

Court No. - 10

Case :- WRIT TAX No. - 1486 of 2023

Petitioner :- M/S T.K. Printers

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 Mr. Aditya Pandey, learned counsel for the petitioner and Mr.Ravi Shanker Pandey, learned ACSC for the respondent.

2. By means of present petition, the petitioner is assailing the orders dated 10.7.2023 and 29.1.2021 passed in the proceedings under Section 129 (3) of UP GST /CGST Act, 2017.

3. Learned counsel for the petitioner submits that the petitioner is an authorized vendor of Bharat Petroleum Corporation Ltd. (BPCL) having GSTIN No. 09AWSPS5747A1Z0. He submits that in the normal course of business, the petitioner was directed by the BPCL to transport 4 MPD machines (Petrol and Diesel delivery machines), which were going to be installed at the petrol pump of BPCL at Atarra, Distt. Banda and in pursuance thereof, the goods in question were loaded on the Vehicle No. UP78DT 5969, however due to some technical glitch at the office of BPCL, e-way bill could not be generated at that time. The vehicle in question was on its onward journey from Kanpur to Banda, was intercepted on 28.1.2021 and statement of the driver was recorded in Form GST MOV-1. Thereafter, on physical verification, no discrepancy was found in relation to the consignment, but the goods were detained on 29.1.2021 on the ground that the documents produced by the petitioner were an after thought. Thereafter notice was issued in Form GST MOV -07 to which the petitioner has submitted reply along with the e-way bill but the same has been rejected and order dated 4.2.2021 has been passed in Form GST MOV-09 by which tax as well as penalty has been imposed. Being aggrieved to the said order, the petitioner has filed an appeal, which has also been dismissed without considering the material on record.

4. Learned counsel for the petitioner further submits that entire proceeding initiated against the petitioner is in violation of circular

dated 9.5.2018 issued by the State Government. He submits that the goods in question cannot be sold in open market as per the direction of Ministry of Petroleum and Natural Gas. He submits the goods in question were going to be installed at the Petrol Pump of BPCL at Atarra, Banda. He submits that the E-way bill was generated at 12:44 PM while the detention order was passed at about 6:56 PM on 29.1.2021, therefore, it is clear that the e-way bill was generated prior to passing of the detention order and same was produced before passing the order of detention. He further submits that before passing of the detention order along with the reply to the notice, stock transfer note as well as e-way bill was submitted but the same was not acknowledged by the respondent authority. He submits that once it is admitted that the goods in question cannot be sold in open market, then there is no intention to evade the payment of tax, therefore, the entire proceedings is bad and is liable to be set aside.

5. He further submits that the goods in question was on stock transfer from Kanpur to Banda, therefore, proceeding initiated against the petitioner is bad. In support of his submission, he relied upon the judgement of this Court in the case of **M/s Vacmet India Ltd. Vs. Additional Commissioner Grade -2 and another (Neutral Citation No. -2023:AHC:200160)** and **M/s Goverdhan Oil Mill Vs. Additional Commissioner and another (Neutral Citation No. 2024:AHC:63409)**. He further submits that none of the authorities below have disputed the fact that the goods were not as stock transfer and there is no question of evade of payment of tax. He prays for allowing the present petition.

6. *Per contra*, learned ACSC supports the impugned order.

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

8. Admittedly, at the time of detention, the goods in question was 4 MPD machines (Petrol and Diesel delivery machines) and same were to be used for installation at the petrol pump of BPCL at Atarra, district Banda. A certificate has been brought on record showing that the said goods were not for trade, therefore, price of the same cannot be determined.

9. Further none of the authorities have disputed the fact that goods in question were stock transfer, in other words, the goods were coming from BPCL Kanpur for installation at the petrol pump of BPCL at Atarra, Distt. Banda.

10. The goods in question were seized on the ground that e-way bill and delivery challan were not accompanying the goods at the time of interception but the same was generated and produced before passing the order of detention.

11. Further none of the authorities below have recorded any finding with regard to evasion of tax.

12. The issue in hand is squarely covered by the judgement of this Court in the case of **M/s Vacment India Limited (supra)** and **M/s Goverdhan Oil Mill (supra)**.

13. In view of the facts and circumstances of the case as well as law laid down as referred herein above, the impugned orders dated 10.7.2023 and 29.1.2021 cannot be sustained in the eyes of law and same are hereby quashed.

14. Accordingly, the writ petition is **allowed**.

15. Any amount deposited by the petitioner shall be refunded to him in accordance with law.

Order Date :- 21.5.2025

Rahul Dwivedi/-