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Judgment No.: 066
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Judgment Deals With

Section/Rule	Section 129
Authority	Calcutta High Court
Case Name	Mohammad Shamasher VS The State of West Bengal & Ors.
Dated	01 st February, 2024

Brief Facts:

The petitioner is the sole proprietor of M/s Afika Infrastructure. An escalator machine (JCB) of the petitioner returning from work was intercepted. The driver of the vehicle failed to produce any document in support of movement of the goods, i.e, the JCB machine. On account of the said offence, order of detention under Section 129(1) was issued. The petitioner was directed to pay penalty under Section 129(3). The adjudicating authority passed order against the petitioner. An appeal was carried there from before the appellate forum which too stood rejected. The petitioner has been held liable for payment of penalty of Rs. 9,93,008/- for contravention of the provision of the Act and the Rules made thereunder. The petitioner has executed a bank guarantee for the above sum subject to which the JCB machine has been released provisionally.

Contention of the Petitioner:

Specific case of the petitioner is that under the provision of Section 129(3), the authority does not have the power to evaluate and adjudicate the quantum of tax. The machine in question was being transported with a valid e-way bill. The details of the machine were mentioned in the said e-way bill. The invoice number and the reason for transportation was also mentioned. No tax is payable on account of the return of the machine after completion of work.

The proper officer exceeded the jurisdiction in calculating the quantum of tax and specifying penalty at the rate of 200% of the tax payable on such goods. The proper officer does not have the power either to determine or to specify tax under Section 129. Non availability of the delivery challan with the vehicle is a mere procedural impropriety and the petitioner did not have any intention to evade tax. The petitioner is the owner of the JCB machine which was being returned and the same is not a taxable supply. For a minor breach of not possessing the delivery challan, such heavy amount of penalty at the rate of 200% ought not to have been imposed.

Contention of the Department:

No document in support of the movement of the vehicle could be produced by the driver at the time of interception. The same is in violation of Rules 138 and 138A of the CGST Rules, 2017. Rule 55 of CGST Rules requires the invoice, delivery challan with proper signature for movement of the goods. The adjudicating authority and the appellate authority noticed that the vehicle in question was not released by the person as recorded in the e-way bill. The same was released by some other person. The delivery challan was also not signed by the consignor. Section 129 provides for imposition of 200% penalty if goods are transported without valid documents.

Findings & Decision of the Court:

E-way bill was duly generated for transportation of the subject machine. As no document in support of such transportation could be produced by the driver of the vehicle at the time interception, accordingly, the vehicle along with the machine was detained. After physical verification of the goods it was detected that the document relied upon by the driver was not signed. The details mentioned in the e-way bill did not match the delivery challan. The name and address of the person who released the goods did not match with the details of the person whose name is mentioned in the e-way bill. Because of the discrepancy in the documents, the authorities concluded that the petitioner transported the goods, i.e., the machine in contravention of the provisions of law.

The petitioner contended that he was the owner of the machine and the same was returning back after completion of work. The reason for transportation of machine is a non taxable one. No tax is liable to be paid as the movement was not a taxable supply.

The authorities noted that the reason for transportation of the goods was inward job work return. The adjudicating authority and the appellate authority despite noticing the fact that the supply was non-taxable, proceeded to impose penalty on the ground that the petitioner could not produce valid documents in support of the movement of the goods.

In the present case, there was a valid e-way bill in support of the transportation. It is only because of non production of the delivery challan that the penalty has been assessed and imposed. Though possession of all document in support of transportation is the fundamental requirement of law, but as it appears that, the petitioner did not have the intention to evade tax, accordingly, imposition of penalty at the rate of 200% of the tax payable appears to be highly disproportionate and not in accordance with the provisions of law.

Thus, the impugned order passed by the adjudicating authority affirmed by the appellate authority was set aside.