HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF JUNE
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HON'BLE SRI JUSTICE M. S. RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO: 9688 OF 2020

Between:

M/s Satyam Shivam Papers Pvt. Ltd., Regd. Office,5-2-200/1/71, Unit No.23, New Osmangunj, Hyderabad, represented by its director Mr.Sriniwas Baldwa S/o.Rangnath Baldwa, R/o Hyderabad.

...PETITIONER

AND

1. Asst. Commissioner (ST), Osmangunj Circle, Charminar Division, GaganVihar Building, Nampally, Hyderabad.
2. Deputy State Tax Officer, Bowenpally-II Circle, Begumpet Division, 3rd Floor, Pavani Prestige, Ameerpet, Hyderabad.
3. Commissioner of State Tax/Central Tax, Govt. of Telangana, 1st Floor, Commissioner of Commercial Taxes Building, Nampally, Hyderabad.
4. Principal Secretary to the Revenue Department, Government of Telangana, Secretariat, Hyderabad.
5. Union of India, rep. by its Secretary, GST authorities, Ministry of Finance, Department of Revenue, Government of India, North Block New Delhi-110001.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India by calling the entire records relating to release order with demand of tax and penalty in proceeding No. DSTO - III/bnpl-II/VTC/2019-20/05 dt.22/01/2020 passed by Senior Assistant under the office of 2nd Respondent, who is not the proper officer and ignoring the replies dt.7/01/2020 and dt.8/01/2020 submitted by the petitioner company against detention notice dt.6/1/2020. as arbitrary, illegal, without an authority of law, unconstitutional besides being quite contrary to the provisions of the Act and consequently declare the said collection of tax and penalty of Rs.34,500/- each under CGST, SGST Act as without jurisdiction.

Counsel for the Petitioner: SRI TEJPRAKASH TOSHNIWAL

Counsel for Respondent Nos. 1 to 4: SRI J. ANIL KUMAR
SC FOR CUSTOMS & CENTRAL EXCISE

Counsel for Respondent No. 5: SRI N. RAJESHWAR RAO
ASSISTANT SOLICITOR GENERAL

The Court made the following: ORDER

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.VINOD KUMAR

Writ Petition No.9688 of 2020

ORDER : *(Per Sri Justice M.S.Ramachandra Rao)*

The petitioner is a Private Limited Company registered under the Companies Act, 1956, and carries on trading business in all kinds of paper. It is also registered under the CGST Act, 2017, SGST Act, 2017 and IGST Act, 2017 on the rolls of the Assistant Commissioner (ST), Osmanganj, Circle, Charminar Division, Hyderabad **(for short, 'the 1st respondent)**.

2. According to petitioner, it is the sole distributor of M/s.International Papers Limited, Andhra Pradesh, and it also effects inter-State purchases of papers from M/s. Emami Papers Ltd., Orissa and receives supplies of paper from these two companies and submits monthly GST returns on-line and also pays GST payable under the CGST and SGST Act, 2017.

3. Petitioner contends that it made an intra-State supply of paper through a tax invoice dt.04.01.2020 (Ex.P.2) to M/s. Sri Ayappa Stationery and General Stores, Station Road, Medchal in Telangana State which is also registered under the GST Act and had also generated an e-way bill dt.04.01.2020 (Ex.P.3). According to it, the

goods were delivered to a transporter for making delivery to the consignee by an auto trolley bearing No.TS 07 UF 1008.

4. Petitioner contends that the auto trolley started for delivery of the paper at 04:33 p.m. on 04.01.2020 to the consignee, but on its way, on account of a political rally being conducted by certain political parties opposing Citizenship Amendment Act (CAA) and National Register of Citizens (NRC), traffic was blocked at Basheerbagh, Hyderabad, that the road got jammed from all corners and the auto trolley could not move forward or backward. Petitioner alleges that this continued till 08:30 p.m. and by that time, the shop of the buyer could be closed, and so the auto trolley driver took the trolley to his residence with the goods so as to deliver them on the next working day.

5. 04.01.2020 was a Saturday, and 5.1.2020 was a Sunday, and the next working day was 06.01.2020.

6. Petitioner contends that on 06.01.2020, the auto trolley was on its way for delivery of the paper to the buyer/consignee but it was detained by the Deputy State Tax Officer, Bowenpally-II, Circle, Begumpet Division **(for short, '2nd respondent')** at Tadbund at 12:35 p.m.; and a Detention Notice in Form GST MOV-07 dt.06.01.2020 (Ex.P.4) was served alleging that the validity of the e-way bill had expired proposing to impose tax and penalty.

7. It was further alleged by the petitioner that the 2nd respondent unloaded the paper boxes at a private premises in the house of 2nd respondent's relative's at Marredpally, Secunderabad without tendering any acknowledgment of receipt of detention of the goods in his custody, and released the auto trolley by unloading the goods in such a manner. Petitioner alleges that this action of the 2nd respondent is arbitrary and illegal and he could not have taken physical possession of the goods in such a manner.

8. Petitioner alleges that it made representation on 07.01.2020 to the 2nd respondent (Ex.P.5) and sought for release of the detained goods by explaining reasons which resulted in expiry of the e-way bill. He also submitted representation on 08.01.2020 by enclosing copy of the Rule 138 of the CGST Rules, 2018 wherein the validity period of the e-way bill for more than 20 kms can be extended for one more additional day and also enclosed copy of the decision rendered by the Allahabad High Court in Writ Tax No.1471 of 2018.

9. Petitioner further alleges that the 2nd respondent received the said letter dt.08.01.2020, but did not acknowledge receipt of the same and did not also release the goods.

10. Petitioner alleges that he waited for release of the detained goods till 19.01.2020 and since it did not seem likely that the 2nd respondent would release the goods in spite of submitting explanation for release, it made payment of (i) Rs.17,250/- under CGST Act,

(ii) Rs.17,250/- under SGST Act, (iii) Rs.17,250/- towards penalty under CGST Act and (iv) Rs.17,250/- towards penalty under SGST Act through NEFT, amounting to Rs.69,000/-, and also submitted a letter dt.20.01.2020 in the office of the 1st respondent (Ex.P.7). According to petitioner, some of the paper packets in the boxes had also gone missing in the mean time.

11. Petitioner further alleges that the 2nd respondent passed an order on 22.01.2020 in Form GST MOV-09 ignoring the representations submitted by petitioner on 07.01.2020 and 08.01.2020 and also the decision of the Allahabad High Court, and mentioning that petitioner admitted that tax and penalty are payable, which is factually incorrect since the petitioner had never admitted the same.

12. According to petitioner, only after payment of the amount of Rs.69,000/- on 22.01.2020, release order was issued by the Senior Assistant attached to the Office of the 2nd respondent.

13. Petitioner also alleges that the impugned order has been passed by the Senior Assistant on behalf of the 2nd respondent and he is not authorized to pass such an order.

Counter-affidavit of 2nd respondent:

14. Counter-affidavit was filed by 2nd respondent stating that he was authorized by the Joint Commissioner (ST), Begumpet Division to conduct vehicular checks; that three vehicles including the vehicle bearing No.TS 07 UF 1008 were stopped by him and the documents

were checked and since the e-way bills were valid only up to 05.01.2020 12:00 a.m. and were not valid on 06.01.2020 when the checking was done by him, he was entitled to detain them; and that the drivers of the auto trolleys expressed ignorance of the expiry of the e-way bill.

15. The 2nd respondent further quoted Rule 138(10) of the GST Act, 2017 which extended the validity of an e-way bill for one additional day and contended that the distance from the destination was less than 100kms and so the e-way bill was valid only for an extra 24 hrs; that such extension can be made four hours before expiry or four hours after expiry, but the e-way bill of petitioner was not so extended.

16. He further contended that though there were three vehicles there was only one e-way bill mentioning the vehicle No.TS 07 UF 1008 and the numbers of the other two vehicles, viz., AP 09 Y 2935 and TS 13 UB 6441, were written manually on the e-way bill which the drivers acknowledged.

17. It was further contended by the 2nd respondent that on 06.01.2020, there was rain and due to non-cooperation of the drivers, the 2nd respondent's staff ensured the safety of the goods under CCTV camera surveillance. The 2nd respondent further stated he received the letter dt.08.01.2020 enclosing the judgment of the Allahabad High Court, and stated that he did not follow it because in the instant case

there was a clear evidence of evasion of tax. Thereafter, certain provisions of the GST and the Rules framed thereunder were quoted *in extenso*.

18. The 2nd respondent also stated that the goods were kept in the premises of a known person on 06.01.2020 because it was a rainy day.

19. He stated that he had applied for leave for four days and in his absence, on the request of petitioner, he directed his Senior Assistant to release the vehicle by signing the release order; and that such release was done in order to ensure that there is no further delay in delivery of goods to the dealer.

20. It was also alleged that to cover up the failure of the dealer to extend the validity of the expired e-way bill, the dealer made self-serving statements which did not prove his *bona fides*.

21. It was stated that petitioner had approached the 2nd respondent on 18.01.2020 which was a Saturday, and on 20.01.2020, the following Monday, the dealer had remitted the tax and penalty; and on 22.01.2020, the payment details were furnished by him and so release orders were issued.

22. It was also stated that as per the Act, a dealer can extend the validity of an e-way bill in Part-B and the same can be sent even to the driver's mobile phone, but the dealer willfully did not do so, and expiry of the e-way bill cannot be treated as a technical mistake. He justified the levy of penalty and tax on the petitioner in this manner.

Reply-affidavit of petitioner :

23. Reply-affidavit was filed by petitioner refuting the allegations leveled by 2nd respondent.

24. The petitioner contended that the 2nd respondent did not disclose the proceedings number through which the Joint Commissioner (ST), Begumpet Division, Hyderabad authorized him to conduct the check of vehicles and he did not even file it along with the counter-affidavit.

25. The petitioner further contended that though there were four auto trolleys, one of which had reached the destination and delivered the paper boxes, the remaining three trolleys could not deliver the paper on 04.01.2020 due to CAA and NRC rallies at Bashierbagh, Hyderabad. It stated that they started on 06.01.2020 for delivery of goods before the expiry of the e-way bill period, and hence the detention notice issued is illegal and bad in law.

26. Petitioner further alleges in this reply-affidavit that the detention notice dt.06.01.2020 is signed by the Assistant Commissioner (C.T.O.), but, the first page of the detention notice mentions the 2nd respondent's name as the first person who intercepted it.

27. It is also stated that the 2nd respondent admitted that he did not sign the release order as he was on leave and there is no provision under the Act to sub-delegate the powers to the 2nd respondent.

28. It was also contended that the 2nd respondent's plea that petitioner has admitted the payment of tax and penalty is absurd, baseless and high-handed, and he did not look into the replies submitted by petitioner. It is stated that there is no document in which the petitioner had admitted liability to pay the tax and liability. It was also stated that the representations given by petitioner in fact show that petitioner never gave consent to pay tax and penalty.

29. The petitioner also contended that there was no evidence of evasion of tax and pointed out that validity of the e-way bill is different from evasion of tax, and the 2nd respondent should have noted the distinction between the two.

30. It was also stated that the 2nd respondent could not have kept the goods in his relative's house, and such a course of action is not permissible under the Act. It was also denied that 06.01.2020 it was a rainy day.

31. Petitioner also alleged that withholding of the goods was permissible only for three days under the Act and the 2nd respondent was duty-bound to bring it to the notice of the Joint Commissioner who allegedly authorized him to detain them, but 2nd respondent could not have detained them for more than 16 days; and that such an action is without the authority of law.

32. According to petitioner, the e-way bill had a validity up to 12:00 p.m. on 06.01.2020, and so, withholding the auto trolley beyond

12:00 a.m. and issuing detention notice at 12:35 p.m. on 06.01.2020 is contrary to law.

33. It was further alleged that the office of 2nd respondent is at Marredpally, Hyderabad. It was also further contended that before issuing release order of the goods, the office of 2nd respondent obtained acknowledgment from the driver that they received the entire stock so as to escape liability for loss of goods while they were in custody of the 2nd respondent.

34. The petitioner further alleged that for minor mistake of expiry of e-way bill which is beyond the control of petitioner company, it cannot levy such tax and penalty particularly when there is no dispute raised by the 2nd respondent about the holding of political rally opposing the CAA and NRC at Bashierbagh, Hyderabad on 04.01.2020 resulting in traffic jam; and that the 2nd respondent also did not dispute that the consignee's shop would be closed by 08:30 p.m. on 04.01.2020. According to him, there was no occasion to levy penalty because the 2nd respondent failed to prove any *mens rea* on the part of petitioner , that penalty proceedings are *quasi* criminal in nature and reliance is placed on the decision of Andhra Pradesh in **Delta Lubricants, Vijayawada vs. Deputy Commercial Tax Officer**[1].

35. We have noted the submissions of both sides.

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[1] 43 APSTJ 27

Consideration by the Court :

36. The admitted facts are that petitioner had dispatched goods on the auto trolley bearing No.TS 07 UF 1008 on 04.01.2020 and the driver of the auto trolley had in his possession tax invoice (Ex.P.2) dt.04.01.2020 as well as e-way bill (Ex.P.3) dt.04.01.2020, and that the distance to be traveled by the auto trolley was only 36 kms.

37. Petitioner alleges that the said auto trolley along with other auto trolleys started for delivery of the paper at 04:33p.m. on 04.01.2020 to the consignee, but on its way to Bashierbagh since there was a political rally opposing CAA and NRC by political parties, the roads were blocked and the traffic could not move forward or backward; that the driver of the said auto trolley waited till 08:30 p.m. on the road; by that time having realized that the shop of the buyer would be closed, the driver of auto trolley took the goods to his residence with a desire to deliver the goods on the next day. The following day 5.1.2020 being a Sunday, the attempt was made by the driver of the auto trolley to deliver them to the buyer on 6.1.2020 when it was detained at 12.35 pm by issuing detention notice dt.06.01.2020.

38. Though according to 2nd respondent, there were three auto trolleys which were detained, the present Writ Petition is confined only to the auto trolley bearing No.TS 07 UF 1008 carrying paper weighing 4366 kgs. which is clearly mentioned in the e-way bill.

39. Therefore, we are not concerned with the story set-up by the 2nd respondent about the other two auto trolleys which were also detained by him on 06.01.2020 along with the auto trolley No.TS 07 UF 1008 nor expressing any view thereon.

40. As rightly contended by counsel for petitioner, Form GST-MOV-07 (notice under Section 129(3) of the CGST Act) on 4.1.2020 to petitioner mentions on the first page, the name and description of the 2nd respondent as the proper officer who detained the vehicle, but on the last page thereof the rubber stamp of the Assistant Commissioner Tax Officer is mentioned. This is not explained by the 2nd respondent.

41. Secondly, petitioner gave representation on 07.01.2020 to the 1st respondent and handed over a copy of the same to the 2nd respondent on 08.01.2020 explaining about obstruction to the movement of the auto trolley on account of rally conducted in the city of Hyderabad on 04.01.2020 preventing the vehicle from reaching its destination on that day.

The order of demand of tax and penalty in From GST MOV-07 issued on 22.01.2020 is signed by the Senior Assistant attached to the Office of 2nd respondent, and not by the 2nd respondent, by wrongly stating therein that petitioner had no objection to pay proposed tax and penalty, in spite of the petitioner giving representations on 08.01.2020 and 20.01.2020 to the contrary.

Why the 2nd respondent has not chosen to refer to these two explanations offered by petitioner is nowhere mentioned in the counter-affidavit filed by 2nd respondent.

It was the duty of 2nd respondent to consider the explanation offered by petitioner as to why the goods could not have been delivered during the validity of the e-way bill, and instead he is harping on the fact that the e-way bill is not extended even four (04) hours before the expiry or four (04) hours after the expiry, which is untenable.

The 2nd respondent merely states in the counter affidavit that there is clear evasion of tax and so he did not consider the said explanations.

This is plainly arbitrary and illegal and violates Article 14 of the Constitution of India, because there is no denial by the 2nd respondent of the traffic blockage at Basher Bagh due to the anti CAA and NRC agitation on 4.1.2020 up to 8.30 pm preventing the movement of auto trolley for otherwise the goods would have been delivered on that day itself. He also does not dispute that 04.01.2020 was a Saturday, 05.01.2020 was a Sunday, and the next working day was only 06.01.2020. .

42. How the 2nd respondent could have drawn an inference that petitioner is evading tax merely because the e-way bill has expired, is also nowhere explained in the counter-affidavit.

In our considered opinion, there was no material before the 2nd respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill because even the 2nd respondent does not say that there was any evidence of attempt to sell the goods to somebody else on 06.01.2020. On account of non-extension of the validity of the e-way bill by petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax.

43. We are also unable to understand why the goods were kept for safe keeping at Marredpally, Secunderabad *in the house of a relative* of 2nd respondent for (16) days and not in any other place designated for such safe keeping by the State.

44. In our opinion there has been a blatant abuse of power by the 2nd respondent in collecting from the petitioner tax and penalty both under the CGST and SGST and compelling the petitioner to pay Rs.69,000/- by such conduct.

45. We deprecate the conduct of 2nd respondent in not even adverting to the response given by petitioner to the Form GST MOV-07 in Form GST MOV – 09, and his deliberate intention to treat the validity of the expiry on the e-way bill as amounting to evasion of tax without any evidence of such evasion of tax by the petitioner.

46. In this view of the matter, the Writ Petition is allowed; the order dt.22.01.2020 passed by the Senior Assistant of the 2nd respondent in Form GST MOV – 09 and levying tax and penalty of Rs.69,000/- on the petitioner, is set aside. The respondents are directed to refund the said amount collected from petitioner within four (04) weeks with interest@ 6% p.a from 20.1.2020 when the amount was collected from petitioner till date of repayment. The 2nd respondent shall also pay costs of Rs.10,000 to the petitioner in 4 weeks.

47. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

MEMORANDUM OF COSTS

W.P.NO.9688 OF 2020

	Rs.	Ps.
Costs Quantified by Hon'ble Court (That the 2nd Respondent herein directed to pay costs of Rs.10,000/- (Rupees Ten Thousand Only) to the petitioner within four weeks.	10,000	00
TOTAL	**10,000**	**00**

SD/- T.TIRUMALA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

GB

SECTION OFFICER

To,

1. The Assistant Commissioner (ST), Osmangunj Circle, Charminar Division, GaganVihar Building, Nampally, Hyderabad.
2. The Deputy State Tax Officer, Bowenpally-II Circle, Begumpet Division, 3rd Floor,Pavani Prestige, Ameerpet, Hyderabad.
3. The Commissioner of State Tax/Central Tax, Govt. of Telangana, 1st Floor, Commissioner of Commercial Taxes Building, Nampally, Hyderabad.
4. The Principal Secretary to the Revenue Department, Government of Telangana, Secretariat, Hyderabad.
5. The Secretary, GST authorities, Ministry of Finance, Department of Revenue, Union of India, North Block,New Delhi-110001.
6. One CC to Sri Tejprakash Toshniwal,Advocate [OPUC]
7. One CC to Sri J Anil Kumar, SC for Customs & Central Excise [OPUC]
8. One CC to Sri N. Rajeshwar Rao, Assistant Solicitor General [OPUC]
9. Two CD Copies

MBC

HIGH COURT

DATED: 02/06/2021

ORDER

WP.No.9688 of 2020

ALLOWING OF THE WRIT PETITION

WITH COSTS.

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14/06
(10)