



2025:AHC:201239

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 629 of 2023

M/S. Om Enterprises

.....Petitioner(s)

Versus

Additional Commissioner, Grade - 2 (Appeal) And
Another

.....Respondent(s)

Counsel for Petitioner(s) : Mohit Kumar Shukla, Nipun Mohan,
Tarun Agrawal
Counsel for Respondent(s) : C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Rahul Krishna Agrawal, along with Shri Mohit Kumar Shukla, learned counsel for the petitioner and learned ACSC for the State - respondents.
2. The instant writ petition has been filed against the impugned order dated 03.12.2022 passed by the respondent no. 1 as well as the impugned order dated 21.12.2021 passed by the respondent no. 2.
3. Learned counsel for the petitioner submits that the petitioner is a trader of TMT iron bars. He further submits that the goods in question were dispatched from Bulandshahar for which tax invoice was generated on 21.12.2021, but the e-way bill could not be generated as there was some technical glitch, but the same was generated on 21.12.2021 at 10.59 a.m. He further submits that the goods in question were intercepted by the Mobile Squad and on inspection, e-way bill was not there. He further submits that the vehicle in question was intercepted at 11.29 a.m. and show cause notice was issued, to which the petitioner submitted a detailed reply, along with the copy of e-way bill. Not being satisfied with the same, the goods were seized and penalty order under section 129(3) of the GST Act was passed, against which an appeal was preferred, which has been dismissed vide impugned order dated 03.12.2022.
4. Learned counsel for the petitioner further submits that the appellate authority recorded a finding that the goods were detained and checked at

11.29 a.m. on 21.12.2021, but the e-way bill was generated before the interception, i.e., at 10.59 a.m. on 21.12.2021 and therefore, there is no intention to evade payment of tax. In support of his submissions, he has placed reliance on the judgement of this Court in ***M/s OSR Creation Vs. State of U.P. & Others*** [Writ Tax No. 1914/2024, decided on 27.01.2025].

5. Per contra, learned ACSC supports the impugned orders and submits that the proceedings have rightly been initiated against the petitioner as the petitioner has violated the provisions of the Act. He further submits that at the time of interception, the document, as contemplated under the GST Act, was not complete. He further submits that the e-way bill, which was required under the GST Act, was not accompanying with the goods. In support of his submissions, he has placed reliance on the judgement of the Division Bench of this Court in ***M/s Aysha Builders & Suppliers Vs. State of U.P. & Others*** [Writ Tax No. 2415/2024, decided on 24.01.2025]. He further submits that if the petitioner is permitted to carry on the transaction without e-way bill, the same will give a handle for evasion of tax.

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

7. It is not in dispute that the goods in question were being transported along with tax invoice, but when the goods were detained and seized at 11.29 a.m. on 21.12.2021, the e-way bill was generated much prior thereof, i.e., at 10.59 a.m. Along with the reply, the said e-way bill was produced, but the same was not accepted and the impugned order was passed.

8. Once the document has been produced, which was generated prior to the detention and physical verification, no adverse view can be drawn against the petitioner. This Court in the case of ***M/s OSR Creation*** (supra) has held as under:-

"8. Admittedly, the goods were intercepted in the evening of 22.11.2022 and at the time of interception the e-way bill was not available along with the goods, therefore, the detention as well as seizure order have been passed and notice was issued to the petitioner. Thereafter the petitioner along with its reply to the show cause notice, has produced the e-way bill however the respondent authorities have proceeded further and imposed the penalty under Section 129 of the Act treating that the same is an after

thought. The record shows that none of the authorities at any stage have pointed out any defect in the e-way bill produced by the petitioner along with the reply to the show cause notice. The record further reveals that none of the authorities at any stage have recorded any finding against the petitioner in respect of intention to avoid the payment of tax. Once the petitioner in its reply has brought on record the e-way bill, before passing the seizure order, which is evident from the Annexure No. 11 at page 65 that the e-way bill was produced, but the same was not accepted treating same as after thought.

9. This Court on various occasions have held that if the requisite documents, which were not accompanying with the goods, were produced before passing the seizure order and if there were no intention to avoid the legitimate tax, the levy of penalty was not justified.

10. This Court in the case of M/s Bans Steel (supra) has held as under:-

10. It is admitted between the parties that at the time of interception of the goods, no E-way bill in respect of tax invoice no. 22 dated 12.7.2019 was produced, therefore, the goods were detained, however before the seizure order could be passed and after issuance of show cause notice, the E-way bill in respect of tax invoice no. 22 dated 12.7.2019 was produced, in which no discrepancy was pointed out by any of the respondent authorities. The only ground for detention being taken by the respondent authority is that once the goods in question was not accompanying with proper documents, there was intention to avoid the payment of tax.

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15. However, in the present case, the consignment of two different dealers were loaded in the vehicle and two separate tax invoices i.e. tax invoice no. 21 dated 12.7.2019 and tax invoice no. 22 dated 12.7.2019 were generated. So far as tax invoice no. 21 dated 12.7.2019 is concerned, there is no dispute in this respect. However so far as tax invoice no. 22 dated 12.7.2019 is concerned, admittedly, E-way bill was not produced at the time of detention and the same was produced before passing the seizure order. It is not in dispute that before the seizure order could be passed, proper E-way bill was produced and the authorities, at no stage, have pointed out any discrepancy in the said E-way bill. Once the E-way bill was

produced before the seizure order could be passed, the discrepancy, if any, was cured. In view of above, the aforesaid judgements relied upon by the learned ACSC have no application in the facts and circumstances of the present case, as such, the same are of no aid to the respondents.

11. Further, in the case of M/s Akhilesh Traders (supra) relied upon by the counsel for the State, either at the time of interception of the goods or before passing the order, no documents were produced, therefore, the Court has justified the levy of penalty.

12. However in the present case, the required document i.e. e-way bill was produced along with the reply to the show cause notice before the seizure order was passed, therefore, the judgement relied upon by learned counsel for the State is of no aid to him. "

9. Learned ACSC has relied upon the judgement in **M/s Aysha Builders & Suppliers** (supra) and submitted that the e-way bill was not there and therefore, the proceedings are justified. But, perusal of the paragraph no. 7 of the said judgement reveals that in the said case, the e-way bill was not generated prior to the detention or seizure of the goods, but the same was generated after detention order was passed and therefore, the said judgement is of no help to the State.

10. In the case in hand, the e-way bill was generated much prior to the detention order, i.e., at 10.59 a.m. on 21.12.2021 and therefore, there is no intention to evade payment of tax.

11. In view of the aforesaid facts & circumstances of the case, the impugned orders cannot be sustained in the eyes of law. The same are hereby quashed.

12. The writ petition succeeds and is allowed.

13. Any amount deposited by the petitioner pursuant to the impugned orders shall be refunded in accordance with law.

(Piyush Agrawal,J.)

November 13, 2025

Amit Mishra