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Neutral Citation No. - 2024:AHC:28307

Court No. - 1

Case :- WRIT TAX No. - 1314 of 2019

Petitioner :- M/S Indeutsch Industries Private Limited
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

(Judgement dictated in Open Court)

1. Heard Sri Nishant Mishra, learned counsel appearing on behalf of the petitioner and Sri Ravi Shankar Pandey, learned Additional Chief Standing Counsel for the respondents.

2. This is a petition under Article 226 of the Constitution of India, wherein the writ petitioner is aggrieved by the order passed in appeal dated June 22, 2019 and the order dated June 22, 2018 imposing penalty under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act').

Facts as narrated in the writ petition are as follows :-

3. Petitioner is a company, engaged in manufacturing Artist Brush and its materials, for which Petitioner is duly registered under the GST regime with GSTN No.09AAACI2206F1Z2. Petitioner is having its manufacturing unit established in Noida Special Economic Zone (hereinafter referred to as 'SEZ'). In normal course of business, petitioner sold 102 boxes of Artist Brushes valuing

Rs. 16,86,696.68/- to one M/s Pidilite Industries Ltd., Delhi (GSTIN No.07AAACP4156B1ZU) vide Tax Invoice No.18-19/CEN/23 dated 14.6.2018, after charging Integrated Goods and Service Tax (hereinafter referred to as the 'IGST') at applicable rate of 18%. Since the transaction in question was from a SEZ unit to a Domestic Traffic Area (hereinafter referred to as 'DTA'), hence petitioner also charged customs duty and SWS (customs) at the rate of 10% each and also filed Bill of Entry in respect of the transaction in question. After preparing tax invoice and bill of entry, petitioner contacted transporter M/s Pawan Roadlines, for transportation of goods, who agreed to transport the goods on vehicle bearing registration no.UP14DT-8219. On the basis of the information provided by transporter, petitioner generated e-way bill no. 4110 1410 2307 (valid till 22.6.2018), after uploading all the required details relating to the transaction. From the enquiries subsequently made by petitioner, it appears that due to non-availability of vehicle bearing registration no. UP14DT-8219, the transporter provided another vehicle bearing registration no.UP14BT-8220 and due to inadvertence, petitioner also loaded the goods in the said vehicle, without even checking the vehicle number mentioned on e-way bill. When vehicle loaded with goods in question was crossing Ghaziabad via Vasundhara, the same was stopped by Respondent No.3 for verification of goods and documents. On being stopped, driver produced the entire documents available with him including e-way bill, tax invoice, bill of entry etc.. On examination of these documents, Respondent No. 3 directed driver to take the vehicle to Commercial Tax Office, Mohan Nagar for physical

verification of goods. Even though the goods were being transported on the strength of valid and genuine documents, specified under Rule 138A, then also Respondent No.3 passed detention order detaining the goods on the ground that the goods were being transported on a vehicle different from that declared on e-way bill.

Contentions of the Petitioner

4. Counsel appearing on behalf of the petitioner has submitted that the goods were accompanied by the tax invoice, packing list, bill of entry for home consumption and the e-way bill. He submitted that the only mistake in all these documents was that the truck number written in the e-way bill was incorrect. He submitted that this mistake had occurred because of a problem in the initial truck that was supposed to carry the goods. He relied on a letter provided by the transporter 'M/s Pawan Roadlines' that explained the reasons for the change of the truck. Counsel submitted that this change in the vehicle was not noted by the representative's of the petitioner, and accordingly, the e-way bill that has been generated based on the earlier truck number was sent alongwith the goods. Counsel further submitted that the bill of entry for home consumption indicates that custom duty had been paid and on such document the number of the truck that was carrying the goods had been mentioned. He further submits that this bill of entry had been issued on June 21, 2018 at NOIDA and the truck was, thereafter, sent to the consignee's address in Madoli, Delhi. Counsel further submitted that there was no question of evasion of tax as the goods left in the afternoon

and were intercepted at around 4 O'clock in the evening by the authorities. Counsel further placed the impugned order passed in appeal and submitted that no where in the order there is any finding that there had been any kind of intention to evade tax. He submitted that as the goods were in order and there was no discrepancy in the same with the e-way bill and the invoices including packing list, there was no scope of imposition of penalty in the present case. He further relied on several judgements of this Court including the judgement passed in **Falguni Steels Vs. State of U.P.** reported in **(2024) 15 Centax 67 (All.)** to buttress his argument that imposition of penalty is invalid in cases when there is no *mens-rea* for evasion of tax.

Contentions of the Respondents

5. Per contra, Mr. Pandey, counsel appearing on behalf of respondents submitted that in the present case the mistake by the petitioner cannot be seen as a clerical error as the truck number itself is different. He further submitted that since the distance between NOIDA to Madoli, Delhi is only 100 kilometers, there is always chance of the e-way bill being used on several occasions resulting in evasion of tax. Counsel further distinguished the judgement passed in **Falguni Steels (Supra)** by saying that the factual matrix therein in that matter was different from the present case.

Analysis and Conclusion

6. Upon a perusal of the documents annexed to the writ petition, it is quite obvious that in the present transaction goods were moving from a SEZ Unit to Domestic Traffic

Area and the said goods have been checked by the Custom authorities. Custom duty and also IGST had been paid on the said goods. The said goods were intercepted only two-three hours after the goods have left the SEZ Unit, and therefore, it cannot be said that this e-way bill was wrongly being used. It is a fact that the burden of proof lies on the petitioner in certain cases to show that there was no evasion of tax. However, when the the error in the documents is only that of a clerical or typographical error, the initial burden of proof lies on the department to show there was intention to evade tax. In the present case the department has failed to do so and infact has not even tried to do so. The documents produced by the petitioner at the time of the interception itself indicates that the goods have been transported from a SEZ Unit to the DTA after payment of custom duty and payment of IGST. This fact has not been discredited by the department in any manner whatsoever. Infact there is complete silence with regard to the fact whether the petitioner had made the payment as indicated in the invoices and the bill of entry. The department has accordingly failed to shift the burden of proof on the petitioner as the only error found by the department was that the vehicle number was incorrect. Apart from this one error in the e-way bill, nothing has been shown by the department to justify the imposition of penalty under Section 129(3) of the Act. The impugned order also failed to take into account the document produced by the petitioner of the transporter wherein the explanation was given with regard to the reason for the mistake of the vehicle number in the e-way bill.

7. One may reiterate the principles laid down in the judgment

of **Falguni Steels (Supra)** with regard to imposition of penalty. Relevant paragraph nos.19 and 20 are delineated below :-

> *"19. Mere technical errors, without having any potential financial implications, should not be the grounds for imposition of penalties. The underlying philosophy is to maintain a fair and just tax system, where penalties are proportionate to the gravity of the offense. In the realm of taxation, imposition of penalty serves as a critical measure to ensure compliance with tax laws and regulations. However, a nuanced understanding prevails within legal frameworks that for penalties to be justly imposed, there must be a demonstrated actual intent to evade tax. This principle underscores the importance of distinguishing technical errors from deliberate attempts to evade tax obligations. Penalties should be reserved for cases where an intentional act to defraud the tax system is evident, rather than for inadvertent technical errors. The legal foundation for this principle lies in the recognition that taxation statutes are not designed to punish inadvertent mistakes but rather deliberate acts of non-compliance. The burden of proof, therefore, rests on tax authorities to establish the actual intent to evade tax before imposing penalties on taxpayers. This safeguards individuals and entities from punitive measures arising from honest mistakes, administrative errors, or technical discrepancies that lack any malicious intent. In the judgments cited above, the Courts therein have emphasized upon the need for a meticulous examination of the facts and circumstances surrounding each case to establish the presence or absence of intentional tax evasion.*
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> *20. To conclude, the requirement of intent to evade tax for the imposition of penalties is a fundamental principle that underpins the fairness and integrity of taxation systems. Recognising the distinction between technical errors and intentional evasion is*

essential for maintaining a balanced and equitable approach to tax enforcement. As nations continue their pursuit of effective tax administration, upholding this principle becomes paramount in fostering voluntary compliance, preserving trust in the tax system, and ensuring the judicious use of regulatory powers."

8. On the perusal of the above principles, it is clear that intention to evade tax is *sine qua non* before imposition of penalty. In present case the department has failed to establish any such intention whatsoever. Furthermore, the Appellate Authority has failed to look into all the documents that were produced by the petitioner to rebut the allegation of the department with regard to intention to evade tax.

9. In light of the same, impugned orders dated June 22, 2019 and June 22, 2018 are quashed and set aside. The writ petition is allowed. Consequential reliefs to follow.

10. Any amount that has been deposited by the petitioner to be refunded within a period of four weeks from date.

Order Date :- 19.2.2024
Dev/-

(**Shekhar B. Saraf,J.**)