IN THE HIGH COURT OF TELANGANA

Writ Petition No.5941 of 2020

SANY HEAVY INDUSTRY INDIA PVT LTD

Vs

STATE TAX OFFICER
PEDDAPALLI CIRCLE
KARIMNAGAR DIVISION
TELANGANA, AND OTHERS

Raghvendra Singh Chauhan, CJ & A Abhishek Reddy, J

Dated: March 18, 2020

Appellant Rep by: Mr L Ravi Chander, Senior Counsel for Mr N Ashwani Kumar
Respondent Rep by: Mr. Govind Reddy, GP for Commercial Tax

GST - The assessee-company is engaged in manufacturing heavy equipment such as Hydraulic Excavators, Concrete Machinery, Mining Machinery, Crawler Excavator, Truck Crane - In the relevant period, it entered into a Machine Demo Activity Agreement for demonstration and evaluation of Hydraulic Excavator, for 45 days and on returnable basis - The petitioner loaded the single machinery and raised a returnable challan in the name of the company to whom the machine was being sent - The bill to ship was addressed to its Head Office - Later owing to an error, the address for delivery of the goods was shown to be a different city - Such error was also made in the e-way bill - The driver was instructed to proceed to the correct destination - Subsequently, the consignment was intercepted by the STO concerned, who checked the necessary papers & detained the consignment - Form GST MOV 07 was issued to the driver and demand for IGST was raised along with equivalent amount of penalty - Hence the present writ.

Held - The petitioner had raised the issue of the tax liability on the transaction - According to the petitioner, the tax liability had not even arisen - Since there was no taxable event, which had occurred, the question of having to pay the tax would not arise - Despite the fact that the said contention was raised by the petitioner, the STO has failed to deal with the said contention - Moreover, the STO has not even assigned any reason for ignoring the said contention - Therefore, the order is clearly a non-speaking order, as the material contention has been totally ignored by the STO - Since the order is a non-speaking one, there is no other option, except to set aside the said order and to remand the case back to the STO with a direction to consider the arguments raised by both sides and to pass a reasoned order, within a period of one month from the date of receipt of a certified copy of this order: HC

Writ petition disposed of

JUDGEMENT

Per: Raghvendra Singh Chauhan:

Aggrieved by the order, dated 24.02.2020, passed by the State Tax Officer, whereby the Officer has not only imposed the tax liability of Rs.50,78,031/-, but has also imposed a penalty of the same amount upon the petitioner, the petitioner has challenged the said impugned order before this Court.

The brief facts of the case are that the petitioner is a Private Limited Company registered under the Companies Act, 1956, having its registered office in Pune. The petitioner Company is engaged in the business of manufacturing heavy equipments such as Hydraulic Excavators, Concrete Machinery, Mining Machinery, Crawler Excavator, Truck Crane, etc. According to the petitioner, M/s. Madhura Engineering Services Private Limited entered into the "Machine Demo Activity Agreement" (MDAA) on 21.01.2020 for the sole purpose of demonstration and evaluation of the Hydraulic Excavator for a period of forty five days on a returnable basis. According to Clause 3 of the MDAA, the place of delivery was to be "Durga Constructions, C/o. Singareni Colleries Company Limited – KKOCP Village Mandamarri, Dist. Mancherial, Telangana State". Furthermore, according to the petitioner, in pursuance of the MDAA, the petitioner loaded the single machinery Excavator Model SY750, and raised a "Returnable Challan" on 22.01.2020 in favour of M/s. Madhura Engineering Services Private Limited. The bill to ship was addressed to the Head Office of M/s. Madhura Engineering Services Private Limited at Hyderabad. Although the delivery was to be made at Mancherial, but due to an inadvertent mistake, the address for delivery of the Excavator was shown as the Hyderabad address instead of the Mancherial address. Moreover, according to the petitioner, the challan clearly showed that the consignment was meant only for "demo approval". Having loaded the machine on two different vehicles due to the weight load, the machinery left Pune, and was scheduled to be delivered at Mancherial. However, as there was the inadvertent mistake of showing the Hyderabad address, in the bill of ship, the same mistake also occurred in the e-way bill. But, the driver was instructed to proceed to Mancherial, because the destination of the machine was actually Mancherial. Further, according to the petitioner, on the night of 31.01.2020, the consignment was intercepted by the respondent No.1, the State Tax Officer, who after checking the necessary papers, detained the consignment. The respondent No.1 issued the Form GST MOV 07 to the driver of the vehicle, whereby the respondent demanded the IGST to the tune of Rs.50,78,031/-, and the penalty of an equal amount, thus totalling to Rs.1,01,56,062/- on the value of the consignment, which was declared to be Rs.2,82,11,287/-.

Having received the said notice, the petitioner immediately sent a reply on 05.02.2020 raising several objections to the notice. Moreover, without prejudice, the petitioner submitted a bank guarantee drawn on ICICI Bank for an amount of Rs.1,01,56,062/-. In view of the bank guarantee, the petitioner’s goods were released on 13.02.2020. But, the grievance of the petitioner is that without considering the reply submitted by the petitioner, the respondent No.1 has passed the impugned order. Hence, this petition before this Court.

Mr. L. Ravi Chander, the learned Senior Counsel, has raised the following contentions before this Court: firstly, the petitioner has raised a vital contention before the respondent No.1, namely that the transaction is not taxable under the **Integrated Goods and Services Tax Act, 2017** (for short, "the Act"). According to the learned

Senior Counsel, the levy and collection of tax is dealt with in Chapter III of the said Act. Section 7 of the Act does not include any transaction where the goods are being sent for the purpose of "demonstration".

Secondly, according to the Frequently Asked Questions, which have been answered by the Central Board of Indirect Taxes and Customs, the goods sent on "a returnable basis" are not covered under the "supply of goods". Since the present consignment was sent on a returnable basis, as it was sent for the purpose of merely demonstration, therefore, according to the answer given by the Central Board of Indirect Taxes and Customs, the said goods were not taxable.

Thirdly, since the taxable event had not even occurred, the question of the petitioner having to pay any tax on the "transfer of the goods" would not even arise. However, despite the fact that the petitioner has raised the said contentions, the respondent No.1 has not even dealt with the said contentions in the impugned order. Therefore, the impugned order deserves to be set aside.

On the other hand, Mr. Govind Reddy, the learned Government Pleader for Commercial Tax, submits that the nature of the transaction is absolutely immaterial as far as Section 7 of the Act is concerned. In fact, Section 7 of the Act defines the word "supply". Since it is an inclusive definition, it is an exhaustive one. According to the definition, even a transfer of goods is covered under the said provision. Therefore, when the movement of consignment begins its journey from point A to point B, it is said to be transferred from the consignor to the consignee. Hence, whether the goods were being sent for the purpose of demonstration, or on a returnable basis, is immaterial. Secondly, the moment an invoice is generated, the tax liability arises automatically. In case the goods were to be returned by the consignee, the consignor would be at liberty to claim the adjustment in his future tax liabilities that will arise. However, the consignor cannot escape the liability to pay the tax. Therefore, the petitioner is liable to pay the tax to the Department. Since the tax has been evaded by the petitioner, the Department was justified in imposing the penalty of the same amount. Hence, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties, perused the impugned order, and considered the record submitted by the petitioner along with the Writ Petition.

A bare perusal of the impugned order clearly reveals that the petitioner had, indeed, raised the issue of the tax liability on the said transaction. According to the petitioner, the tax liability had not even arisen. Since there was no taxable event, which had occurred, the question of having to pay the tax would not arise. Despite the fact that the said contention was raised by the petitioner, the respondent No.1 has failed to deal with the said contention. Moreover, the respondent No.1 has not even assigned any reason for ignoring the said contention. Therefore, the impugned order is clearly a non-speaking order, as the material contention has been totally ignored by the respondent No.1. Since the impugned order is a non-speaking one, this Court has no other option, except to set aside the said impugned order, and to remand the case back to the respondent No.1 with a direction that he shall give both the parties, the petitioner as well as the Revenue Department, ample opportunities to raise their contentions in their

respective favour, and to pass a reasoned order, within a period of one month from the date of receipt of a certified copy of this order.

The Writ Petition is accordingly, hereby, allowed.