

Court No. - 38

Case :- WRIT TAX No. - 614 of 2020

Petitioner :- M/S Jai Maa Jwalamukhi Iron Scrap Supplier

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Alope Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

1. Heard Sri Alope Kumar, learned counsel for the petitioner and Sri Jagdish Mishra, learned Standing Counsel for the State.

2. Present petition has been filed to challenge the order dated 18.6.2020 passed by the appellate authority under the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the Act). By that order, the appeal authority has partly allowed the appeal no. 12 of 2020, arising from the proceedings under Section 130(2) of the Act.

3. While the explanation furnished by the petitioner with respect to two "loose purchases" referred to by the assessing authority has been rejected, the petitioner has been held liable to tax on the concealed turnover of iron scrap, valued at Rs. 20,00,000/-. Accordingly, tax Rs. 3,60,000/- and penalty Rs. 3,60,000/- have been sustained by the appeal authority. Aggrieved thereby, the petitioner has filed the present petition.

4. Since the GST Tribunal has yet not been constituted, the present writ petition was entertained and pleadings have been exchanged. Accordingly, the same is being decided upon hearing the parties.

5. Learned counsel for petitioner submits, in the first place, the assessing authority had passed an order under Section 130 of the Act and treated the entire stock of iron scrap discovered during the survey dated 31.5.2019 to be undisclosed/concealed stocks. That conclusion had arisen solely on account of the non-

production of books of accounts by the petitioner. Accordingly, by its order dated 19.3.2020 passed under Section 130(2) of the Act, the assessing authority had determined the turnover of iron scrap, at the hands of the petitioner, at Rs. 7,46,50,000/-. It was taxed accordingly and penalty was also imposed. Perusal of the said order would reveal that other than the defect of non-production of books of account, assessing authority has also taken into consideration the fact that there were discrepancies arising on the basis of the details mentioned in the auto-populated GSTR-3B and GSTR-2A, filed by the petitioner.

6. Against the aforesaid order, the petitioner filed an appeal and explained that there was no discrepancy in the GSTR-3B and GSTR-2A. It also sought to reconcile the "loose purchases" with the original tax invoice as also the e-way bills issued from time to time that were otherwise uploaded on the web portal of the revenue authority.

7. After hearing the parties, the appeal authority accepted the explanation furnished by the petitioner with respect to all but two "loose purchases" relied against. Accordingly, the appeal authority has partly allowed the appeal and sustained the imposition of tax and penalty on the balanced turnover of Rs. 20,00,000/- only, that refers to two "loose purchases" for which the petitioner's explanation was rejected.

8. Submission of learned counsel for the petitioner is that even those two purchases were duly explained, inasmuch as, the same were really not in the shape of the loose documents but the same were regular tax invoice of the assessee being numbered JM/J/17-18/BST202 dated 24.1.2018 and purchase invoice dated 29.5.2019. Copies of those documents have also been annexed with the writ petition. The details of the two transactions mentioned in the chart, which is a part of the

appeal order, are the same as those mentioned in the tax invoice and the purchase invoice, relied upon by the petitioner. There is no discrepancy, either in the date or description of the invoice or the value of the goods that has been mentioned thereon. Then, referring to paragraph nos. 38, 39, 40 and 41 of the writ petition, it has been submitted that it was a specific case of the petitioner that e-way bills had been uploaded against both aforesaid transactions. Copies of the same have also been annexed with the writ petition.

9. By means of paragraph no.29 of the counter affidavit, denial has been made, however, the respondent revenue-authority has not denied the issuance of the invoice and the e-way bills, as claimed by the petitioner. Thus for the purposes of this writ petition, it has to be assumed as correct that the invoice and the e-way bills appended with the writ petition, had been issued. There is a clear reference of the number of the invoice in the appeal order itself. It therefore further appears that the appeal authority had also looked into the some documents.

10. Once the revenue authority admits that the invoice and the e-way bills relied upon by it, had been issued in regular course, it is difficult to imagine how the appeal authority could have reached a conclusion that the goods sold or purchased against those invoices were unaccounted for. The invoice is primary evidence of the transaction. Unless the revenue authority disputes its genuineness, it cannot be lightly overlooked. Then, in the present case, the revenue authorities further admit to the issuance of the e-way bills against the aforesaid invoices. Therefore, the transaction was not only made against the regular invoice but also the details of the transaction were uploaded on the portal of the revenue authority.

11. In view of the aforesaid facts to permit the revenue

authorities, to draw a conclusion of evasion of tax is found to be without any basis. The alleged discrepancy in GSTR-3B and GSTR-2A referred to by the assessing authority did not even find favour with the appeal authority, inasmuch as, it did not refer to the same in the impugned order. Therefore, that part of the submission advanced by learned Standing Counsel cannot be accepted. Even otherwise, in face of the admission, as to the genuineness and existence of the tax invoice and the e-way bills, mere existence of some discrepancies may not have ever led the revenue authority to the conclusion that tax had been evaded or the transaction had not been disclosed. **To hold that there was discrepancy in the account is different and lighter charge than to hold that the assessee had not disclosed or concealed part of its turnover.** As noted above, once the revenue authority accepted, even if impliedly, that the transaction were covered by regular invoices and those details had been uploaded on the web portal by issuing e-way bills, merely because there may have been existed certain discrepancies, the transaction cannot be said to be one falling under the category of undisclosed turnover.

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12. Accordingly, the present petition succeeds and is **allowed**. The order dated 18.6.2020 is set aside and matter remitted to the appeal authority to pass a fresh order. Any amount that may have been deposited by the assessee during pendency of the petition, may be adjusted against the final demand, in accordance with law.

Order Date :- 17.3.2021
Prakhar