

Court No. - 41

Case :- WRIT TAX No. - 1366 of 2019

Petitioner :- M/S Jindal Pipes Limited

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Siddhartha Varma,J.

Counter affidavit has been filed by the learned Standing Counsel. The same be kept on record. Learned counsel for the petitioner, however, does not wish to file rejoinder affidavit.

Certain goods were being transported from Ghaziabad to Ghazipur by a transporter namely M/s. Pragati Logistic Private Limited. However, as in the E-Way bill, which was prepared by the consignor at Ghaziabad from where the goods were being transported, the distance between Ghaziabad and Ghazipur had been stated as 90 kilometres which was in fact 980 kilometres, proceedings were initiated. On 20.8.2018, when the goods after being intercepted by the Mobile Squad Officials at Kanpur were seized under section 129 of the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as the 'Act'), the petitioner deposited Rs.9,15,802.85 and got it's goods released. This amount was paid towards the Central Goods and Service Tax and State Goods and Service Tax along with the penalty. The tax imposed was Rs.69,849.37 paisa. and the penalty under the CGST and SGST was Rs.3,88,052.06 paisa individually. The total penalty was Rs.7,76,104.12 paisa. However, since under section 129(1)(a), the consignor himself appeared and paid the amounts due, the penalty on 21.8.2018, when the order was passed, was reduced to Rs.69,849.37 paisa i.e. equal to the tax levied which was Rs.69,849.37 paisa. Therefore, on 21.8.2018, the total amount due against the petitioner was calculated as Rs.2,79,397.48 paisa. However, when the

petitioner filed an appeal against the order dated 21.8.2018 on 6.3.2019 under section 107 of the Act and by the impugned order dated 20.8.2019, the appeal was dismissed as having been filed beyond the limitation prescribed, the instant writ petition was filed.

Learned counsel for the petitioner has submitted that in the counter affidavit in paragraph 5, it had been admitted that order for depositing Rs.2,79,397.48 was served upon the driver of the vehicle, Sri Narendra Kumar who was a driver of the transport agency and, therefore, the order was neither served on the consignee nor on the consignor. Learned counsel relied upon a judgment of this Court reported in **2019 (21) GSTN 145 : S/S. Patel Hardware vs. Commissioner of State** wherein it has been specifically held that the order by which tax was levied and the penalty was imposed had to be served upon a person who was likely to be aggrieved by the order. It specifically holds that the driver was not a "person aggrieved" to whom the order ought to have been communicated and, therefore, the order definitely was not served upon a person who was likely to be aggrieved and, therefore, learned counsel for the petitioner submits that the appeal which was filed on 6.3.2019 was well within the limitation provided by section 107 of the Act.

Learned Standing Counsel, however, in reply submitted that the service of the order on the driver Narendra Kumar was sufficient service and, therefore, the limitation for the filing of the appeal commenced on 20.8.2018 itself.

Having heard the learned counsel for the petitioner and the learned Standing Counsel, I am of the view that the order was served on the driver and, therefore, was definitely not served on a person who would have been aggrieved by the order and, therefore, the service on the driver was no service at all.

The writ petition is, accordingly, allowed. The order dated 20.8.2019 is quashed. The appeal shall now be entertained as having been filed within the limitation provided under section 107 of the Act.

Order Date :- 20.1.2020
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(Siddhartha Varma, J.)