

GIB/UP/MODERN TRADERS/09-05-2018/HC-62

High Court Category : E-way Bill

State : Uttar Pradesh

Order No.: GIB/UP/MODERN TRADERS/09-05-2018/HC-62

Name of Entry :
MODERN TRADERS

Date : 09-05-2018

Breif Issue :

Fact & Issues Involved:

The Assessee is a registered firm and is engaged in business of Iron and Steel goods. Certain goods of the aforesaid nature were sold to one M/s Arjun Dev & Company, Delhi, who is also a registered company against the invoice No. 0003 dated 5.4.2018 after charging IGST @ 18%.

The goods were handed over to the transporter who has loaded the same in a vehicle No. UP 13 AT 1153 on 4.5.2018. It is an admitted case of the petitioner that though the E-way bill post 1.4.2018 was not clear and the notification issued under CGST/UPGST Act were silent with regard to requirement of E-way bill for inter-state transactions, the petitioner dispatched the goods without generating the E-way bill.

While movement of the vehicle and when the vehicle crossed Yamuna Express Way it was intercepted by the respondent no.3 Assistant Commissioner, State Tax, Mobile Squad, Unit-II, Noida at 1.30 a.m. on 5.5.2018 solely on the ground that the goods were not accompanied with E-way bill.

- A. Issue a writ, order or direction in the nature of certiorari quashing the impugned seizure order and consequential order under Section 129(3) (Annexure 1 and 2) passed by respondent no.3 on the same i.e. 5.5.2018.
- B. Issue a writ, order or direction in the nature of mandamus commanding respondent no.3 and his agents, to release the Vehicle No. UP13AT-1153, without insisting for deposit of any amount of tax/penalty.”

Decision of Advance Ruling Authority :

Decision:

The petitioner that while issuing the interception memo the respondent no.3 has mentioned the time being 1.30 a.m. on 5.5.2018 and directed the petitioner to appear on 6.5.2018 at 10 a.m. for physical verification, however while preparing the verification record (Part-A and Part-B) no time has been

mentioned.

The Assessee has also brought to our notice that the respondent no.3, with malice intention, has deliberately not mentioned the time in either of the orders passed being the seizure order under section 129(1) and penalty under Section 129(3). Both the aforesaid orders are passed on 5.5.2018 i.e. before the date which has been indicated in the interception memo being 6.5.2018. Learned counsel for the petitioner has submitted that since the petitioner has placed the E-way bill on 5.5.2018 itself the respondent no.3 has illegally proceeded to pass the impugned orders before any physical verification done.

Once the E-way bill is produced and other documents clearly indicates that the goods are belongs to the registered dealer and the IGST has been charged there remains no justification in detaining and seizing the goods and asking the penalty.

In view of the aforesaid facts, we quash the seizure order dated 5.5.2018 as well as the consequential penalty order dated 5.5.2018. We direct the respondent no.3 to immediately release the goods and vehicle in favour of the petitioner.