

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.P. No.12913/2020

Robbins Tunnelling and Trenchless Technology (India) Pvt. Ltd.

-Versus-

The State of M.P. and others

Shri Sapan Usrethe, Advocate for the appellant.

Shri B.D. Singh, Govt. Advocate for the respondents/State.

CORAM :

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice.

Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

ORDER

(Jabalpur, dtd.04.02.2021)

Per : Vijay Kumar Shukla, J.-

Hearing convened through video conferencing mode.

The present petition has been filed under Articles 226/227 of the Constitution of India, challenging the order dated 28-9-2019, whereby the appellate authority, respondent No.3 herein, has confirmed the imposition of tax to the extent of Rs.1112134/- and penalty of Rs.11,12,134/- against the petitioner.

2. The facts of the case, adumbrated in a nutshell, are that the petitioner is a registered tax-payer under the Goods and Service Tax (GST) and it has imported boring machine cutter parts from its parent company from the United States of America (USA). Its clearing agent while shipping the goods from Custom Station, Mumbai to the

Registered Office of the petitioner, situated in District Katni (MP), generated E-way bill in which by mistake erroneously entered its own name in the column of consignee. During the movement of goods the State Tax Officer of Anti Evasion Bureau, detained the vehicle and levied tax and penalty against the petitioner. Being aggrieved by the said order an appeal was preferred before the Joint Commissioner S.G.S.T. (Appeals), Bhopal and the concerned officer affirmed the order of tax and penalty levied by the State Tax Officer and rejected the appeal.

3. The petitioner is a company and a registered dealer bearing GST Identification No.23AADCR1345K1ZJ, providing services of tunnel boring and related activities therein. Since the Bank Canal Project of Narmada Valley Development Authority is going on, the petitioner is doing excavation work by tunnel boring machine and for the purpose of procurement, it has imported tunnel boring machine cutter parts etc., from the Robbins Company (a parent company from the USA). After placement of purchase order, the Robbins Company, situated at 5866, South 194 Street Kent, WA98032 USA, has raised a commercial invoice in the name of the petitioner – Robbins Tunnelling & Trenchless Technology (India) Pvt. Ltd., Shub City, House No.C03, near Mansarovar Colony, Amirganj Road, Madhav Nagar, Katni – 483 501 (MP), Invoice No.LSN0009039, dated 13-9-2018, for supply of disc, cutter ring & retainer etc..

4. The petitioner has entered into an agreement with Titan Sea & Air Services Pvt. Ltd. and appointed the said company as its clearing and forwarding agent. At the time of import the bill of entry, bearing No.8870378, dtd.15-11-2018 for home consumption of the above mentioned purchase was made. Subsequently, the Custom Duty assessed with IGST to the tune of Rs.1112134/- was paid as applicable on this import. The clearing and forwarding agent, M/s Titan Sea & Air Services Pvt. Ltd., cleared the goods and prepared the documents for movement of goods from NHVA SHEVA, Mumbai Port to the petitioner's Registered Office, situated at C-3 Madhav Nagar, Katni (MP) and raised tax invoice, bearing number SIC/1136/18-19, dated 30-11-2018 for the services provided to the petitioner.

5. The clearing and forwarding agent, Titan Sea & Air Services Pvt. Ltd., in compliance of Section 68 of the Central Goods & Services Tax Act, 2017 (for short, "the GST Act) read with Rule 138-A of the Goods and Service Tax Rules, 2017 generated an E-way bill by logging into its own login ID for movement of the goods from Mumbai to Katni on 28-11-2018 at 06:03 hrs, E-way bill No.231061028418. The clearing and forwarding agent filed all the related details of the transaction as required in the E-way bill, but by mistake generated the E-way bill on its own name, GST No.27AACT2359N1ZY as recipient of the goods, in stead of the

petitioner. The said goods was transported from Mumbai to Katni by the vehicle bearing registration No.MP-04-GA7780 along with all related documents. The vehicle was detained by the Sales Tax Officer, Anti Evasion, Bhopal on 5-12-2018 due to wrong shipping address in the E-way bill.

6. The petitioner submitted a reply on 12-12-2018 before the State Tax Officer along with an affidavit given by the clearing and forwarding agent, M/s Titan Sea & Air Services Pvt. Ltd., stating that the mistake was not committed intentionally or with malafide intention. The State Tax Officer did not accept the reply and raised the demand of Rs.1112134/- as tax and penalty of Rs.1112134/- against the petitioner by the impugned order dated 14-12-2018, to be paid under the IGST head.

7. It is asserted that the petitioner was left with no other option for release of the vehicle, and therefore, paid the tax and penalty, as levied, vide Challan No.SBIN122300132855, dated 14-12-2018 at 08:55:51 hrs. Thereafter the said vehicle was released by the State Tax Officer. Being aggrieved by the order of the State Tax Officer, the petitioner preferred an appeal under Section 107 of the GST Act before the Joint Commissioner, SGST (Appeals), Bhopal seeking relief of the tax and penalty levied against it.

8. The Joint Commissioner, SGST (Appeals) in his order, stated that in the E-way bill name and address of the recipient, while matching with the Bill of Entry No.LSN00090393, dated 13-9-2018 and Bill of Lading No.BOCLEWR00108720, is not the same and such a mistake cannot be treated to be a clerical mistake. The Appellate Authority in his order stated that by entering the name of the clearing and forwarding agent, Titan Sea & Air Services Pvt. Ltd. in the E-way bill, in place of the petitioner, makes the tax evasion assessable. The appeal was rejected by the Appellate Authority confirming the order passed by the State Tax Officer.

9. It is argued that Section 68 of the GST Act read with Rule 138-A of the Goods and Service Tax Rules, 2017 requires that the person in-charge of a conveyance carrying any consignment of the goods of the value, exceeding Rs.50000/-, should carry a copy of the documents viz. invoice, bill of supply, delivery challan, bill of entry and a valid E-way bill, in physical or electronic form for the purpose of verification. Complying with all such formalities, the petitioner carried all related documents during movement of the goods from Mumbai to Katni. It is strenuously urged that in case, if the petitioner at the time of movement of the goods does not carry the aforementioned documents, there is no doubt that contravention of the provisions of laws takes place and the provisions enjoined in Section 129 of the GST Act are invokable. It is put forth that in spite of all

requisite documents having been carried, how the proceeding under Section 129 of the GST Act was initiated by the State Tax Officer, which was confirmed by the appellate authority. It is stated that the proceeding initiated under Section 129 of the GST Act against the petitioner is injudicious. It is asseverated that the Appellate Authority is not justified in rejecting the appeal preferred by the petitioner without pursuing the General Disciplines pertaining to concept of penalty.

10. A reference is made to Sub-section (1) of Section 126 of the GST Act, which provides that no Officer under this Act, shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without any fraudulent intent or gross negligence. Clause (b) of the Sub-section further prescribes that an omission or mistake in documentation shall be considered to be easily rectifiable, if the same is an error apparent on the face of record. The error which the service agent, Titan Sea & Air Services Pvt. Ltd., committed at the time of generation of the E-way bill, was a procedural mistake without a fraudulent intention or gross negligence. Therefore, the tax and penalty levied against the petitioner runs counter to the provisions envisaged in the GST Act. It is argued that in para 4 of the impugned order the respondent has accepted that the goods so imported were consigned from the Robbins

Company (a parent company from the USA) to the petitioner and the documents were fully matching with the transaction.

11. Learned counsel for the petitioner further submitted that even in the E-way bill, Annexure-P/9, an approximate distance was also mentioned as 1200 Kms., which was not possible for the destination within the State of Maharashtra. It was a clerical mistake and, therefore, the respondents ought to have considered the case for minor punishment by virtue of the Circular, dated 14-9-2018, issued by the Ministry of Finance. Further, the respondents have completely failed to take into consideration the E-way bill, Annexure-P/9, showing the approximate distance of 1200 km. and rejecting the appeal of the petitioner, merely on the ground that the name of the consignee is not matching. Whereas the particulars in Part A of E-way bill, were fully matching with all the related documents.

12. It is vehemently argued that the Central Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, received various representations regarding imposition of penalty, in case of minor discrepancies in the details mentioned in the E-way bill, although there are no major lapses in the invoices accompanying the goods in movement. Consequently, a circular was issued, vide No.CBEC/20/16/03/2017-GST, dated 14-9-2018 by the Ministry of Finance, appended as Annexure-P/15 to the writ

petition, specifically stating that it has been informed that proceedings under Section 129 of the GST Act are being initiated for every mistake in the documents mentioned in para 3 of the said Circular. It is clarified that in case, a consignment of goods is accompanied with an invoice or any other specified documents and not with an E-way bill, proceedings under Section 129 of the GST Act may be initiated. Para 5 of the Circular further clarifies, that in case a consignment of goods is accompanied with an invoice or any other specified document and also with an E-way bill, proceedings under Section 129 of the GST Act may not be initiated. It is strenuously urged that the respondent/Appellate Authority is not justified in rejecting the appeal on the ground that the petitioner has not discharged its liability of payment of IGST Tax at the time of import. It is put forth that the point raised on behalf of the respondents, is totally incorrect because at the time of making of a Bill of Entry for home consumption, vide No.8870378, dated 15-11-2018, the IGST for a sum of Rs.1112134/- was paid accordingly along with Custom Duty.

13. Regard being had to the pleadings advanced on behalf of the parties, and bestowing our anxious consideration on the relevant provisions of the GST Act, we find that the respondents are not justified in rejecting the appeal of the petitioner on the ground that the mistake committed while generating the E-way bill, was not a clerical error or a small mistake. Accordingly, the impugned orders passed by

the respondents, dated 28-9-2019 (Annexure-P/14) and 14-12-2018 (Annexure-P/12) confirming the tax and penalty to the tune of Rs.2224268/-, are hereby quashed. The respondents are directed to consider the case of the petitioner for imposition of a minor penalty, treating it to be a clerical mistake, as per Circular, dated 14-9-2018 No.CBEC/20/16/03/2017-GST issued by the Ministry of Finance.

14. *Ex-consequenti*, the **writ petition is allowed**, in the above terms. There shall be no order as to costs.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge