

**Court No. - 5**

**Case :-** WRIT TAX No. - 44 of 2023

**Petitioner :-** J.K. Cement Ltd.

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

**Counsel for Petitioner :-** Shubham Agarwal

**Counsel for Respondent :-** Rishi Kumra A.C.S.C.

**HON'BLE PIYUSH AGRAWAL, J.**

1. Heard Mr. Shubham Agarwal for the petitioner and Mr. Rishi Kumar, learned A.C.S.C. for the respondent authority.
2. The present writ petition is being entertained by this Court at this stage as no G.S.T. Tribunal has been formed in the State of U.P.
3. By means of present petition, the petitioner is assailing the order dated 8.10.2021 and 12.11.2021 passed by respondent nos. 4 and 3 respectively.
4. Brief facts of the case are that the petitioner being registered company incorporated under the Companies Act, 1956 is engaged in the manufacture and sale of cements, wall putty, adhesives etc. The petitioner is duly registered under the Goods and Services Tax Act and paying the taxes as and when its due. In the normal course of business, the petitioner has sent five consignments of J.K. Cement White MaxX Premium White Portland Cement, J.K. Cement WallmaxX putty and J.K. MaxX waterproof Putty and five invoices were also issued. The said goods were transported from Gwalior to Panna, Madhya Pradesh by which two G.R. number i.e. 612 and 611 were also issued in which vehicle number was also mentioned as MP 20 HB4370. The goods on its onward journey from Gwalior to Panna, Madhya Pradesh passes

through the State of UP where the said goods were intercepted during transit on the ground that e-way bill was not accompanying the goods. On the said basis, the impugned order was passed under Section 129 (3) of the Act by which the penalty of Rs. 175236/- was imposed under G.S.T. Act, against which the first appeal was preferred, which was also dismissed. Hence the present petition.

5. Learned counsel for the petitioner has submitted that petitioner is registered company engaged in the business of aforesaid goods and was also registered under the G.S.T. Act. He submitted that a notification was issued on 14.8.2018 in State of Madhya Pradesh in which it has been provided that only the items mentioned at serial numbers 1 to 11 of the said notification, are required to carry e-way bill during transportation and on the strength of said notification, he submitted that the goods in question during transit, were not required to carry e-way bill on its movement within the State of Madhya Pradesh. He further submitted that it is not in dispute that the goods were accompanying with all requisite documents such as tax invoices and G.R on which no discrepancy whatsoever was found.

6. He further submitted that it is not in dispute that the goods were originated from Gwalior, Madhya Pradesh and to be terminated in Panna, Madhya Pradesh and once this fact is admitted by the authorities, the impugned order passed against the petitioner under Section 129 of G.S.T. Act is arbitrary and illegal. He further submitted that the petitioner being a registered company, the proceedings ought to have been initiated under Section 122 (XIV) of GST Act. He further submitted that once there is no discrepancy having been found with regard to quantity, quality or movement of the goods originating from Gwalior, Madhya Pradesh and to be terminated at Panna, Madhya Pradesh, the impugned orders are not justified. He prays for allowing the writ petition.

7. *Per contra*, Mr. Rishi Kumar, learned Additional Chief Standing Counsel supports the impugned order and submitted that the goods in question was not carrying e-way bill which was required to be carried while

the goods were in transport. He further submitted that the Notification dated 24.4.2018 is of no help to the petitioner as its reference to the State of Madhya Pradesh and not of State of U.P. He prays for dismissal of this writ petition.

**8.** The Court has perused the records.

**9.** Admittedly, the goods were originated from Gwalior, Madhya Pradesh and its destination was Panna, Madhya Pradesh. It is also admitted by all the authorities below that during transportation of the goods, tax invoices & G.R. are genuine. It is further admitted that the State of Madhya Pradesh has issued a notification dated 24.4.2018 mentioning therein 11 items for which only the e-way bills are required during transport and other items were exempted from accompanying the e-way bill. The respondent authorities have accepted that the goods were originating from Gwalior, Madhya Pradesh and to be terminated at Panna, Madhya Pradesh. It is not a case of the respondent authorities that the goods which were detained and were being unloaded in State of UP or found to be unloaded in State of UP or intent to be unloaded in State of UP but on the contrary it has been accepted by both the authorities below that the goods were in transit and its final destination was Panna, Madhya Pradesh then mainly because the goods were not accompanying the e-way bill, the seizure ought not to have been made as in the case in hand in State of Madhya Pradesh, the said goods were exempted from carrying the e-way bill at the relevant point of time.

**10.** It is also informed at bar that if the goods are coming from Gwalior Madhya Pradesh to Panna, Madhya Pradesh, it has to pass through Jhansi, Uttar Pradesh for a short distance to enter again in Madhya Pradesh for its final destination at Panna, Madhya Pradesh.

**11.** On perusal of the impugned order it is also found that it is categorically mentioned that the origination as well as termination of the goods in question was in State of Madhya Pradesh meaning thereby the authorities are of the view that the goods were not to be unloaded in the

State of UP or any intention to avoid tax. However, mainly on the ground of some small technical fault for not carrying the e-way bill, the penalty ought not to have been levied in the absence of any discrepancy in document accompanying the goods. In view of above, the impugned orders cannot be sustained in the eyes of law.

**12.** In the results, the writ petition is **allowed**. The impugned orders are set aside. Any amount already deposited by the petitioner during pendency of the present litigation, shall be refunded to him within a period of 20 days from the date of production of certified copy of this order before the authority concerned.

**Order Date :- 28.8.2023**

Rahul Dwivedi/-