

**Court No. - 3**

**Case :-** WRIT TAX No. - 1425 of 2023

**Petitioner :-** Jitendra Kumar

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Aditya Pandey

**Counsel for Respondent :-** C.S.C.

**Hon'ble Siddhartha Varma,J.**

**Hon'ble Shekhar B. Saraf,J.**

1. This is an application under Article 226 of the Constitution of India where the petitioner is aggrieved by the detention order dated 17.11.2023 and the subsequent show-cause notice dated 23.11.2023.

2. The case made out by the petitioner is that the goods were detained by the Revenue Department while the goods were in transit from Patna to Aligarh on the ground that the goods were not accompanied by the valid documents. It is to be noticed that in the detention order, the only ground that was taken by the Revenue Department was that no valid documents were accompanying the goods. However, it appears that in the show-cause notice, there is a complete silence with regard to the earlier reason given in the detention order and the same has been substituted by a different reason that in the GSTR 2A form, four out of other suppliers, that had been shown in the GSTR 2A, had their registrations suspended or cancelled.

3. Learned counsel on behalf of the petitioner relies upon a Division Bench judgment of the Gujarat High Court, presided by Hon'ble Mr. Justice Harsha Devani, in **F.S. Enterprise vs. State of Gujarat (R/Special Civil Application Nos.7061, 7062 and 7064 of 2019, decided on 11.10.2019)** to buttress the argument that if

the goods seized are backed by even photocopies of the valid documents, the detention would be illegal. He further relied on a co-ordinate Bench decision of this Court in **M/s. Gobind Tobacco Manufacturing Co. & Anr. vs. State of U.P. & Ors. (Writ Tax No.600 of 2022, decided on 17.5.2022)** wherein the Bench held that if the goods are covered by the valid documents, any detention of the same would be totally arbitrary, illegal and without jurisdiction. In this case, costs were also imposed by the coordinate Bench. Learned counsel on behalf of the petitioner has also relied upon a decision of the Supreme Court in **Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.** reported in **AIR 1978 SC 851** wherein the Supreme Court in paragraph 13 held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise.

4. Per contra, learned counsel on behalf of the respondent relied upon a decision of the Supreme Court in **State of Uttar Pradesh vs. M/s. Kay Pan Fragrance Pvt. Ltd.** reported in **2020 (5) SCC 811** to support the argument that the law laid down under the U.P. Goods and Service Tax Act, 2017 the documents were required to be valid once the goods were in transit since section 129 is a summary proceedings. Learned counsel on behalf of the respondents submitted that a procedure is laid down and the same should be followed as per statute and the writ Court should not interfere in such matters.

#### **Analysis & Conclusion :**

5. It is trite law, settled by a catena of Supreme Court judgments, that the Revenue cannot beat around the bush and keep changing

the goal post at each stage. Once the Revenue had taken a particular stand, the same cannot be completely changed and/or supplemented by a different reason or ground.

6. In the present case, it is clear that the detention was made on the ground that the goods were not accompanied by valid documents. However, when the show-cause notice was issued, there is no whisper of any invalid document whatsoever. In fact, the stand was completely changed by the Revenue and this volte face cannot be countenanced by this Court. The detention of goods causes serious prejudice to an assessee and the same can only be done on the basis of specific, valid and reasonable grounds. In the present case, it is quite obvious that at the time of detention, the ground that was stated by the Revenue was incorrect. More so, there was no reason for the Revenue to have detained the goods and the consequential actions that followed, were obviously vitiated.

7. In light of the findings above, we are of the view that the detention order and the subsequent show-cause notice were bad in law, and accordingly, both are quashed and set-aside.

8. The writ petition is, accordingly, allowed. The Revenue is directed to release the goods and the vehicle of the petitioner within a period of 7 days from date.

9. Though this is an appropriate case for imposing cost upon the Revenue as the actions of the respondents appear to be mala fide in nature, we are restraining ourselves from doing so only on the earnest prayer made on behalf of learned counsel for the respondents.

**Order Date :- 16.12.2023**

GS