

2022 (4) TMI 351 - ALLAHABAD HIGH COURT

Other Citation: 2022 (62) G. S. T. L. 459 (All.)

M/S CALCUTTA SOUTH TRANSPORT CO. VERSUS STATE OF U.P. AND ANOTHER

Writ Tax No. - 406 of 2022

Dated: - 28-3-2022

Seeking release of detained goods alongwith the vehicle - allegation is that some of the goods loaded in the truck are over and above the goods covered by invoices - Section 130 of the CGST/UPGST Act, 2017 - order of Confiscation passed without affording any opportunity of hearing to the petitioner - violation of principles of natural justice - HELD THAT:- Once the order of confiscation dated 29.11.2020 and the order of first appellate authority dated 28.06.2021 were quashed by this Court by judgment dated 15.11.2021, the order of confiscation stood eclipsed from the very date of issuance. There is no order of confiscation in existence and, yet, the truck of the petitioner is being unauthorisedly and illegally detained by the respondent no.2. About 18 months have passed since the detention of the aforesaid truck without any valid order for confiscation or any proceeding of confiscation in existence, yet, the truck in question is being detained by the respondent no.2 arbitrarily, illegally and un-authorisedly, resulting in harassment of the petitioner.

It is settled law that if a public functionary acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. Harassment by public authorities is socially abhorring and legally impermissible which causes more serious injury to society. In modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention for compliance of order of this Court, linger on leaving the petitioner to run from one end to other with no result. Therefore, award of compensation for unauthorised, arbitrary and illegal detention of the truck of the petitioner by the respondent authorities would not only compensate the petitioner for loss suffered by him but it would also help in improving work culture and public confidence in rule of law.

Thus, as per pleadings, the petitioner is suffering financial loss of ₹ 5000/- per day since the date of detention of truck, i.e. 14.10.2020. Since determination of loss due to arbitrary, illegal and unauthorised detention by the respondent no.2, is a question of fact, therefore, the Commissioner of Commercial Tax, U.P., Lucknow is directed to determine the financial loss of the petitioner in respect of the truck in question, within three weeks from today after affording opportunity of hearing to the petitioner and pay it to the petitioner within next one week through account payee bank draft.

The respondents are directed to release forthwith the truck bearing registration no.HR 55 S 1171 - petition allowed.

Judgment / Order**Hon'ble Surya Prakash Kesarwani And Hon'ble Jayant Banerji JJ.****For the Petitioner : Alope Kumar**

For the Respondent : C.S.C.**ORDER**

1. Heard Shri Aloke Kumar, learned counsel for the petitioner and Shri B.P. Singh Kachhawaha, learned Standing Counsel for the State-respondents.

2. This writ petition has been filed praying for the following reliefs:-

"(i) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondent no.2 to release the vehicle no.HR 55 S 1171 [so detained by the order dated 14.10.2020] of the petitioner.

(ii) Issue any other suitable writ, order or direction in favour of the petitioner as this Hon'ble High Court may deem fit and proper under the facts and circumstances of the case.

(iii) Award the cost of the petition to the petitioner."

3. Briefly stated facts of the present case are that the petitioner is the owner of truck bearing registration no.HR 55 S 1171. The petitioner is engaged in the business of leasing trucks and other vehicles on hire/fixed freight basis to various transporting entities. In the course of its business, the petitioner has given on hire the aforesaid truck in question to one M/s Aruna Chaleswara Transport Company (hereinafter referred to as the 'hirer') for the purpose of transportation of goods from Delhi to Vijayawada (Andhra Pradesh) for a period of 7-8 days on a consideration of ₹ 80,000/-. The hirer loaded the goods for transportation from Delhi on 06.10.2020 for Vijayawada. In the course of journey, the aforesaid truck was passing through the State of Uttar Pradesh when it was intercepted by the respondent no.2, i.e. Assistant Commissioner (Mobile Squad) Unit-2, Commercial Tax, Agra, who found that some of the goods loaded in the truck are over and above those covered by invoices, therefore, he issued an order of detention dated 14.10.2020 in MOV-06. Since neither the owner of the goods nor the transporter, i.e., the hirer, came forward to deposit the tax and penalty as demanded by order dated 31.10.2020, the respondent no.2 initiated proceedings under Section 130 of the CGST/UPGST Act, 2017 for confiscation of the truck in question. In this regard, a notice in GST MOV-10 dated 23.12.2020 was issued to the petitioner fixing the date for hearing on 28.11.2020. Immediately on the receipt of the aforesaid notice, the petitioner submitted an application dated 05.12.2020 before the respondent no.2 bringing to his notice the entire facts and requested to release the truck. However, in the meantime, the respondent no.2, without affording any opportunity of hearing to the petitioner, passed an order of confiscation dated 29.11.2020 in GST MOV-11.

4. Aggrieved with the aforesaid order of confiscation dated 29.11.2020, the petitioner filed First Appeal No.63 of 2021 before the appellate authority which was dismissed by order dated 28.06.2021. In the meantime, the petitioner also attempted to lodge a first information report on 17.12.2020 against the hirer for using the truck for transportation of certain goods not covered by valid invoice. Since the FIR was not registered by the SHO, Police Station, Alipur, Delhi, therefore, the petitioner approached the Commissioner of Police, New Delhi through mail on 25.01.2021 and when nothing happened, the petitioner filed an application dated 01.02.2021 in the court of Chief Metropolitan Magistrate, District North, Rohini Courts, Delhi under Section 156(3) of the Code of Criminal Procedure, which was registered as Criminal Case No.525 of 2021.

5. Aggrieved with the order of confiscation dated 29.11.2020 under Section 130 of the CGST Act and the order of the first appellate authority dated 28.06.2021, the petitioner filed Writ-Tax No.650 of 2021 before this Court in which he also prayed for a direction in the nature of mandamus to the authorities concerned to release the aforesaid truck detained by order dated 14.10.2020. The aforesaid writ petition was allowed and the orders impugned therein were quashed by this Court by judgment and order dated 15.11.2021. The relevant portion of the judgment is reproduced below:-

"In the light of the aforesaid decision, the present case has to be considered. The facts and circumstances

narrated above reflect that the show cause notice dated 23.12.2020 was misleading and incorrect. Where a show cause notice in Form GST MOV-10 is issued, which is a prelude to possibility of imposition of liability in the nature of civil consequences against a person, the same has to be specific, containing necessary and correct particulars that may enable the noticee to clearly understand the matter and appear or file his reply on the date and in the manner specified in the notice. **Evidently, the show cause notice sent in the aforesaid Form GST MOV-10 dated 23.12.2020 does not comply with the aforesaid requirement as the date for appearance is stated as 28.11.2020.** The quandary and dilemma that can visit a person served with such a show cause notice can only be imagined. The plight of the petitioner is well reflected in the aforesaid legal notices sent by him as well as his repeated efforts to get an FIR lodged against the aforesaid transporter and other persons. The learned Standing Counsel implying that the petitioner would be deemed to have knowledge of proceedings for confiscation because the signature of its driver appears on the Form MOV-4, is misplaced. The proceedings and consequences of seizure and of confiscation are different. Had the show cause notice Form GST MOV-10 been properly prepared, the petitioner could have had adequate opportunity to represent his case and, subject to such proof as required by clause (v) of sub-section (1) of Section 130 of the Act, would not have been saddled with the liability under sub-sections (2) and (3) of Section 130 of the Act. **Therefore, the show cause notice Form GST MOV-10 that was issued was defective which resulted in denial of opportunity to the petitioner, and as such, cannot be said to be a show cause notice in the eyes of law.**

Thus, not only have the principles of natural justice not been complied with by the respondents, the petitioner has also been prejudiced by such non-compliance. **There is no material on record to demonstrate that an opportunity of hearing was duly granted to the petitioner as is the mandate of sub-section (4) of Section 130 of the Act.**

Under the circumstances, **the order dated 28.06.2021 (as corrected on 25.09.2021)** passed by the Additional Commissioner Grade II (Appeal)-I, State Tax, Agra as well as the **order dated 29.11.2020 Form GST MOV-11** passed by the Assistant Commissioner (Mobile Squad) Unit-2, Commercial Tax, Agra cannot be sustained and **are hereby quashed.** However, in the interest of justice, it is left open to the respondents to issue a fresh show cause notice to the petitioner and proceed thereafter in accordance with law.

Subject to the aforesaid observations, this writ petition is **allowed.**"

(emphasis supplied)

6. Despite the aforesaid judgment dated 15.11.2021, the respondents have neither issued any fresh notice to the petitioner nor have released the truck so far although there exists no order of confiscation.

7. Learned Standing Counsel has produced before us the written instructions of the respondent no.2 dated 15.03.2022 which also leaves no manner of doubt that no notice has been issued to the petitioner pursuant to the liberty granted by this Court by judgment dated 15.11.2021. The written instructions of the respondent no.2 dated 15.03.2022, as produced by learned Standing Counsel, are kept on record. The relevant portion of the aforesaid instructions of the respondent no.2 is reproduced below:-

"उक्त के सम्बन्ध आपको अवगत कराना है कि सचल दल कार्यालय में पुनः सुनवाई हेतु पोर्टल पर नोटिस जारी करने की कोई व्यवस्था नहीं दी गई है। अतः माननीय उच्च न्यायालय द्वारा पारित आदेश के अनुपालन में ज्वाइंट कमिश्नर (आई०टी०) अनुभाग वाणिज्यकर लखनऊ (ज्वा० कमि० विधि प्रकोष्ठ को/प्रतिलिपि प्रेषित) को इस कार्यालय के पत्र संख्या 178 दि० 21/12/2021 अनुस्मारक पत्र संख्या 187 दिनांक 05/01/2022, द्वितीय अनुस्मारक पत्र संख्या 189 दि० 13/01/2022, तृतीय अनुस्मारक पत्र संख्या 195 दि० 03/02/2022, चतुर्थ अनुस्मारक पत्र संख्या 201 दि० 24/02/2022 एवं पंचम अनुस्मारक पत्र संख्या 226 दि० 14/03/2022 प्रेषित कर निवेदन किया गया है कि पुनः नोटिस जारी करने की सुविधा सचलदल कार्यालय को उपलब्ध कराने की कृपा करें ताकि माननीय उच्च न्यायालय के आदेश का पालन सुनिश्चित किया जा सके। किन्तु आज तक पुनः सुनवाई हेतु नोटिस जारी करने का कोई विकल्प विभागीय साइट पर उपलब्ध नहीं कराया गया है।"

8. Section 130 of the CGST Act 2017 provides for confiscation of goods or conveyances and levy of penalty, as under :-

"130. Confiscation of goods or conveyances and levy of penalty.- (1) Notwithstanding anything contained in this Act, if any person-

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made there under with intent to evade payment of tax; or
- (ii) does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) supplies any goods liable to tax under this Act without having applied for registration; or
- (iv) contravenes any of the provisions of this Act or the rules made there under with intent to evade payment of tax; or
- (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made there under unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for

hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after **giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.**”

9. Once the order of confiscation dated 29.11.2020 and the order of first appellate authority dated 28.06.2021 were quashed by this Court by judgment dated 15.11.2021, the order of confiscation stood eclipsed from the very date of issuance. There is no order of confiscation in existence and, yet, the truck of the petitioner is being unauthorisedly and illegally detained by the respondent no.2. About 18 months have passed since the detention of the aforesaid truck without any valid order for confiscation or any proceeding of confiscation in existence, yet, the truck in question is being detained by the respondent no.2 arbitrarily, illegally and un-authorisedly, resulting in harassment of the petitioner.

10. It is settled law that if a public functionary acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. Harassment by public authorities is socially abhorring and legally impermissible which causes more serious injury to society. In modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention for compliance of order of this Court, linger on leaving the petitioner to run from one end to other with no result. Therefore, award of compensation for unauthorised, arbitrary and illegal detention of the truck of the petitioner by the respondent authorities would not only compensate the petitioner for loss suffered by him but it would also help in improving work culture and public confidence in rule of law. The principles of law aforesaid also find support from the law laid down by Hon'ble Supreme Court in **Lucknow Development Authority vs. M.K. Gupta; (1994) 1 SCC 243** and **N. Nagendra Rao and Company vs. State of Andhra Pradesh; (1994) 6 SCC 205**.

11. In paragraph 46 of the writ petition, the petitioner has stated that the petitioner is facing recurring financial loss due to detention of its truck since 14.10.2020. In paragraph 8 of the application dated 05.12.2020 submitted by the petitioner before the respondent no.2, it has been stated as under :-

“8. That due to keeping of the said truck under custody my client is not in a position to run his business and he is paying salary to the driver and he is bearing bank EMI. Taxes and Insurances of that truck and in the manner aforesaid he is suffering loss at least ₹ 5,000/- per day.”

12. Thus, as per pleadings, the petitioner is suffering financial loss of ₹ 5000/- per day since the date of detention of truck, i.e. 14.10.2020. Since determination of loss due to arbitrary, illegal and unauthorised

detention by the respondent no.2, is a question of fact, therefore, we direct the Commissioner of Commercial Tax, U.P., Lucknow to determine the financial loss of the petitioner in respect of the truck in question, within three weeks from today after affording opportunity of hearing to the petitioner and pay it to the petitioner within next one week through account payee bank draft.

13. For all reasons stated above, the writ petition is allowed with cost. The respondents are directed to release forthwith the truck bearing registration no.HR 55 S 1171.

14. For grossly arbitrary, illegal and unauthorised action of the respondent no.2 to detain the truck in question even despite the judgment of this Court dated 15.11.2021, we impose cost of ₹ 5000/- upon the respondents which shall be deposited by the respondents with the High Court Legal Services Committee, High Court, Allahabad within three weeks from today.

15. With the aforesaid directions, the writ petition is **allowed**.

Citations: in 2022 (4) TMI 351 - ALLAHABAD HIGH COURT

1. [1994 \(11\) TMI 364 - Supreme Court](#)
2. [1994 \(9\) TMI 316 - Supreme Court](#)
3. [2021 \(11\) TMI 934 - ALLAHABAD HIGH COURT](#)