

**Court No. - 7**

**Case :-** WRIT TAX No. - 1235 of 2025

**Petitioner :-** M/S Kesarwani Traders

**Respondent :-** State Of Up And 3 Others

**Counsel for Petitioner :-** Aditya Pandey, Manish Kumar Kesarwani

**Counsel for Respondent :-** C.S.C., Krishna Agarawal

**Hon'ble Piyush Agrawal, J.**

1. By means of present writ petition, petitioner assails the order dated 24.12.2024 passed by Additional Commissioner Grade -2 (Appeal) Judicial Division, Third, State Tax, Prayagraj, impugned notice dated 07.09.2022 issued by Assistant Commissioner, Fatehpur, Sector- 3, Prayagraj (B), Prayagraj as well as order dated 17.11.2023 along with recovery notice DRC-07.

2. Counsel for the petitioner submits that the petitioner is a registered dealer and having GSTIN number 09AEKPK2885FIZ6. He is engaged in the business of purchase and sale of MS TMT bar etc. In a normal course of business, the petitioner placed an order to a registered dealer i.e. M/s Purvanchal Tradelink India, Sonbahdra for supply of TMT Bars, who in turn, placed an order to the supplier namely SM Shop Raipur, Chhattisgarh, who in turn issued a tax invoice No.00961 dated 20<sup>th</sup> June, 2018. In the said invoice, M/s Purvanchal Tradelink India was shown as buyer and the petitioner been shown as consignee. The said goods were sent through vehicle No.CG-10-C-6933 as well as e-Way bill was also generated. In short, the said transaction can at best be said to be "Bill To Ship To", which is permissible under the GST regime.

3. Counsel for the petitioner further submits that while the goods were in transit, the same was intercepted and checked by a mobile squad of Chhattisgarh on 21.06.2018 and a rubber stamp was put

on e-Way bill accompanying the goods. He further submits that thereafter his supplier namely M/s Purvanchal Tradelink India, Sonbahdra have issued tax invoice No.0014 dated 20<sup>th</sup> June, 2018 in which the same vehicle number was specifically mentioned to be CG10C6933. The goods in question was duly purchased from a seller from Raipur, Chhattisgarh accompanying specific documents duly verified e-Way bill as above, therefore, movement of goods cannot be disputed.

4. But, to a utter surprise, a proceedings under Section 74 of U.P. Goods and Service Tax Act was initiated against the petitioner for the tax period June 2018 to June 2018, Financial Year 2018-19 by issuing notice dated 07.09.2022 to which the petitioner submitted two replies on 06.10.2022 and 25.10.2023 along with supporting documents like tax invoice, bank statement, biltee, tax invoice of the supplier, E-way bill, Ledger, RCM Tax Invoice, GSTR 2A, details of the supplier, etc., but, without considering the material on record, the order dated 17.11.2023 was passed. Not only this, a recovery notice in DRC-07 was also issued.

5. Aggrieved by the said order, the petitioner filed a first appeal. In the grounds of appeal, specific ground was taken that the goods were intercepted at Chhattisgarh and on e-Way bill, rubber stamp was put, but, by the impugned order dated 24.12.2024, the appeal was dismissed.

6. Counsel for the petitioner submits that in the impugned order the ground of appeal and argument of the petitioner was noticed but no weightage was given. He submits that once the goods in question were intercepted and checked, the movement of goods cannot be disputed to be forged or only a paper transaction. He further submits that the selling dealer's registration was cancelled

on 28.09.2018 but the transaction took place prior to it, and on the date of transaction, the supplier of the petitioner was having a valid registration therefore no adverse inference can be drawn against the petitioner reversing the Input Tax Credit (ITC).

7. Per contra, learned Standing Counsel supports the impugned order. He submits that the proceedings has rightly been initiated against the petitioner under Section 74 as the registration of seller of the petitioner namely M/s Purvanchal Tradelink India, Sonbahdra was cancelled and once the seller was found non-registered, the entire proceedings is justified.

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

9. It is not in dispute that proceedings have been initiated against the petitioner under Section 74 holding that tax invoice No.0014 dated 20<sup>th</sup> June, 2018 issued by M/s Purvanchal Trade Link India, Sonbahdra is not a registered dealer and, therefore, the claim made by the petitioner was a paper transaction. The record further shows that in the transaction, SM Shop, Raipur, Chhattisgarh have issued a tax invoice No.00961 dated 20<sup>th</sup> June, 2018 which was a "Bill To Ship To" transaction where the truck number was specifically mentioned as CG10-C-6933. Further, petitioner has been shown as consignee and the supplier has been shown as buyer. The said fact has not been disputed by the authorities. Further, the record shows that specific pleadings in the grounds of appeal before the first appellate authority was taken that the said vehicle was intercepted by a mobile squad of Chhattisgarh and a rubber stamp was put on e-Way bill and was duly signed (copy of the grounds of appeal has been appended as Annexure 6 to the writ petition). The grounds taken by the petitioner have been noticed in the impugned order at

internal page 2 of the impugned order but no rebuttal or contradicting material against the petitioner has been brought on record to justify the action.

10. Once the said fact has been noticed in the impugned order and not disputed at the movement of goods have started from Raipur, Chhattisgarh to the place of petitioner, the benefit of the same cannot be legally denied. Further, the copy of the tax invoice of the selling dealer SM Shop Raipur and e-Way bill have been filed at page 67 and 68 of the paper book as Annexure 6 which clearly shows the movement of goods was as "Bill To Ship To" transaction. Further, the record shows that the registration of the seller i.e. M/s Purvanchal Tradelink India, Sonbahdra was cancelled subsequent to the date of transaction, hence, no adverse inference can legally be drawn against the petitioner as on the date of transaction, the seller was having a valid registration.

11. Once on the date of transaction the seller was having a valid registration and the transaction was through a valid billing channel, which has neither been denied nor any adverse material has been brought on record, no adverse inference can be drawn against the petitioner.

12. In view of the above, the impugned orders cannot be sustained in the eyes of law and are hereby quashed.

13. The writ petition stands **allowed**.

14. Any amount deposited during pendency of the present litigation shall be refunded to the petitioner within a month from the date of presentation of a certified copy of this order.

**Order Date :- 18.8.2025**

Kushal