

**Court No. - 1****Case :-** WRIT TAX No. - 1109 of 2019**Petitioner :-** M/S Akhilesh Traders**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Pranjal Shukla**Counsel for Respondent :-** C.S.C.**Hon'ble Shekhar B. Saraf,J.**

1. Heard Sri Pranjal Shukla, learned counsel appearing on behalf of the petitioner and Sri Ravi Shanker Pandey, learned Additional Chief Standing Counsel appearing on behalf of the State.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the petitioner is aggrieved by the order imposing penalty dated August 8, 2018 passed by respondent No.4/Assistant Commissioner, Commercial Tax, Mobile Squad Unit-4, Prayagraj under Section 129(3) of the Uttar Pradesh Goods and Services Act, 2017 (hereinafter referred to as "the Act") and the order dated August 20, 2019 passed in appeal by respondent No.3/Additional Commissioner, Grade-2 (Appeal) 3rd, Commercial Tax, Prayagraj.

3. The undisputed facts in the present case are that the goods were intercepted and upon interception, no E-Way Bill, invoice and billity were present in the vehicle carrying the goods. Subsequent to the interception, these documents were produced by the assessee.

4. Sri Pranjal Shukla has relied upon the Division Bench judgments of this Court rendered in **M/s Axxpress Logistics India Private Limited v. Union of India and others** (Writ Tax No.602 of 2018 decided on April 9, 2018) and **M/s Modern Traders v.**

**State of U.P. and others** (Writ Tax No.763 of 2018 decided on May 9, 2018) to argue that when the documents are produced after the interception and before the detention order is passed, no penalty is leviable under Section 129(3) of the Act. He further relies upon paragraph Nos.19 and 20 of the Single Bench judgment of this Court in **M/s Falguni Steels v. State of U.P. and others** (Writ Tax No.146 of 2023 decided on January 25, 2024) to buttress his argument that the intention to evade tax must be present and it is the duty of the Department to indicate such intention to evade tax.

5. Sri R.S. Pandey has submitted that the judgments relied upon by the learned counsel for the petitioner relate to the period where the detention of goods was prior to April 2018. He further submitted that in instances of detention that occurred subsequent to April 2018, the E-Way Bill is mandatory and is required to be carried along with the goods. In the present case, he submits that neither the E-Way Bill nor even invoice and billity were accompanying the goods at the time of interception. He, accordingly, submits that the burden of proof with regard to intention to evade tax shifts from the Department to the assessee.

6. In the present case, the facts are undisputed that neither invoice nor E-Way Bill were accompanying the goods. Such a contravention to the Rules cannot be treated to be a mere technical or typographical mistake, and accordingly, in such cases, the burden of proof for establishing that there was no mens rea for evasion of taxes shifts to the assessee.

7. This Court in umpteen cases where penalties were being imposed under Section 129 of the Act though held that an intention to evade tax should be present, however, in the event the goods are

not accompanied by the invoice or the e-way bill, a presumption may be raised that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods.

8. In the present case, one comes to an inexorable conclusion that the petitioner has not been able to rebut the presumption of evasion of taxes, as he has not been able to explain the absence of invoice and the E-Way Bill. Production of these documents subsequent to the interception cannot absolve the petitioner from the liability of penalty as the very purpose of imposing penalty is to act as a deterrent to persons who intend to avoid paying taxes owed to the Government. It is clear that if the goods had not been intercepted, the Government would have been out of its pocket with respect to the GST payable on the said goods.

9. In light of the above findings, no interference is required with regard to the impugned orders. The writ petition is, accordingly, dismissed.

**Order Date :- 20.2.2024**

Kuldeep

(Shekhar B. Saraf,J.)

