

Court No. - 2

Case :- WRIT TAX No. - 884 of 2024

Petitioner :- M/S Agarwal Steels

Respondent :- Additional Commissioner Grade 2 And Another

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

Heard Shri Suyash Agarwal, learned counsel for the petitioner and learned ACSC for the State - respondents.

The instant writ petition has been filed against the impugned order dated 03.04.2024 passed by the Additional Commissioner, Grade - 2, Saharanpur as well as the impugned order dated 06.3.2024 passed by the Assistant Commissioner, Sector - 2, Mobile Squad - 1, Saharanpur.

Learned counsel for the petitioner submits that the petitioner is a firm engaged in the business of supply of iron scrap. He further submits that on 19.02.2024, an e-auction was held by the Northern Railway at New Delhi, in which the petitioner was bidder and purchased 110.138 metric tonne of iron scrap for which an invoice was issued on 22.02.2024 by the Ministry of Railway, on which CGST, SGST and TDS were also charged/paid by the petitioner.

On the same day, release order was also issued from the Office of the Northern Railway Store Department. On 04.03.2024, the Railway issued a sale-note of scrap to be lifted from Bijnor (UP). Thereafter, the petitioner issued tax invoice on 04.03.2024 in favour of M/s Swastik Steel Traders, Punjab for sale of 5831 kgs. of iron scrape to be transported through Truck No. UP 20 AT - 9997. Along with the goods, e-way bill, bilty, etc. were also accompanying.

The goods were onward journey from Bijnor (UP) to Punjab accompanying with tax invoice, e-way bills, transporter bilty, etc., but the vehicle no. UP 20 AT - 9997 carrying the goods was intercepted at Devband, Saharanpur. On physical inspection, the respondent no. 2 found no discrepancy in the goods, but the goods were detained only on the ground that the e-tax invoice was not accompanying the goods and proceedings under section 129 of the GST Act were initiated. On payment of tax and penalty, the goods and the vehicle were released. Thereafter, the respondent no. 2, being not satisfied with the reply of the petitioner, passed the impugned order dated 06.03.2024 imposing penalty. Aggrieved by the said order, the petitioner preferred an appeal, which has been dismissed vide impugned order dated 03.04.2024.

Learned counsel for the petitioner further submits that the Ministry of Finance vide

notification dated 14.09.2018 clarified that if the consignment of goods is accompanied with an invoice or any other specified documents, the proceedings under section 129 of the GST Act may not be initiated. He further submits that before issuing of the show cause notice and passing of the seizure order, e-tax invoice was produced before the authority concerned, but in spite of the said facts, the impugned order was passed. He further submits that due to technical glitch in the GST portal, the e-tax invoice could not be generated. The authority below has not recorded any finding that the petitioner has intention to evade tax, but still the goods were seized and the impugned order has been passed. He further submits that while dismissing the appeal, the authority below erred in not considering the fact that e-invoice was generated and produced before the respondent no. 2 even before passing the detention order. But the respondent no. 2 merely proceeded solely on the basis of the unavailability of the e-invoice at the time of interception of the vehicle.

He further submits that once the e-way bill was produced before the seizure order could be passed, no proceedings ought to have been initiated against the petitioner. In support of his submission, he has placed reliance on the judgement of this Court in *Shyam Sel & Power Limited Vs. State of U.P. & Others* [(2023) 11 Centax 99 (All.)] and *Galaxy Enterprises Vs. State of U.P. & Others* [(2023) 12 Centax 137 (All.)].

Per contra, learned ACSC supports the impugned orders.

After hearing learned counsel for the parties, the Court has perused the record.

It is not in dispute that the goods in question were accompanying with tax invoice, e-way bill, bilty, etc., in which no adverse inference regarding the description of goods and the quantity of goods was ever drawn at any stage. The only ground for seizure of the goods and penalty was that the e-tax invoice was not accompanying the goods in question. The petitioner submitted its reply specifically mentioning that due to technical glitch in the GST portal, the same could not be generated. The said fact has not been disputed by any of the authorities. Even before this Court, the said ground has been taken, but the same has not been specifically denied. Further, the record shows that none of the authorities below have recorded any finding that the petitioner has intention to evade payment of tax.

This Court in *Shyam Sel & Power Limited* (supra) and *Galaxy Enterprises* (supra) has specifically held that in case any deficiency is pointed out in the show cause notice and the same is cured before passing of the detention order, no penalty can be justified.

In view of the aforesaid facts & circumstances of the case as also the law laid down by this Court in the above noted cases, the impugned order dated 03.04.2024 passed by the Additional Commissioner, Grade - 2, Saharanpur as well as the impugned order dated 06.3.2024 passed by the Assistant Commissioner, Sector - 2,

Mobile Squad - 1, Saharanpur cannot be sustained in the eyes of law. The same are hereby quashed.

The writ petition succeeds and is allowed.

The authority concerned is directed to refund the amount deposited by the petitioner in the present proceedings, in accordance with law, within a period of two months from the date of production of a certified copy of this order.

Order Date :- 17.2.2025

Amit Mishra

