

**Court No. - 2**

**Case :-** WRIT TAX No. - 415 of 2020

**Petitioner :-** M/S Manas Enterprises

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

**Counsel for Petitioner :-** Rishi Raj Kapoor

**Counsel for Respondent :-** C.S.C.

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

1. Heard Mr. Rishi Raj Kapoor, learned counsel for the petitioner and Mr. Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the State-respondents.

2. By means of present petition, the petitioner is, inter alia, praying for the following reliefs:-

*"i) Issue a writ, order or direction in the nature of certiorari quashing the order passed in Defective Appeal No. 28/18 dated 29.07.2019, passed by Respondent no. 2 u/s 107(11) read with Section 107(4) of the U.P. GST Act, 2017 (Annexure No. 6 of this writ petition);*

*ii) Issue a writ, order or direction in the nature of certiorare quashing the order dated 45 dated 18.03.2018 passed by Respondent No. 3 (Annexure No. 4 of this writ petition);"*

3. Learned counsel for the petitioner submits that the petitioner is a registered dealer engaged in the business of un-manufactured tobacco. In the normal course of business, the petitioner has sold certain goods to M/s Sai Industries, Rupra Road, Odisha having tax invoice no. 001/016 dated 21.03.2018 along with Central E-way Bill No. 421002598045 dated 17.03.2018. The goods in question were transported through the transporter namely Kaimganj Delhi Transport Company thorough Truck No. UP 64 H 7562. During transportation of the goods, on 17.03.2018, the same were intercepted and detained on the ground that State E-way Bill was not present at the time of interception and on the said ground seizure order was passed. Thereafter notice under Section 129 (3) of the Act was issued on 17.03.2018, in reply thereto, the petitioner has filed downloaded copy of E-way Bill- 01, which was downloaded on 18.03.2018 He further submits that there was no clarity as to whether both Central E-way Bill as well as State E-way Bill was required to accompany with the goods in question, as it was a transition period of new GST regime from Value Added Tax.

4. In support of his submission, he relied upon the judgement of this Court in the case of M/s Godrej and Boyce Manufacturing Co. Ltd. Vs. State of UP and others, 2018 UPTC Vol 100, 1206 and Writ Tax No. 1670 of 2018 (M/S Varun Beverages Limited Vs. State of UP and others), Neutral Citation No. 2021: AHC: 117492 -DB. He submits that against the penalty order, an appeal was filed but the same was dismissed as time barred. He prays that issue in hand is squarely covered with the Division Bench judgements of this Court as referred herein above. He prays for

allowing the present writ petition.

5. Per contra, learned Standing Counsel has supported the impugned orders and submits that the proceeding has rightly been initiated against the petitioner as the goods in question were not accompanying with the proper documents at the time of interception of the goods as well as passing of the penalty order. He further submits that this Court in the cases of Writ Tax No. 291 of 2022 (M/s Garg Enterprises Vs. State of UP), Neutral Citation No. 2024:AHC:9851 and Writ Tax No. 975 of 2023 (M/s Yadav Steels Having Office Vs. Additional Commissioner and another), Neutral Citation No. 2024:AHC: 26169 have held that the delay in filing the appeal can not be condoned. He prays for dismissing the present writ petition.

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

7. It is not a case of the respondent authority that at the time of interception of the goods in question, the Central E-way bill under the GST Act was not available. Only E-way Bill 01 under UP GST Act was not available with the goods in question however before passing of the penalty order, the same was produced. The issue in hand is not res integra.

8. The issue in hand squarely covers with the judgements of Division Bench of this Court in the cases of M/s Godrej and Boyce Manufacturing Co. Ltd. (supra) and M/s Varun Beverages Limited (supra).

9. Further during period from 1.2.2018 to 31.3.2018, the requirement of E-way Bill under UP GST Act read with the Rules framed thereunder was not enforceable. The goods in question were detained and seized on 18.03.2018 on the ground that E-way Bill 01-02 under UP GST Act was not accompanying with the goods. It is not the case of the respondent authorities that Central E-way Bill was not accompanying with the goods in question. Once the said fact is not disputed by the respondent authorities, neither the detention order nor the seizure order nor penalty was justified.

10. In view of the facts and circumstances of the case as well as law laid down by this Court, the impugned orders dated 18.03.2018 and 01.10.2020 cannot be sustained in the eyes of law and same are hereby quashed.

11. The writ petition succeeds and is allowed.

12. The authority concerned is directed to refund any amount deposited by the petitioner either pursuant to the impugned orders or in pursuance of the direction made by this Court, within a period of one month from the date of production of a certified copy of this order.

**Order Date :- 26.11.2024/Amit Mishra**