

Court No. - 38

Case :- WRIT TAX No. - 57 of 2020

Petitioner :- Mahavir Polyplast Pvt. Ltd.

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Nishant Mishra

Counsel for Respondent :- C.S.C.

and

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Hon'ble Saumitra Dayal Singh,J.

1. Rejoinder affidavit filed today is taken on record.
2. Heard Sri Nishant Mishra, learned counsel for the assessee and learned Standing Counsel for the State.
3. Present and the connected Writ Tax No.56 of 2020 have been filed by the same assessee/petitioner Mahavir Polyplast Pvt. Ltd. By means of these petitions, the petitioner has challenged the order dated 26.11.2019 passed by the Additional Commissioner Grade-2 (Appeal)-2, whereby the said authority has dismissed the assessee's Appeal No.GST-71/2018 for the tax period 2018-19 arising from an earlier order dated 16.08.2018 passed by Prashant Kumar Singh-I, Assistant Commissioner (Mobile Squad)-2 Agra and another appeal order dated 22.11.2019 passed in assessee's Appeal No.GST-74/2018 for the tax period 2018-19 arising from another order dated 27.08.2018 passed by Vijay Kumar-VIII, Assistant Commissioner (Mobile Squad)-5, Agra. Both appeals have been dismissed. In absence of Tribunal being constituted, the present petitions were entertained and have been heard.
4. In short, the appellate authority has rejected the two appeals and confirmed the orders passed by two authorities, in exercise of powers vested under Section 129(3) of the Uttar Pradesh Goods And Services

Tax Act, 2017 (hereinafter referred to as the 'Act') imposing identical liability of tax Rs.4,99,813/-, and equal amount of penalty on a single transaction. Besides that illegality established on the face of record, there are other glaring facts that have required a deeper scrutiny to be made.

5. The assessee is a manufacturer of PVC pipes. For that, it has established its manufacturing unit at Khasara No.704/3, Mauza Runakata Kirawali Road, Tehsil-Kirawali, Agra. It also stores its raw materials and manufactured goods at a godown located on the same premises. Undisputedly, the assessee was not found involved in any transaction of transportation of any goods whether raw materials or finished goods. However, on 07.08.2018, the business premises of the petitioner was subjected to a search and seizure operation by Special Investigation Branch of the Commercial Tax Department, Agra. Arising therefrom, a *Panchnama* dated 07.08.2018 was drawn mentioning therein, amongst others, allegation of shortage of physical stock as compared to that recorded in the stock registers. On the next date i.e. 08.08.2018, the assessee moved an application to the S.I.B. authorities disputing the allegation of shortage of stock. According to the assessee, stock reconciliation could be made by taking into account the stock of raw materials and finished goods stored at its other godown that was not subjected to search and seizure proceedings, on 07.08.2018.

6. On 09.08.2018, the Assistant Commissioner (Mobile Squad), Unit-II Agra namely, Sri Prashant Kumar Singh-I issued a show cause notice on MOV 7, dated 10.08.2018 with the description "*Vahan Sankhiya UPGODOWN02*". Similarly, Sri Vijay Kumar VIII, Assistant Commissioner (Mobile Squad) -5 Agra issued another show cause notice on MOV-7 dated 14.08.2018, to the assessee with respect to "*Vahan Sankhiya GODOWON*".

7. Thus, both authorities proceeded to issue separate show cause notices to the assessee under Section 129(3) of the Act with respect to

the same search and seizure operation conducted by the Special Investigation Branch of the Commercial Tax Department, at the business premises of the petitioner, on 07.08.2018. Pursuant to the above notices, seizure orders have been passed. Tax and penalty has been demanded. The appellate authority having dismissed the appeals, the petitioner is before the Court.

8. While no challenge has been made to the search and seizure operation that was conducted by the Special Investigation Branch of the Commercial Tax Department at the premises of the assessee on 07.08.2018, suffice to note, adjudication proceedings were separately initiated that are pending consideration in appeal. Therefore, no order is being made with respect to the same as may influence the outcome of the adjudication proceedings. Those would have to be tested on their own strength.

9. Insofar as seizure of goods and demand of tax under Section-129 of the Act is concerned, it is unbelievable that two (not one), authority of the Mobile Squad of Commercial Tax Department chose to act with negligence. The provision of Section 129(3) of the Act could not be invoked to subject a godown premises to search and seizure operation unmindful of the Act that no action was taken or contemplated under Section 67 of the Act, as that would have mandated existence of "reasons to believe", to subject that premise to search and seize goods or documents found therein. Also, both authorities of the Commercial Tax Department namely, Sri Vijay Kumar-VIII, Assistant Commissioner (Mobile Squad)-5, Agra and Sri Prashant Kumar Singh-I, Assistant Commissioner (Mobile Squad)-2 Agra chose to exercise powers vested in them to search a vehicle carrying goods during transportation to proceed against goods lying in a godown.

10. They not only closed their eyes to the power and jurisdiction that never existed but they deliberately described the vehicle being checked as "UPGODOWN02" and "GODOWON" (as has been noted above).

That description was given by them, deliberately. Therefore, they cannot deny that they were aware that the subject search was not directed at any vehicle but at an immovable property namely a godown premise.

11. The Court does not wish to go deeper into the intention of the officers concerned in issuing such notices and drawing up such proceedings for which they had no jurisdiction as that would entail calling of personal affidavits of the officers at the cost of precious time of the Court. However, the officers are accountable for their acts. Therefore, let this order be communicated to the Commissioner Commercial Tax UP to look into the matter, call for explanation and take appropriate action commensurate to the misconduct, if any, that may be found committed by the erring officers and to take consequential and corrective action to avoid such occurrences, in future.

12. Insofar as the present petitioner is concerned, the entire proceedings drawn up against it under Section 129(3) of the Act, are found to be without jurisdiction.

13. Accordingly, the orders dated 26.11.2019 and 22.11.2019 are quashed. Any amount that may have been deposited by the petitioner may be refunded together with interest at the rate 8%, subject to adjudication proceedings.

14. In view of the above, both petitions are **allowed**.

Order Date :- 6.8.2022
S.Chaurasia