

Court No. - 9

Case :- WRIT TAX No. - 595 of 2023

Petitioner :- M/S Lalitpur Power Generation Company Ltd., Through Its Senior Vice President

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for State.
2. Through this writ petition, a challenge has been made to order dated 20.01.2023 passed by Assistant Commissioner, Commercial Tax, Mobile Squad, Unit-1, Jhansi, under Section 129(1) of the U.P. State Goods and Service Tax Act, 2017 (hereinafter called as "the Act of 2017") imposing penalty of Rs. 93,298/- and appellate order dated 17.04.2023 passed by Additional Commissioner, Grade-2 (Appeal)-II, Commercial Tax, Jhansi, under Section 129(3) of the Act of 2017 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 provisions of Goods and Service Tax Act, 2017. It is engaged in the generation of electricity and the thermal power plant situated at Village Mirchwara and Burogaon, Tehsil- Mehroni, District- Lalitpur. The goods were being transported from the godown situated at Jhansi to Power Plant, and was intercepted on 19.01.2023 at 3:22 pm at Lalitpur Road, Jhansi. The goods in transit were carrying two invoices, two bilties and two e-way bills. During inspection of Vehicle No. UP 94 AT/1712, bilty dated 03.01.2023 of Ms. Associate Road Carriers Ltd. Kolkata, tax invoice dated 12.01.2023 of Ms. Weldus Solutions Engineer, Lucknow, bilty dated 13.01.2023 of M/s TCI Freight Sikandrabad, tax invoice dated 12.01.2023 of M/s. New Delta International Delhi along two e-way bills were furnished. On inquiry of the documents, it was found that conveyance was being done through

different vehicle contrary to the vehicle declared in Part B of the e-way bill no. 7713 1109 2438 and validity of e-way bill no. 4313 0563 8265 was till 15.01.2023 whereas it was being transported on 19.01.2023. The vehicle was detained under Section 129(1) of the Act of 2017 and show-cause notice under Section 129(3) was issued. Since the reply was not found plausible, the order dated 20.01.2023 was passed and penalty of Rs.93,298/- was imposed. Against the said order, penalty amount was deposited and goods along with vehicle was released. Thereafter, an appeal was preferred which was dismissed on 17.04.2023. Hence, this 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, there was no intention of petitioner to evade the payment of tax and goods were being transported from godown at Jhansi to its power plant and all the required documents i.e. tax invoice, consignment notes issued by the transporter and necessary e-way bills were accompanying the goods when the vehicle was intercepted. It is further submitted that only discrepancy was that in respect of Safety Shoes Consignment, vehicle no. mentioned in the e-way bill was different from the vehicle in which the goods were being transported to power plant and in respect of welding electrode consignment, validity of e-way bill had expired. It is further contended that these discrepancies do not endorse any tax evasion on the part of petitioner and only indicate error in e-way bills. 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. Century Rayon vs. UOI** reported in 2018 UPTC 528, **M/s. Bhumika Enterprises vs. State of U.P.** reported in 2018 UPTC 536, **M/s. Singh Tyres vs. State of U.P.** reported in 2018 UPTC 539, **Mahaluxmi Traders vs. State of U.P.** reported in 2018 UPTC 545, **M/s. Shubham Fertilizers and Chemicals vs. State of U.P.** reported in 2018 UPTC 546 and **M/s. Shanu Events vs. State of U.P.** reported in 2022 UTC 1513.

5. Learned Standing Counsel while opposing the writ petition submitted that there

was an intention to evade the tax. He further submitted that transit in question was being made on the basis of e-way bill no. 7713 1109 2438 and e-way bill no. 4313 0563 8265. After enquiry, it was found that conveyance was being done through different vehicle contrary to the vehicle declared in Part B of the e-way bill no. 7713 1109 2438 and validity of e-way bill no. 4313 0563 8265 was till 15.01.2023 whereas it was being transported on 19.01.2023. It is further submitted that the goods were being transported in violation of Section 68 and Rule 138-A of the Act of 2017 and the same was not covered with valid e-way bill.

6. 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.

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

8. The sole question for consideration is whether carrying valid 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 valid 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."

9. 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. "

10. In the instant case, it is an admitted case that the goods were intercepted on 19.01.2023 at 3:22 pm at Lalitpur Road, Jhansi. The said transit in question was being done on basis of e-way bill no. 7713 1109 2438 and e-way bill no. 4313 0563 8265. After enquiry, it was found that transportation of goods was being done through different vehicle in place of the vehicle declared in Part B of the e-way bill no. 7713 1109 2438 and validity of e-way bill no. 4313 0563 8265 was only till 15.01.2023 while it was being transported on 19.01.2023.

11. Rule 138 of the Act of 2017 provides that complete and valid 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"

12. 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 valid e-way bill once the goods are put in transit.

13. No case for interference is made out.

14. The writ petition fails and is hereby dismissed.

Order Date :- 15.4.2025

V.S.Singh