

Tax demand order alleging e-way bill reuse quashed by HC and termed it as perverse and erroneous

The Hon'ble Allahabad High Court in *M/s. Anandeshwar Traders v. State of UP [Writ Tax No. 503 of 2020 decided on January 18, 2021]* held that the order demanding tax and penalty passed by Revenue under Section 129(3) of the Central Goods and Services Tax Act, 2017 (“CGST Act”) is contrary to the provisions of the law and is perverse and erroneous on the basis that the Revenue had not recorded any reason to establish evasion of tax or attempt to evade tax or reuse of the e-way bill.

Facts:-

M/s. Anandeshwar Traders (“the Petitioner”) is a trader in Pan Masala and other goods. The Petitioner claimed to have sold disputed goods to a dealer against its tax invoices dated November 24, 2019. Two e-way bills were also prepared on November 24, 2019 and Bilty of the carrier were also prepared for transportation of those goods.

The goods in question along with the two tax invoices, e-way bills and two bilty were found with the goods on November 28, 2019 when the same were intercepted by the revenue authorities. At the stage of seizure i.e., when the order under Section 129(1) of the CGST Act was passed alleging the reuse of the aforesaid e-way bills.

However, the Assistant Commissioner in its order dated December 3, 2019 imposed the tax and penalty amounting to Rs. 29,76,110/- and no findings were recorded to that effect.

Aggrieved by the above order, the Petitioner appealed against the same and the same was dismissed vide order dated June 22, 2020 by Additional Commissioner Grade-2 (Appeal)-5, Commercial Tax, Kanpur (“Appeal authority”).

It is to be noted that Appeal authority relied on some additional evidence produced by revenue authority and further, relied on Rule 138(9) of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”), to state that since the goods were not being transported immediately upon preparation of the e-way bills on November 24, 2019 the same should have been cancelled. It has been inferred that the said e-way bills had been reused.

A writ petition was filed by the Petitioner against the order dated December 3, 2019 in the High Court.

Petitioner's Contention:-

- That Rule 138(9) of the CGST Rules does not provide compulsory cancellation of e-way bills by a dealer, in case, the goods are not transported within 24 hours of its generation. Further, it does not lead to the second use of the e-way bills merely because transportation of the goods did not commence for four days thereafter.
- That as per Rule 112 of the CGST Rules and the judgement of the Hon'ble Supreme Court in case of ***Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.[AIR 1978 SC 851]*** the right to lead additional evidence at the stage of appeal has been granted to the appellant only. Therefore, the Appeal authority has wrongly allowed the application of the revenue authority.

Respondent's Contention:-

- That if the Petitioner had not transported the goods as disclosed on the e-way bills, the Petitioner should have acted in accordance with law and cancelled the same under Rule 138(9) of the CGST Rules.
- That as per the evidence given to the Appeal Authority, the goods have been transported twice under the same e-way bill.

Held:-

The Hon'ble Allahabad High Court in ***Writ Tax No. 503 of 2020 decided on January 18, 2021*** held as under:

- Rule 138(9) of the CGST Rules, does not prescribe that the dealer must necessarily cancel the e-way bill if no transportation of the goods is made within 24 hours of its generation. If such cancellation does not take place, then there are no consequences. On the contrary, the stated Rule permits a dealer to cancel the e-way bill only if the transportation does not take place and its the dealer who chooses to cancel such e-way bill within 24 hours of its generation.

- Observed that, since the Petitioner had pleaded a negative fact, the initial onus was on the revenue authority to lead positive evidence to establish that the goods had been transported on an earlier occasion.
- Noted that neither any inquiry appears to have been made at that stage from the purchasing dealer or any toll plaza or other source, nor the Petitioner was confronted with any adverse material as may have shifted the onus on the Petitioner to establish non-transportation of goods on an earlier occasion. The presumption could not be drawn on the basis of the existence of the e-way bills when there did not exist evidence of actual transaction performed and there is no statutory presumption available. Also, there is no finding of the assessing authority to that effect. Mere assertion made at the end of the seizure order that it was clearly established that the Petitioner had made double use of the e-way bills is merely a conclusion drawn bereft of material on record. It is the reason based on facts and evidence found by the assessing authority that has to be examined to test the correctness of the order and not the conclusions, recorded without any material on record.
- Further stated that, the Appeal authority had not recorded any reason to establish evasion of tax or attempt to evade tax or even reuse of the documents by the Petitioner. He simply rejected the explanation furnished by the Petitioner without recording any reason and consequently imposed tax and penalty in the order dated December 3, 2019 passed under Section 129(3) of the CGST Act.
- Held that, the order dated December 3, 2019 is found to be pervasive and erroneous in nature and is set aside. Any amount that may have been deposited by the Petitioner, may be returned to it, in accordance with law.

Relevant Provisions:-

Section 129(3) of the CGST Act:

“(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).”

Rule 138(9) of the CGST Rules:

*“(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill **may be** cancelled electronically on the common portal within twenty four hours of generation of the e-way bill:*

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.”

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