

GIB/UP/M/S METENERE LTD./17.12.2020/HC-182

High Court Category : SEIZURE AND DETENTION OF GOODS

State : Uttar Pradesh

Order No.: GIB/UP/M/S METENERE LTD./17.12.2020/HC-182

Name of Entry :
M/S METENERE LTD.

Date : 17-12-2020

Breif Issue :

FACTS ISSUE OF THE CASE:

The petitioner is engaged in manufacture of lead ingots falling under GST Tariff Chapter Heading No. 7804. They are duly registered under the GST Act. On 6.1.2018 Anti Evasion Department of GST, Greater Noida visited the factory premises of the petitioner for verification of the records. The petitioner claimed that petitioner had produced all the Returns of TRANS-1. It is alleged that on 10.1.2018 another team from the same department visited the factory premises and passed an order of detention detaining 12,979 metric tonnes of entire stock of the petitioner. It is alleged that the said stock included the stock manufactured prior to enforcement of GST. The petitioner claimed that it produced all the records; however, the records of GST were not available in the factory premises as the same were kept at head office of the petitioner situated at Ghazipur.

Decision of Advance Ruling Authority :

DECISION:

Confiscation - penalty - Section 9 of the CGST is the charging section which provides for levy of tax on supplies of goods or services. Section 12 of the CGST Act provides for time on which the tax are to be paid and elaborates the "*time of supply of goods*" and Section 12 (2) clearly provides that the "*time of supply of goods*" is the date of issue of invoices or the date of receiving of the payment in respect to such supplies - Section 35 (1) clearly provides that all the registered person are required to keep and maintain at the principal place of business a true and correct account of things specified in Clause (a) to (f). The Second proviso to Section 35 (1), Rule 56 and Rule 57 make it further necessary to keep the said documents as specified in Clause (a) to (f) in the electronic form.

In the present case, the proper officer was empowered to determine the liability of payment of tax in terms of the powers conferred under Section 35 (6) after resorting to the procedure

as established under Section 74 of the Act - Although in terms of the provisions of Section 35 (6), the unaccounted goods are '*deemed to be supplied*' however, determination and quantification of the tax on the said '*deemed supply*' has to be done in accordance with Section 73 or Section 74 of the Act - A perusal of Section 73 and 74 makes it clear that a show cause notice is bound to be served prior to determination of the tax leviable on the '*deemed supply*' whereas in the present case no such notice is available on record and it is common ground that apart from the said proceedings, no other proceedings have been initiated and concluded under Section 73 or 74 of the Act.

Confiscation of goods - Section 130 of the Act - In the present case, even if it is admitted, for the sake of arguments, that the documents were not maintained at the registered office or the other place of business, there is no finding to the effect that any supply was made with an intent "*to evade payment of tax*" as is required under Section (i) of Section 130 (1) - there is nothing on record to establish that the petitioner did not account for any goods on which he is liable to pay tax under the Act (as required to attract Section 130 (1)(ii).

It has not been established that there was any contravention of any provision or any Rules with an "*intent to evade payment of tax*" - none of the ingredients which are required for confiscation existed in the present case and thus, the confiscation itself was wholly arbitrary and illegal.

Search and Seizure - Section 67 of the CGST Act, 2017 - A perusal of the said section makes it clear that proper officer should have "***reasons to believe***" that there is any suppression of any transaction relating to supply of goods by the taxable person or as claimed or has claimed input tax credit in respect of entitlement or has indulged in contravention of the provisions of this Act or the Rules made there under to evade tax under this Act, or such person is keeping his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act - In the present case, as the petitioner has not challenged the seizure order, I am not going to the said question in the absence of any pleadings or the arguments advanced or document produced in respect of the same.

Levy of Penalty under Section 122 - The facts of the present case makes it clear that even if the allegations of the department, as adjudicated and confirmed in an appeal are accepted to be true, the offence committed by the petitioner would fall under the offence specified in Column B above for following reasons; firstly, the only allegations are that the petitioner has not maintained the Book of Accounts as are required under the Act and the Rules and secondly the penalty has been imposed holding the Petitioner's conduct in violation of Section 122 (1) (xvi) and (xvii) of CGST Act read with Section 122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise for quantification of the ***tax evaded*** has been done in pursuance to the powers conferred under Section 35 (6) read with Section 73 or 74 of the Act, as such, I have no hesitation in holding that in the given facts and circumstances of the case for the violations alleged and established against the Petitioner, the maximum penalty that could be imposed upon the petitioner is ? 10,000/-.

The impugned orders dated 15.1.2020 and 27.1.2020 (Annexure No. 5) is set aside insofar as it relates to confiscation of goods and imposition of penalty in excess of ? 10,000/-, as the

confiscation has been set aside, there is no question of payment of redemption fine - the total penalty imposed upon the petitioner is quantified at ? 10,000/- - Appeal allowed in part.