

Neutral Citation No. - 2025:AHC:64555

Reserved on 22.04.2025

Delivered on 28.04.2025

Court No. - 2

Case :- WRIT TAX No. - 1386 of 2023

Petitioner :- M/S Maa Kamakhya Trader

Respondent :- Additional Commissioner Grade 2 And Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

- 1.** Heard Sri Aditya Pandey, learned counsel for the petitioner, and Sri R.S. Pandey, learned Additional Chief Standing Counsel for the State-respondents.
- 2.** By means of this writ petition, the petitioner has assailed the order dated 10.11.2023 passed by the respondent no.1 in Appeal No.0513/2023, Assessment Year 2023-24.
- 3.** Learned counsel for the petitioner submits that the goods in question was in transit from Guwahati, Assam to Delhi and while passing through the State of U.P., the same were intercepted by the respondent no.2 on 21.09.2023 in District- Amroha. At the time of interception, all documents were produced i.e. tax invoices, E-invoices and E-waybills and Bilties (GR) before the respondent no.2 and the statement of the driver of the vehicle was recorded in MOV-01 issued on 22.09.2023, which shows that all the documents were found to be correct, a copy of which has been annexed as **Annexure No.3** to this writ petition.

4. He further submits that in the MOV-04 i.e. the physical verification report, in the column of description of goods as per the invoice and description of goods in the conveyance was noted and no difference as per the invoices and physical verification was pointed out, but thereafter, a somersault was taken by the authority that the goods were different than mentioned in the accompanying documents. He further submits that once the goods were verified physically and after getting the details of the goods mentioned in the accompanying tax invoices and when no discrepancy was found in the physical verification as mentioned in MOV-04, at a later stage, the authorities cannot take a different stand. On the said basis, the demand was issued against which an appeal was filed, which was also dismissed without considering the material available on record.
5. He further submits that even in the counter affidavit, not a word has been whispered about the MOV-04 while noting the goods in conveyance as no difference was found in the accompanying documents. He next submits that the authorities cannot be permitted to take a different stand at a later stage in spite of being no difference to be found at the time of inspection.
6. *Per contra*, learned Additional Chief Standing Counsel supports the impugned order.
7. Upon hearing the counsel for the parties, the Court has perused the records.
8. It is not in dispute that the goods in question were accompanied not only with the tax invoices, E-way bill, but also E-tax invoices, e-way bills as well as G.R. (bilties) and the statement of the driver of the vehicle was also recorded in MOV-01, a copy of which has been annexed as **Annexure No.3** to this writ petition.

9. Further, the MOV-04 was also issued after the physical verification of the goods in question, a copy of which has been annexed as *Annexure No. 4* of this writ petition.
10. The perusal of the MOV-04 shows that in the description of goods as per the invoices including H.S.N. Code and description of goods in conveyance, no difference was pointed out. Once the goods in question, on the physical verification, was found as per the goods disclosed in the invoices, the revenue cannot be permitted to completely change its stand by supplementing different grounds. The argument raised by Sri R.S. Pandey, A.C.S.C. that as soon as H.S.N. Code is fed in the description of goods, the same goods appear in the description of goods as per the invoice (in Column of MOV-04) and therefore, the State authorities are not in a position to correct the field, and thus the description was found differently in the column of description of goods in conveyance could not be filled correctly.
11. On a pointed query put to the State that as soon as H.S.N. Code is fed in the column of description of goods as per invoice, whether the goods appear as per the code or it has to be fed, the answer was in negative i.e. the goods have to be fed manually.
12. A similar question was asked with regard to the filling of description of goods in conveyance in Column IV, he accepts that it has filled manually.
13. Once on the verification report i.e. MOV-04, the items are fed by the officer concerned, after due verification, the authorities cannot be permitted to completely change its stand or further permitted to supplement by different reasons or grounds, which were not taken or mentioned while preparing the physical verification report in MOV-04.

14. The purpose of filling MOV-04, at the time of physical verification, is to find the correctness of the goods in transit from the accompanying documents and if the officer while preparing the MOV-04 did not find any change or difference in goods that of mentioned in the accompanying documents, the same cannot be permitted at a later stage for taking a different stand, as mentioned in the present case.
15. That this Court in the case of *Jitendra Kumar Vs. State of U.P. and Another (Writ Tax No.1425 of 2023)* in para no. 5, 6 & 7 has held as under:-

“5. It is trite law, settled by a catena of Supreme Court judgments, that the Revenue cannot beat around the bush and keep changing the goal post at each stage. Once the Revenue had taken a particular stand, the same cannot be completely changed and/or supplemented by a different reason or ground.

6. In the present case, it is clear that the detention was made on the ground that the goods were not accompanied by valid documents. However, when the show-cause notice was issued, there is no whisper of any invalid document whatsoever. In fact, the stand was completely changed by the Revenue and this volte face cannot be countenanced by this Court. The detention of goods causes serious prejudice to an assessee and the same can only be done on the basis of specific, valid and reasonable grounds. In the present case, it is quite obvious that at the time of detention, the ground that was stated by the Revenue was incorrect. More so, there was no reason for the Revenue to have detained the goods and the consequential actions that followed, were obviously vitiated.

7. In light of the findings above, we are of the view that the detention order and the subsequent show-cause notice were bad in

law, and accordingly, both are quashed and set-aside.”

- 16.** In view of the facts as stated above as well as in the light of the aforesaid judgment, the impugned order cannot be sustained in the eyes of law and the same is hereby quashed.
- 17.** The writ petition is **allowed**, accordingly.
- 18.** Any amount deposited by the petitioner during the pendency of the present litigation, shall be refunded to the petitioner within a period of three weeks from the date of production of certified copy of this order.

Order Date :- 28.04.2025

Pravesh Mishra/-

(PIYUSH AGRAWAL, J.)