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THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No.2024:AHC:83380
Court No. 1

WRIT TAX No. - 433 OF 2020

M/S MID TOWN ASSOCIATES

v.

**ADDITIONAL COMMISSIONER GRADE-2 (APPEAL), JUDICIAL
DIVISION IIInd, STATE TAX, MORADABAD & OTHERS**

For the Petitioner : Suyash Agrawal, Advocate
For the Respondent : Arvind Kumar Mishra, Standing Counsel

Last heard on : May 7, 2024
Judgment on : May 9, 2024

Hon'ble Shekhar B. Saraf, J.

1. This is a writ petition under article 226 of the Constitution of India wherein the petitioner has prayed for the issuance of a writ of certiorari quashing the impugned order dated January 4, 2020 passed in appeal by Additional Commissioner Grade-2 (Appeal), Judicial Division 2nd State Tax, Moradabad/respondent No. 1. The said appeal was preferred against the penalty order dated May 21, 2019 passed by Assistant Commissioner, State Tax, Mobile Squad, Unit – III, Moradabad/respondent No. 2.

FACTS

2. Factual matrix leading to the instant petition is delineated below:
- a) The petitioner is a registered dealer, who deals in manufacturing, trading and exporting of handicraft iron, glass, wax, marble, tiles, wooden handicraft etc.
 - b) On May 20, 2019, the goods in question were being transferred by the petitioner from Chandigarh to USA through Inland Container Depot (ICD), Moradabad vide Invoice No. MID/126. A truck

bearing No. HR 38 P 8575 was assigned for the transportation of the said goods from Chandigarh to Moradabad.

- c) On May 21, 2019 at 08:52 am, the respondent No. 2 intercepted the aforesaid truck at Moradabad and detained the same on the ground that the goods loaded on the truck were being transported without E-Way bill.
- d) Subsequently, an order of detention under Section 20 of the Integrated Goods and Services Tax Act (hereinafter referred to as 'the IGST Act') read with Section 129 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") was passed on the same day, that is, on May 21, 2019 by the respondent No. 2 on the ground of presumption that the goods were being transported with the intention to evade tax due to the non production of E-Way Bill.
- e) A notice under Section 20 of the IGST Act read with Section 129 (3) of the CGST Act dated May 21, 2019 was issued to the petitioner directing him to show cause as to why an amount of tax of Rs.2,90,011/- along with a penalty of same amount ought not to be recovered from him.
- f) On the same day of issuing the show cause notice, the respondent No.2 passed the penalty order under Section 20 of the IGST Act read with Section 129 (3) of the CGST Act.
- g) Against the order dated May 21, 2019 passed by the respondent No. 2, the petitioner filed an appeal before the respondent No.1, who vide its order dated January 4, 2020, dismissed the said appeal and affirmed the order passed by the respondent No. 2.
- h) Being aggrieved by the order dated January 4, 2020, the petitioner has preferred the instant petition.

CONTENTIONS OF THE PETITIONER

3. Sri Suyash Agrawal, learned counsel appearing on behalf of the petitioner has made the following submissions:

- i. The petitioner had downloaded the E-Way Bill for the goods in question on May 21, 2019 at 08:38 am and the interception took place on the same day at 08:52 am which means the E-Way Bill was downloaded prior to the interception of the goods.
- ii. In the show cause notice issued to the petitioner, a time limit of 7 days was mentioned to submit the reply but without waiting for 7 days and without giving an opportunity of hearing to the petitioner, the respondent No. 2 illegally passed the penalty order.
- iii. The minor mistake in documentation was without any fraudulent intent or gross negligence and the same was later on rectified by downloading the E-Way Bill. This minor mistake of the petitioner is protected under Section 126 (1) of the CGST Act.
- iv. As provided under rule 138 (A) (b) of the CGST Rules, the person incharge of a conveyance shall carry a copy of the E-Way Bill in physical form or E-Way bill number in electronic form. In the present case, although the driver of the vehicle could not provide a hard copy of the E-Way Bill to the respondent No. 2, yet he informed the respondent No. 2 about the E-Way bill number.
- v. Since the E-Way Bill was downloaded prior to the interception of the goods and the driver of the vehicle informed the respondent No. 2 about the E-Way Bill number,

the respondent No. 2 was not justified in passing the penalty order.

CONTENTIONS OF THE RESPONDENTS

4. Learned Standing Counsel appearing on behalf of the respondents has made the following submissions:

- i. At the time of interception, the vehicle in question was in transit without there being the mandatory E-Way Bill which is a clear violation of the provisions of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'the UPGST Act').
- ii. The proceedings under Section 129 (1) of the UPGST Act were initiated in view of the aforesaid anomaly.
- iii. The proceedings initiated under Section 129(1) & 129(3) of the UPGST Act were just, proper and in accordance with the law.
- iv. The penalty imposed and the entire proceedings were in consonance with the Rules and Law, particularly highlighting the necessity of E-Way Bills during transportation.
- v. The appellate authority made a decision after due consideration of facts and materials, and thus upheld the penalty order.

ANALYSSIS AND CONCLUSION

5. I have heard the counsel appearing for the parties and perused the material on record.

6. In the present case, the pivotal question pertains to the compliance of E-Way bill as required under the provisions of the CGST/UPGST Act and related rules. The petitioner contends that compliance was timely achieved, while the respondents argued that the absence of an E-Way bill during transit constituted a violation.

7. The crux of the dispute lies in the interpretation of statutory provisions regarding E-Way bill, the presumption of tax evasion in its absence, and the procedural fairness in penalty imposition.

8. It is clear from the perusal of the record that the show cause notice and the penalty order both were issued on the same day, which indicates that no opportunity of hearing was given to the petitioner to submit his reply which is a gross violation of the principles of natural justice.

9. Upon a perusal of the E-Way Bill downloaded by the petitioner, it is clear that even though the driver could not produce the hard copy of the E-Way Bill before the respondent No. 2, yet it was downloaded prior to the interception of the vehicle.

10. This Court had dealt with a similar issue in case of **M/S. Hindustan Herbal Cosmetics V. State Of U.P. And 2 Others** (WRIT TAX No. - 1400 of 2019 decided on January 2, 2024) wherein it has been held that presence of mens rea for evasion of tax is a sine qua non for imposition of penalty. The Court further emphasized that a minor error in the documentation can not be a valid ground for passing of the penalty orders by the authorities. Relevant paragraph of the judgment is delineated below:

“8. Upon perusal of the judgments, the principle that emerges is that presence of mens rea for evasion of tax is a sine qua non for imposition of penalty. A typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty. In the case of M/s. Varun Beverages Limited (supra) there was a typographical error in the e-way bill of 4 letters (HR – 73). In the present case, instead of ‘5332’, ‘3552’ was incorrectly entered into the e-way bill which clearly appears to be a typographical error. In certain cases where lapses by the dealers are major, it may be deemed that there is an intention to evade tax but not so in every case. Typically when the error is a minor error of the nature found in this particular case, I am of the view that imposition of penalty under Section 129 of the Act is without jurisdiction and illegal in law.”

11. This Court in case of **Falguni Steels v. State of U.P.** reported in **(2024) 124 GSTR 10** has held that in a case where the E-Way Bill is

downloaded and produced before passing of the penalty order by the authorities and no mens rea can be inferred from the act of the petitioner, there is no justification in passing of the penalty order by the authorities. Relevant paragraph of the judgment is quoted below:

“17. Once both the e-way bills were presented before passing of the penalty order, and all the documents including the tax invoices, were found to be in order, respondent No. 2 had no sound rationale to pass the impugned order dated February 20, 2019. A bare reading of the said order would show that the presence of the tax invoices, was recorded by respondent No. 2. Furthermore, respondent No. 2 also rejected the e-way bills which were generated post the detention of the goods, since the same in its opinion, was contrary to the provisions of the UPGST Act, 2017/CGST Act, 2017. Nowhere in the said impugned order, it has been recorded that there was any definite intention to evade tax. The essence of any penal imposition is intrinsically linked to the presence of mens rea, a facet conspicuously absent from the record. The order, therefore, stands vulnerable to challenge on the grounds of disproportionate punitive measures meted out in the absence of concrete evidence substantiating an intent to evade tax liabilities.”

12. The law laid down in **Falguni Steels (supra)** was also followed by this Court in case of **M/s Globe Panel Industries India Private Limited v. State Of U.P. And Others** (Writ Tax No. - 141 of 2023 decided on February 5, 2024). Relevant paragraph of the judgment is extracted below:

“4. This Court in M/s Hindustan Herbal Cosmetics v. State of U.P. and Others (Writ Tax No.1400 of 2019 decided on January 2, 2024) and M/s Falguni Steels v. State of U.P. and Others (Writ Tax No.146 of 2023 decided on January 25, 2024) held that mens rea to evade tax is essential for imposition of penalty. The factual aspect in the present case did not indicate any intention whatsoever to evade tax. Furthermore, the documents that have been relied upon by the petitioner have not been considered by the authorities. The authorities have dealt with the issue with regard to the expiry of the E-Way Bill and held that no explanation was offered by the petitioner with regard to the fresh generation of the E-Way Bill, as the same had expired ten days before the detention. However, it is to be noted that the goods in the vehicle were for two e-Invoices and two E-Way Bills and only one E-Way Bill had expired. There is no dispute with regard to the consignor and consignee nor any dispute with regard to the description of the goods in the vehicle. In relation to the e-Invoices and the E-Way Bills, the authorities have not been able indicate any intention

whatsoever on behalf of the petitioner to evade tax. Indubitably, there is a technical violation that has been committed by the petitioner. However, the authorities have not been able to indicate in any manner that the E-Way Bill had been used repeatedly nor have they made out any case with regard to an intention to evade tax by the petitioner. Accordingly, this Court is of the view that such a technical violation by itself without any intention to evade tax cannot lead to imposition of penalty under Section 129(3) of the Act. This view is fortified by a catena of judgments as indicated above.”

13. In the facts and circumstances, it is clear that only violation is a technical one wherein E-Way Bill was not present in the vehicle. However, it is clear that the E-Way Bill had been downloaded prior to the interception of the vehicle. Furthermore, invoice and the E-Way Bill matched with the goods in the vehicle, and accordingly, one can infer that there was no mens rea for the evasion of tax.

14. In light of the above discussion, I am of the view that there was no intention to evade tax on the part of the petitioner. Further, respondent authorities failed to check the genuinness of the E-Way Bill number as informed by the driver from the GST portal and did not provide an opportunity of hearing to the petitioner which was against the principles of natural justice which strenghtens my view that the authorties did not act in accordance with the law.

15. Accordingly, the writ petition is allowed. The impugned orders dated January 4, 2020 and May 21, 2019 are hereby quashed and set aside.

16. The respondent authorities are directed to refund the amount of tax and penalty deposited by the petitioner within a period of four weeks from the date of this judgment.

Date : 09.05.2024
Kuldeep

SAG
ADVOCATES
SERVICE BEGINS HERE...

(Shekhar B. Saraf, J.)