

(1)

W.A.No.1823/2019

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

Writ Appeal No.1823/2019

M/s Om Trading Company

Vs.

Deputy Commissioner of State Tax and others

Coram:

Hon. Shri Justice S.A.Dharmadhikari

Hon. Shri Justice Anand Pathak

Shri Kamal Kumar Jain, learned counsel for the appellant.

Shri R.P.Singh Kaurav, learned Government Advocate for the respondents/State.

J U D G M E N T

(Delivered on this 7th day of April 2021)

In this Writ Appeal preferred under Section 2 (1) of the Madhya Pradesh Uchch Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, challenge has been made to the order dt.27.08.2019 passed by the learned Single Judge in W.P.No.9885/2019, whereby Writ Petition challenging the order dt.18.04.2019 passed by the learned appellate authority has been dismissed.

2. Brief facts leading to filing of the writ petition were that the appellant is a dealer registered under the Central Goods and Services Tax Act, 2017 (hereinafter shall be referred to as the 'Act of 2017') and is engaged in carrying on the business of selling and purchasing of Clarified Butter (Ghee), Butter and

(2)

W.A.No.1823/2019

other milk products under the name of M/s Om Trading Company Gwalior. On 05.10.2018, a show cause notice was issued to the appellant by the Deputy Commissioner of State Tax Gwalior, in which it was stated that the appellant is carrying on the business only on papers and the e-way bills are downloaded but the concerned vehicles are not transporting any goods in actual. The cause of action arose when the report bearing No.229/Deputy Commissioner's office dt.29.08.2018 was addressed by the Dy. Commissioner, Range-A, Agra to the Joint Commissioner, Gwalior, whereby it transpired that the appellant had carried out business transactions with one M/s Macro International, Kacharighat, Agra and has purchased 8100 kgs. of clarified butter through bill No.53 on 31.07.2018 amounting to Rs.23,49,000/- and again purchased 1000 Tin of clarified butter through bill No.54 amounting to Rs.40,50,000/-. In view of aforesaid, a show cause notice dt.05.10.2018 was issued as it was found that the bills were without supply of goods in violation of stipulations contained in the Act of 2017. The notice was purportedly issued under Rule 21 (b) of the Central Goods and Services Tax Rules 2017 (hereinafter shall be referred to as the 'Rules of 2017'), which mandates that the registration granted to the person is liable to be cancelled, if the person issued invoice or

(3)

W.A.No.1823/2019

bill without supply of goods or services in violation of the provisions of the Act or the rules made thereunder. Since the appellant failed to prove his e-way transaction details, his registration has been cancelled by order dt.09.01.2019. Being aggrieved, the appellant preferred an appeal under Section 107 of the Act of 2017. The Appellate Authority taking into consideration the entire facts on record, affirmed the order passed by the Dy.Commissioner of State Tax. Being aggrieved, the appellant had filed writ petition before this Court bearing W.P.No.9885/2019, which came to finally decided on 27.08.2019, whereby the orders passed by the Dy.Commissioner of State Tax as well as Appellate Authority has been affirmed. Being aggrieved, the present Writ Appeal has been filed.

3. Shri Kamal Kumar Jain, learned counsel appearing for the appellant submitted that the impugned order passed by the learned Single Judge is perverse and contrary to law and therefore the same deserves to be set aside. It is further contended that the order dt.09.01.2019 passed by the appellate authority is completely silent as to the provisions under which the impugned order has been passed and no good reason has been assigned for cancellation of GSTN of the appellant. The appellant further contended that the consignment was being

transported by the transporter namely M.R. Road Lines through which the material was physically transported to Gwalior through Vehicle No. UP83T0223 and HR63A3341 and the route taken was from Agra to Kheragarh to Rajakheda, then Dholpur to Morena and then Gwalior and in between there was no toll plaza located. Even though all the requisite documents i.e. e-way bill and invoices were available, therefore, it can not be said that no physical transportation of goods had taken place from Agra to Gwalior. The appellant further contended that the said collection of tax and penalty by the respondents is through coercion and threat inspite of the fact that cancellation is covered by all the documents. It is alleged that it is an inter-State sale and the respondents can not deny the same and demand and collect the tax in the manner in which they have done, which is arbitrary and without jurisdiction. In such circumstances, the impugned order deserves to be set aside.

4. Learned counsel for the appellant in support of his contention has placed reliance on the judgment of High Court of Kerala in the case of **Kannangayathu Metals Vs. Asst. State Tax Officer and others** reported in (2020) 38 GSTJ 482 (Ker) to contend that as per Section 129 of GST Act, there is no mandate for detaining goods merely because driver took an alternate route to reach the destination, if the goods are covered

by valid E-way Bill. The writ petition was allowed. He further placed reliance on another judgment of High Court of Kerala in the case of **Relcon Foundations (P) Ltd. Vs. Asstt. State Tax Officer and others** reported in (2020) 38 GSTJ 482 (Ker), in which it is held that detention of the vehicle under Section 129 of GST Act is not justified.

5. *Per contra*, the counter affidavit has been filed by the respondents. Shri R.P.Singh Kaurav, learned Government Advocate appearing for the respondents/State contended that the appellant had failed to bring on record any material before the authorities to show that the bills/e-way bills which were issued and are in question in the present litigation pursuant to which any material physically transferred from Agra to Gwalior or not and therefore there is no infirmity in the order dt.27.08.2019 passed by the writ court. He further contended that even assuming for the sake of argument that the alleged contentions of the appellant are true, in that case there are number of toll plaza between Morena to Gwalior and if the goods had been physically transferred, the appellant ought to have possessed the toll plaza receipts. It is also settled practice that the transporters used to choose shortest route available to transport the goods in order to save time and money. In the present case, the route used to transport the goods is not only

longer route but also takes more time to reach the destination. It is very surprising and strange that instead of using four lane high way, some alternative route, which is longer, has been used by the appellant. Cancellation of registration of GSTN was effected after affording due opportunity of hearing to the appellant.

6. Learned Single Judge came to the conclusion that a detailed enquiry was conducted by the Commercial Department Range Agra and that the fact regarding issuance of invoices/e-way bills without any transportation of physical goods came into picture, therefore, verification in this regard was also done wherein it was actually found that the goods were not physically transported and that before initiating the proceeding against the appellant proper opportunity of hearing/show cause notice was issued and only thereafter the order cancelling the GST registration was passed. The appellant had failed to produce the said documents to prove that the goods in question was physically transferred from Agra to Gwalior. As such finding no error in the judgment rendered by the appellate authority, writ petition was dismissed.

7. Heard learned counsel for the parties.

8. For the purpose of convenience, Rule 21 of the Rules of 2017 is reproduced hereinunder :-

“21. Registration to be cancelled in certain cases.- The registration granted to a person is liable to be cancelled, if the said person -

- (a) does not conduct any business from the declared place of business; or
- (b) issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder; or
- (c) violates the provisions of section 171 of the Act or the rules made thereunder.
- (d) violates the provision of rule 10A.
- (e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder, or
- (f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
- (g) violates the provision of rule 86B.”

Rule 22 of the Rules of 2017 is also reproduced hereinunder :-

“22. Cancellation of registration. - (1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

(2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG-18 within the period specified in the said sub-rule.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date

of application submitted under rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1) or under sub-rule (2A) of rule 21A, cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.

(3A) Where a certificate of registration has not been made available to the applicant on the common portal within a period of fifteen days from the date of the furnishing of information and particulars referred to in clause (c) of sub-rule (2) and no notice has been issued under sub-rule (3) within the said period, the registration shall be deemed to have been granted and the said certificate of registration, duly signed or verified through electronic verification code, shall be made available to the registered person on the common portal.

(4) Where the reply furnished under sub-rule (2) or in response to the notice issued under sub-rule (2A) of rule 21A is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20.

Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.

(5) The provisions of sub-rule (3) shall, *mutatis mutandis*, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.”

9. The appellate authority taking into consideration the entire facts on record had affirmed the order passed by the

Dy.Commissioner of State Tax holding that -

“...पाया गया कि संबंधित अधिकारी द्वारा पंजीयन निरस्त किये जाने के पूर्व अपीलार्थी को कारण बताओ सूचनापत्र दिनांक 05-10-2018 को जारी किया गया था। तत्पश्चात दिनांक 09-01-2019 को अपीलार्थी का पंजीयन निरस्त किया गया है। पंजीयन निरस्तीकरण का मुख्य आधार डिप्टी कमिश्नर (वि.अनु.शा.) वाणिज्यिक कर रेंज ए, आगरा का पत्र दिनांक 29-08-2018 है, जिसमें डिप्टी कमिश्नर (वि.अनु.शा.) वाणिज्यिक कर रेंज ए, आगरा द्वारा अपीलार्थी मेसर्स ओम ट्रेडिंग कम्पनी के संबंध में यह प्रतिवेदित किया गया है कि उनके द्वारा मेसर्स मार्को इंटरनेशनल आगरा से माल देशी घी क्रमशः रुपये 2349000/- एवं रुपये 4050000/- बिल क्रमांक 53 दिनांक 31-07-2018 एवं बिल क्रमांक 54 दिनांक 31-07-2018 से क्रय करना दर्शाया है। आगरा के विक्रेता व्यवसाई मेसर्स मार्को इंटरनेशनल आगरा के द्वारा विभागीय पोर्टल पर मुख्य व्यवसाय स्थल के अतिरिक्त तीन अन्य स्थानों पर भी गोदाम घोषित किये गये हैं जिनमें से केवल एक स्थान पर ही फर्म की व्यवसायिक गतिविधियाँ होना पाई गई तथा विक्रेता व्यवसाई मेसर्स मार्को इंटरनेशनल, आगरा की जांच के समय उक्त माह से संबंधित कोई नियमित प्रपत्र नहीं पाये गये। इसके अलावा मेसर्स आगरा-ग्वालियर पाथवेज प्रा०लि० जाजव टोलप्लाजा, सैंया, आगरा से डिप्टी कमिश्नर, वाणिज्यिक कर रेंज, आगरा द्वारा सूचना प्राप्त की गई जिसके अनुसार उक्त वाहन जिनके कि वाहन क्रमांक क्रमशः UP 83 T 0223 एवं वाहन क्रमांक HR 63 A 3341 हैं, निर्धारित तिथि को टोलप्लाजा से पास नहीं हुए हैं। इससे स्पष्ट है कि क्रेता विक्रेता दोनों व्यवसाइयों द्वारा केवल प्रपत्रों का आदान-प्रदान किया जा रहा है। वास्तव में माल का कोई परिवहन नहीं किया जा रहा है।

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अपीलार्थी द्वारा माल से संबंधित जो कागजात प्रस्तुत किये हैं उनसे माल का वास्तविक आदान-प्रदान किया जाना प्रमाणित नहीं होता है। सहायक आयुक्त, राज्यकर, ग्वालियर वृत्त तीन के निर्देश पर राज्यकर निरीक्षक, ग्वालियर वृत्त तीन द्वारा प्रस्तुत प्रतिवेदन दिनांक 05-12-2018 एवं पंचनामा में दर्शित पते पर अपीलार्थी का व्यवसाय संचालित होना प्रतीत होता है किन्तु उनके द्वारा उक्त संव्यवहार के संबंध में कोई प्रतिवेदन नहीं दिया गया है। सक्षम अधिकारी द्वारा अपीलार्थी के

प्रकरण में डिप्टी कमिश्नर, वाणिज्यिक कर रेंज, आगरा के प्रतिवेदन के आधार पर पंजीयन निरस्त किया गया है। जिसमें उनके द्वारा विक्रेता व्यवसाई मेसर्स मार्को इंटरनेशनल आगरा के व्यवसाय स्थल की जांच की गई तथा पाया गया कि विक्रेता द्वारा माल का वास्तविक विक्रय नहीं किया गया है। वास्तविक रूप से माल का आदान-प्रदान न करते हुए केवल प्रपत्रों का आदान-प्रदान किया गया है तथा टोलप्लाजा आगरा-ग्वालियर पाथवेज प्रा०लि० जाजव सैंया, आगरा के रिकार्ड में भी उक्त वाहनों का निर्धारित तिथि को वहाँ से निकलना नहीं पाया गया है।”

10. On going through the order passed by the appellate authority it appears that the detailed enquiry was conducted before passing the impugned order, in which certain discrepancies were found with regard to the business of the appellant. It was found that the appellant had failed to prove e-way bill transaction details, therefore, the registration was cancelled. A proper opportunity of hearing was afforded to the appellant. No cogent documentary evidence is available on record to justify the stand taken by the appellant. The learned Single Judge has rightly come to the conclusion and dismissed the writ petition.

11. The judgments relied on by the learned counsel for the appellant are of no assistance to the appellant inasmuch as the facts of those cases and the present case are altogether different. In the present case, in the detailed enquiry it was found that no material physically transferred from Agra to Gwalior.

(11)

W.A.No.1823/2019

12. In view whereof, no fault can be found in the finding recorded by the learned Single Judge as well as learned appellate authority. Accordingly, the writ appeal fails and is hereby dismissed.

(S.A.Dharmadhikari)
Judge

(Anand Pathak)
Judge

SP