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Neutral Citation No. - 2025:AHC:52971

Court No. - 9

Case :- WRIT TAX No. - 1559 of 2024

Petitioner :- M/S B M Computers
Respondent :- Commissioner Commercial Taxes And 2 Others
Counsel for Petitioner :- Pooja Talwar
Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard learned counsel for the petitioner and Sri Arvind Kumar Mishra, learned Standing Counsel for State.

2. Through this writ petition, a challenge has been made to order dated 06.03.2023 passed by Assistant Commissioner, State Tax, Mobile Squad-5, Sector-5, Unit-1, Noida, under Section 129(3) of the U.P. State Goods and Service Tax Act, 2017 and Central Goods and Service Tax Act, 2017 imposing penalty and appellate order dated 30.05.2024 passed by Additional Commissioner, Grade-2 (Appeal)-3, State Tax, Noida, confirming the order of penalty passed by Assessing Authority.

3. The brief facts of the case are that petitioner is a registered dealer under the GST regime having GSTN No. 09AEWPA1632E1ZN. It is engaged in the sale and purchase of computer and other hardware material. The petitioner firm had carried a stock transfer of goods from its Agra Headquarter to Ghaziabad Branch amounting to Rs.8,45,000/- and Rs.1,43,500/- inclusive of tax and issued invoice No. ST/OUT/BMC/365, e-way bill no. 4113 1890 1103 and ST/OUT/BMC/366, e-way bill no. 4113 1891 6631, respectively for the said transactions. The said transfer was taking place by taking services of one M/s Shagun Logistics Cargo Services. The vehicle along with goods were intercepted at Luharli Toll Plaza Dadri, Greater Noida at about 3:16 AM on 06.03.2023 by respondent no. 2. A physical verification of consignment of goods was carried out and a detention order was passed on 06.03.2023 stating that Part B is not updated in the e-way bill. On the same day, a show-cause

notice was issued demanding response from the petitioner on the points raised therein and proposed demand. Petitioner appeared before the Assessing Authority and filed its reply and penalty was imposed under Section 129(3) of UPGST/CGST Act, 2017. The petitioner deposited the entire amount of penalty and got the vehicle released. Aggrieved by the order of penalty, petitioner firm preferred appeal before the Appellate Authority which was dismissed on 30.05.2024. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that first appellate authority has not applied its mind while rejecting the appeal and a non-speaking order has been passed. According to petitioner's counsel, goods were duly covered with tax invoices and only deficiency was that Part B of e-way bill was not filled which was a human error and to be filled by transporter. Reliance has been placed upon the decisions in case of **M/s. Varun Beverages Limited vs. State of U.P. and 2 others** reported in **[2023 U.P.T.C. (113) 331]**, **M/s. Falguni Steels vs. State of U.P. and others, 2024 UPTC 221**, **Indeutsch Industries Pvt. Ltd. vs. State of U.P. & others** reported in **[2024 UPTC (Vol. 116) 579]**, **M/s. Exch. Therm Engineering Company vs. State of U.P. and others [2024 UPTC (Vol. 116) 362]** and **M/s Rawal Wasia Yarn Dying Pvt. Ltd. vs. Commissioner Commercial Tax and another [2024 NTN (Vol. 84) 213]**.

5. Learned Standing Counsel while opposing the writ petition submitted that there was an intention to evade the tax. He further submitted that when the goods were intercepted only Part A of the invoice No. ST/OUT/BMC/365, e-way bill no. 4113 1890 1103 was filled and Part B of the e-way bill required for transportation was not filled and it was generated on 06.03.2025 at 4:28 AM that is after about one hour when the vehicle was intercepted. It is further contended that invoice no. ST/OUT/BMC/366, e-way bill no. 4113 1891 6631 reflected that goods

were being transported from Agra to Agra while the goods were brought from Agra to Noida for which no document was available.

6. It is further contended that petitioner firm deliberately did not fill Part B of e-way bill, due to which the required time limit for e-way bill did not start and the goods reached Noida. In such a situation, with the intention of evading tax, goods were brought in many vehicles using this document. He further submits that as per Rule 138 of the Act of 2017, complete e-way bill is mandatory.

7. It was lastly contended that the judgment relied upon by petitioner relate to the period where the detention of goods was prior to April, 2018. According to him, in instances of detention that occurs subsequent to April, 2018, complete e-way bill is mandatory and required to be carried along with goods. Reliance has been placed upon the decision of co-ordinate Bench in case of **M/s. Jhansi Enterprises, Nandanpura, Jhansi vs. State of U.P. and others, Writ Tax No. 1081 of 2019**, decided on 01.03.2024 and decision rendered in case of **M/s. Akhilesh Traders vs. State of U.P. and others, Writ Tax No. 1109 of 2019**, decided on 20.02.2024.

8. I have heard respective counsel for the parties and perused the material on record.

9. The sole question for consideration is whether carrying complete e-way bill is mandatory for the movement of goods from one place to another. The question is no more *res integra* after the 14th Amendment of the Uttar Pradesh Goods and Service Tax Rules, 2017 which came into effect from 01.04.2018. Post amendment in the Rule, it has become obligatory that goods should be accompanied with complete e-way bill. The co-ordinate Bench in **Akhilesh Traders (supra)** had held that in case goods are not accompanied by e-way bill, a presumption may be read 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. Relevant paras 7 and 8 are extracted hereasunder:-

> *"**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."*

10. In **Jhansi Enterprises (supra)**, the co-ordinate Bench following the decision rendered in **Akhilesh Traders (supra)** further held that mere furnishing of documents subsequent to interception cannot be a valid ground to show that there was no intention to evade tax. The Court further held that reliance placed upon the decision by petitioner therein was of transaction prior to April, 2018 but after April, 2018, those difficulties have been resolved and there is no difficulty in generating and downloading the e-way bill. The Court held as under:-

> *"**11.** Mere furnishing of the documents subsequent to the interception can not be a valid ground to show that there was no intention to evade tax. There must be some reasonable grounds to justify the non-production of documents at the proper time.*
>
> ***12.** Furthermore, the judgments upon which the petitioner is relying are prior to April 2018, when there were actually some difficulties with the generation of e-way bill. But after April, 2018 those difficulties have been resolved and now there is no difficulty in generating and downloading the e-way bill.*
>
> ***13.** The argument raised by the counsel appearing on behalf of the petitioner that the vehicle was parked at the godown for unloading is not supported by the facts. The interception of the vehicle was in a place away from the godown and this entire argument is obviously an*

> *afterthought. Accordingly, the application of Section 129(3) of the Act by the authorities is valid and just in law.*
>
> ***14.*** *In light of the above, I am of the view that the petitioner herein has not complied with the provisions of law, hence the steps taken by the respondent authorities are proper and in accordance with the law and require no interference by this court. "*

11. In the instant case, it is an admitted case that the goods were intercepted by respondent no. 2 on 06.03.2023 at 3:16 a.m., while only Part A of the invoice No. ST/OUT/BMC/365, e-way bill no. 4113 1890 1103 was filled and Part B of the e-way bill required for transportation was not filled and it was generated on 06.03.2025 at 4:28 AM that is after about one hour when the vehicle was intercepted. Further, invoice no. ST/ OUT/BMC/366, e-way bill no. 4113 1891 6631 reflected that goods were being transported from Agra to Agra while the goods were brought from Agra to Noida for which no document was available

12. Rule 138 of the Act of 2017 provides that complete e-way bill is mandatory for commencement of movement of goods, which is extracted as under:-

> *"**Rule-138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-***
>
> *(1)Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—*
>
> *(i) in relation to a supply; or*
>
> *(ii) for reasons other than supply; or*
>
> *(iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods in Part A of FORM GST EWB-01, electronically, on the common portal.*
>
> *(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the recipient may generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01"*

13. Moreover, conduct of the petitioner clearly reveals that an intention to evade the tax is there as not only the goods in transit were not accompanied by Part B of e-way bill but also goods were being

transported from Agra to Noida while the e-way bill was issued by the petitioner firm from Agra to Agra.

14. Reliance placed upon the judgments is distinguishable in the facts of the present case as in those cases, the transaction was prior to April, 2018 where the benefit was given to those assesses. It is mandatory on the part of the seller to download the complete e-way bill once the goods are put in transit. Only downloading Part A of e-way bill and non filling of Part B would not absolve the liability under the Act.

15. No case for interference is made out.

16. The writ petition fails and is hereby dismissed.

Order Date :- 10.4.2025
V.S.Singh