

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3499 of 2024

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Pawan Carrying Corporation a proprietary concern having its office at 133/282, Transport Nagar, Kanpur through its authorized signatory Shri Prakash Ojha (Male aged about 35 years) son of Shri Shailendra Ojha resident of Makhdum Saray, Adarsh Nagar, Tarwara More, Siwan, Bihar - 841226.

... .. Petitioner/s

Versus

1. State of Bihar through the Commissioner of State Tax, having its office at Kar Bhawan, Bir Chand Patel Path, Patna.
2. Asst. Commissioner of State Tax, Siwan Circle, Siwan.

... .. Respondent/s

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Acts/Sections/Rules:

- CGST Act, 2017 - Section 129(3)

Writ - filed under section 129(3) of CGST Act for quashing the order of detention of vehicle. Petitioner, a carrier had been transporting tobacco from Uttar Pradesh to West Bengal, passing through the Bihar. Detention of vehicle was done six days after it was intercepted in Bihar. Further, notice was issued after seven days of detention. Furthermore, final order was passed beyond seven days of service of notice.

Held - When the vehicle was intercepted and detained by the tax authority there was no reason to wait for six days before carrying out the inspection of the goods. (Para 5)

A circular has been issued by the Central Board of Direct Taxes and Custom that speaks of inter alia, error in one or two digits of the vehicle number enabling the authority to not proceed against the consignor under Section 129 of the CGST Act. Hence there was no need of detention in the first place. (Para 6)

Notice was issued beyond the limitation period of seven days as provided in Section 129(3) of CGST Act. (Para 7)

Final order has to be passed within seven days from date of service of notice as per Section 129(3) which too has been violated. (Para 8)

Officers did not act in accordance with the provisions, we hence find no reason to sustain the demand raised. (Para 9)

Petition allowed. (Para 10)

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... .. Respondent/s

Appearance :
For the Petitioner/s : Mr.D.V.Pathy, Advocate
For the Respondent/s : Mr.Standing Counsel (11)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-02-2024

The proceedings challenged in the present writ petition are initiated under section 129(3) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘CGST Act’, in short) and the ground raised is of limitation both in issuing a notice after the detention and then in passing the final



order from the date of service of such notice; both prescribed under section 129(3) of the CGST Act.

2. On facts suffice it to notice that the petitioner, a carrier had been transporting tobacco from Kanpur in Uttar Pradesh to Dalkola in West Bengal, passing through the State of Bihar. Annexure-P/1 series are the e-way bills. Annexure-P/2 dated 28.12.2023 is the order of detention. Annexure-P/3 is the notice dated 05.01.2024 issued under section 129(3) of the CGST Act. The order passed is produced at Annexure-P/4 dated 15.01.2024.

3. The learned counsel for the petitioner Mr. D.V. Pathy, points out that the interception of the vehicle was made on 22.12.2023, and it cannot at all be said that the detention was made only on 28.12.2023 when Annexure-P/2 was issued and Annexure-P/3 notice was issued on 05.01.2024, beyond the seven days period provided under section 129 (3) of the CGST Act, going by both the date of interception and the date of alleged detention. The order passed on 15.01.2024 is also beyond the prescribed seven days period from the date of service of notice. The learned counsel also specifically referred to the circular produced as Annexure-P/5 wherein Circular Number. 64/38/2018-GST dated 14.09.2018 issued by the



Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, by which negligible defects were directed to be ignored, one of such defects being that found in the present case.

4. Mr. Vikash Kumar, learned counsel for the State pointed out that the vehicle was intercepted on 22.12.2023 and the statement of the Driver GST MOV-1 was issued to him along with GST MOV-2 order for physical verification and inspection. Only when the driver of the vehicle submitted an application for physical verification on 28.12.2023, the vehicle was detained as per Annexure-3. The petitioner then submitted its letter of authority on 02.01.2024 and hence the notice was issued on 05.01.2024, under section 129(3) of the CGST Act. On 12.01.2024 and 15.01.2024, the petitioner sought time and hence, it was adjourned for 15.01.2024, on which date the reply was submitted by the petitioner and the order was passed.

5. Admittedly, the vehicle was intercepted on 22.12.2023 and there was absolutely no reason why the verification of the goods should await an application by the driver of the vehicle. Section 129 is a *non obstante* clause which confers power for detention or seizure of any transport or goods, when they are in transit in contravention of the provisions of the



CGST Act. Hence, when the vehicle was intercepted and detained by the tax authority there was no reason to wait for six days before carrying out the inspection of the goods. The defect noticed was also of two figures in the vehicle number differing from that recorded in the e-way bills; clearly covered by Annexure-P/5 circular.

6. Annexure-P/1 is series of e-way bills which shows the transport to be in vehicle no. UP78 CT 9645. On detention the transport was found to be made in a vehicle having no. UP78 CT 9650. The petitioner produced documents, as stated in the writ petition, establishing that the vehicles bearing both the registration numbers belonged to the petitioner. The tax authority in the order passed specifically pointed out that this would further the case of evasion and if the vehicles were with two different operators probably the recording of the number in the e-way bill was a bonafide mistake. We need not go into the merits of the case especially when the contention is of bar by virtue of limitation. We would also notice that the circular issued by the Central Board of Direct Taxes and Customs, speaks of *inter alia*, error in one or two digits of the vehicle number enabling the authority to not proceed against the consignor under Section 129 of the CGST Act.



7. Be that as it may, even if the detention is stated to be on 28.12.2023, the notice was only issued on 05.1.2024, after the seven day period provided in Section 129(3) CGST Act. Likewise when the petitioner had been informed at the time of verification, if the petitioner had sought for time on the seventh day from the date of serving of notice, there was nothing preventing the tax authority from rejecting the said prayer and passing the order, especially since, if the matter is kept pending, the proceedings would be barred by limitation.

8. Section 129(3) of the CGST Act as substituted by Act 13 of 2021 is extracted hereunder:-

“129(3) the proper officer detaining or seizing goods or conveyances shall issue notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of Sub Section (1)”

(underlining by us for emphasis)

9. The Limitation is clear and definite. The facts of the case indicate that the officers did not act in accordance with the provisions, we hence find no reason to sustain the demand raised. We set aside the orders passed for detention of the



vehicles. The vehicle with the goods would be released immediately. Ordered, accordingly.

10. The petition is allowed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.02.2024
Transmission Date	NA

