-way bill relied upon by the petitioner dated 14th May, 2023, shows that the vehicle was dispatched from Guwahati, Assam to Gurgaon, Haryana in the name of Mr. Marto Lollen in both the places.

14. When the conveyance was intercepted by the respondents wherein the said car was transporting, on verification of documents it was found that the tax invoice related to the supply of the said car was not available and the e-way bill dated 14th May, 2023 produced by the driver, it was found that the same was generated by Delivery Relocation

Services of Gurgaon against the document no. 1028 dated 14th May, 2023 in support of movement of the said car. As per the e-way bill, the car was transported from Mr. Marto Lollen, Assam to Mr. Marto Lollen, Haryana which is contrary to the statement of the petitioner that the car was supplied by Shifting Gears, Assam to the petitioner C/o Car Zone, Sterling Centre, Next to Courtyard Marriot, Chakala, Andheri (E), Mumbai.

15. The case of the petitioner that the car was first purchased by Mr. Marto Lollen being the proprietor of the firm M/s MMD & Brothers Enterprises, Arunachal Pradesh. On verification of the same, it was found that Input Tax Credit "ITC" on the said car has been claimed by M/s MMD & Brothers Enterprise being GSTIN – 12ANQPL7319G1ZW in the GSTR 3B of May, 2021 and has utilized the same to discharge his tax liability. As per inward supply statement in GSTR 2A for the period May, 2021 of M/s MMD & Brothers Enterprise, Arunachal Pradesh, GSTIN-12ANQPL7319G1ZW, it was found that Input Tax Credit on the said car has been accrued as IGST ITC Rs. 6,73,513/- and Cess Rs. 4,81,081/- from M/s. T.I. Motors Pvt. Ltd., Assam. As per the case of the petitioner, the car was supplied by M/s MMD & Brothers Enterprise, Proprietor, Mr. Marto Lollen, Arunachal Pradesh to Shifting Gears, Assam but the petitioner has not produced any documents either before the respondents or in the present proceeding to establish that Shifting Gears, Assam purchased the car from Mr. Marto Lollen and due to which the respondents could not ascertain whether Input

Tax Credit was availed or not on purchase of car by Shifting Gears, Assam. This Court impleaded Shifting Gears, Assam and Mr. Marto Lollen as respondents in the present proceeding but inspite of service of notice, they have not appeared in the matter.

16. The petitioner has relied upon the Invoice–cum-Bill of Supply dated 13th May, 2023 wherein the cost of the vehicle shown as Rs. 26,00,000/- and CGST & SGST were shown 9% each and the total amount shown as Rs. 26,75,000/- but has produced another Invoice dated 13th May, 2023 before the respondents showing the total amount of Rs.26,75,000/- and in the said invoice shown Tax as "NIL".

17. As per Notification No. 8/2018 - Central Tax (Rate) dated 25th January, 2018, it is clarified that:

> "**2.***This Notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of Section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods."*

In the Notification No. 1/2018-Compensation Cess (Rate) dated 25th January, 2018, the Government of India, Ministry of Finance (Department of Revenue) amended the Notification No. 1/2017 – Compensation Cess (Rate) dated 28th June, 2017, which reads as follows:

> "42A. All old and used motor vehicles
>
> *Explanation: Nothing contained in this entry shall apply if the supplier of such goods has*

> *availed input tax credit as defined in clause (63) of Section 2 of the Central Goods and Services Tax Act, 2017, CENVAT credit as defined in CENVAT Credit Rules, 2004, or the input tax credit of Value Added Tax or any other taxes paid on such vehicles."*

In the present case, Input Tax Credit on the car has already claimed and utilized by M/s MMD & Brothers Enterprise, Proprietor Mr. Marto Lollen, Arunachal Pradesh on the very first instance, thus this Court is of the view that the margin value scheme is not applicable in the case of the petitioner.

18. This Court considered the judgments relied by the petitioner but finds that the judgments as distinguishable from the facts and circumstance of the present case. In the present case after interception of the conveyance, the respondent no.2 has followed all the procedure by issuing notice to the petitioner and proper opportunity was provided to the petitioner. It is found from record that documents relied by the petitioner are contrary to each other. The petitioner failed to prove that M/s Shifting Gears, Assam has purchased the said vehicle from Mr. Marto Lollen. The e-way bill relied by the petitioner for transportation of the car contrary to the Invoice–cum–Bill of Supply dated 13th May, 2023 and subsequent invoice submitted by the petitioner shows that no Tax was paid.

19. Considering the above, this Court did not find any illegality in the order passed by the respondent no. 2 dated 30th May, 2023 and thus the order does not require any interference.

20. WPA No. 1219 of 2023 is **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)