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By Nidhi, Advocate



Judgment No.: 003
Dt.: 30-10-2023



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Judgment Deals With

Section/Rule	Section 129 of CGST Act, 2017
Authority	Allahabad High Court
Case Name	M/s. Balaji Traders And Another VS State Of U.P.
Dated	06 th October, 2023

Brief Facts:

The petitioner – firm is engaged in business of trading cigarette, pan-masala & food spices. The petitioner received an order of supply from a party in Maharashtra. The invoice dated 18.11.2022 was generated. The goods were supposed to be sent through railway. The goods were intercepted on 18.11.2022 outside the railway station, which were loaded in e-rickshaw and confiscated by the GST officials. Thereafter, on 19.11.2022, a SCN was issued to the petitioner – firm imposing a penalty of Rs. 5,58,286/-. The petitioner submitted reply to the SCN and also deposited a penalty amount; whereupon, the goods were released. The Assistant Commissioner passed impugned order dated 25.11.2022 confirming the penalty u/s 129(1) of the SGST Act. Aggrieved by the said order, the petitioner preferred an appeal, which was also dismissed vide order dated 24.03.2023 confirming the order dated 25.11.2022.

Hence, this writ petition was filed.

Contention of Petitioner:

On receipt of purchase order from Maharashtra, tax invoice was raised, but the e-way bill could not be generated as there was some technical glitch. For filling up the e-way bill, Railway Receipt number was required and therefore, on 18.11.2022, in the evening, the petitioner went to the Kanpur Railway Station for arranging the entire booking process and to obtain Railway Receipt number for generating the e-way bill and asked the e-rickshaw driver to wait outside the railway station itself. When the goods were intercepted, the e-rickshaw driver duly informed to the GST authorities that the owner of the goods, along with paper, is inside the railway station for getting the Railway Receipt prepared, but without waiting or cross-checking the said fact, the Department confiscated the goods. A detailed reply was given by the petitioner narrating the said facts, but without considering the same, the impugned penalty order has been passed. There was no intention of the petitioner to evade payment of tax. Even while issuing the show cause notice or passing the impugned order, no observation has been made about the intention of the petitioner to evade payment of tax, but still the impugned orders have been passed confirming the penalty upon the petitioner.

Contention of Respondent:

At the time of interception of the goods outside the railway station, no documents were produced and therefore, the goods were rightly confiscated and thereafter, SCN was issued and impugned orders have been passed as there was a contravention of the provisions of the SGST Act and the Rules framed there-under. Therefore, the proceedings have rightly been initiated against the petitioners. In the event the goods were not intercepted or confiscated, the petitioners would have succeeded in its motive of not entering the transaction in question in its books of account.

Findings & Order:

The goods were intercepted and confiscated outside the railway station. The goods were loaded in e-rickshaw and the driver of the e-rickshaw had duly informed the authorities that the owner of the goods, along with documents, is inside the railway station and requested for waiting, but the Departmental officer, in their wisdom, have neither cross-checked the said fact nor waited for the Proprietor of the petitioner – firm to come out. On the contrary, the goods have been confiscated and SCN was issued. When the petitioner came to know about this fact he tried to show the documents, but in vain. The petitioner submitted a detailed reply & also deposited the penalty as mentioned in the notice on 24.11.2022 itself, but the authorities have passed the order u/s 129(3) of SGST Act on 25.11.2022 confirming the demand and penalty.

It is also not in dispute that the petitioner, after getting the knowledge of the goods being intercepted and confiscated before passing the seizure order, has informed the authorities about the attending circumstances, but without considering the same, the impugned order under section 129(3) of the SGST Act has been passed.

At the time of issuing notice or passing the order under section 129(3) of the SGST Act, not a word has been whispered with regard to intention to evade payment of tax.

Therefore, the impugned orders cannot be sustained in the eyes of law. The impugned order 25.11.2022 passed by the Assistant Commissioner as well as the impugned order dated 24.03.2023 passed by the Appellate authority were quashed. The penalty deposited by the petitioners pursuant to the impugned order shall be refunded to the petitioners within 15 days, failing which the petitioners shall be entitled to interest @ 9% per annum from the date of deposit of the amount till the actual payment made to the petitioner.

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