

**Court No. - 2**

**Case :-** WRIT TAX No. - 731 of 2020

**Petitioner :-** M/S Parle Biscuits Private Ltd.

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Chetan Prakash, Shachi Srivastava

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

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

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

2. By means of instant writ petition, the petitioner has assailed the order dated 04.02.2020 passed in Appeal No.ALL2/GST/0001/2018/Year 2018/-2019 passed by the Additional Commissioner Grade-2 (Appeal) Judicial Range-2, Commercial Tax, Prayagraj as well as order dated 06.12.2018 passed by Assistant Commissioner, Commercial Tax (Mobile Squad) Unit-3 Prayagraj.

3. Learned counsel for the petitioner submits that the petitioner is engaged in the business of Biscuit, Toffee, Kazu, Mango Bite etc. In the normal course of business, the goods were being transported from Allahabad to Chitrakoot through Vehicle No. UP73A0353 along with E-way bill issued on 01.12.2018 as well as proper bill and bilty. The goods were intercepted on 03.12.2018 by Mobile Squad Unit-3 Prayagraj on the ground that the E-way bill along with the goods was expired and thereafter the penalty was imposed on the ground that the goods were being transported through its E-way bill and the same has not been updated.

4. Learned counsel for the petitioner submits that due to breakdown in the vehicle, within the prescribed limit of E-way bill, the goods could not be reached its destination i.e. Chitrakoot. He further submits that there was no intention to avoid any payment of tax. He further submits that no adverse finding has been recorded by any of the authorities below. Counsel further submits that since it was an E-way bill, which was within the knowledge of the department, the goods in question cannot be sealed or payment of legitimate tax could be avoided.

5. In support of his submission, he has placed reliance upon the following judgments passed by this Court:-

(i) *M/s Globe Panel Industries India Pvt. Ltd. Vs. State of U.P. and others (Writ Tax No.141 of 2023).*

(ii) *M/s Falguni Steels Vs. State of U.P. and others (Writ Tax No. 146 of 2023).*

(iii) *S/S Banaras Industries Vs Union of India and 4 others (Writ Tax No.897 of 2022).*

(iv) *M/s Creative Lab Situated at 12 Vs. Stat of U.P. and 2 others (Writ Tax No. 1036 of 2024).*

(v) *M/s Vishal Pipes Limited Vs. State of U.P. and 2 others (Writ Tax No. 46 of 2021).*

6. Per contra, learned Additional Chief Standing Counsel supports the impugned orders by submitting that the petitioner has violated the provision of the Act and therefore the proceedings have rightly been initiated against the petitioner.

7. He further submits that the petitioner ought to have got the E-way bill updated before his further journey.

8. In support of his submission, he has placed reliance upon the judgments of this Court passed in the cases of ***Trade Tax Revision No. 15 of 2024 (M/s Ghata Mehandipur Balaji Grinding Works Pvt. Ltd. Vs. Commissioner Commercial Taxes U.P. Govt. Lucknow)*** and ***Vardan Associates Pvt. Ltd. Vs. Assistant Commissioner of State Tax Central Section & Ors. (Civil Appeal No. .... of 2023).***

9. He prays for dismissal of the present writ petition.

10. After hearing the parties, the Court has perused the record.

11. It is admitted between the parties that the goods in transition from Allahabad to Chitrakoot were intercepted on the ground that the validity of the E-way bill had expired and no discrepancy whatsoever has been pointed out by the authority with regard to quality, quantity or otherwise except the expiry of E-way bill within the time prescribed to reach its destination i.e. Chitrakoot.

12. The record further shows that no finding whatsoever has been recorded with regard to *mens rea* by either of the authorities.

13. This Court in the case of ***M/s Falguni Steels (supra)*** has held that in absence of any ground with regard to intention to evade payment of tax, the penalty proceedings cannot be justified.

14. The similar view has been expressed by this Court in the case of *S/S Banaras Industries (supra)*.

15. The Standing Counsel has relied upon the judgment of this Court passed in the case of *Vardan Associates Pvt. Ltd. (supra)* in which the Hon'ble Apex Court which was partly allowed by reducing the penalty amount. In the said judgment, the E-way bill was expired and the goods were seized after more than ten days, whereas in the case in hand the E-way bill expires before the inception of transition of goods.

16. On perusal of the aforesaid judgments, it shows that either of the parties has not raised the issue of the *mens rea at any stage; whereas in the case in hand, the petitioner has raised issue from its inception as well as specific grounds were also taken in the appellate court and also before this Court* and therefore, once the specific ground of *mens rea* has been taken, this Court has held that in absence of any finding with regard to *mens rea*, penalty cannot be imposed.

17. In view of the above, the judgments cited by the State passed in the case of *Vardan Associates Pvt. Ltd. (supra)*, is distinguishable and is no aid to him.

18. So far as the judgment relied upon by the respondents passed in the case of *M/s Ghata Mehandipur Balaji Grinding Works Pvt. Ltd. (supra)*, at the time of interception or seizure order being passed, no document whatsoever was available or produced whereas in the case in hand, all documents were there. Therefore, on the specific point that no document was available at the time of interception or in reply to the show cause notice, which is not the case in hand, the said judgment is distinguishable and is also of no aid to the State.

19. Considering the facts as stated above as well as judgment cited by the counsel for the petitioner, the impugned orders cannot sustain in the eyes of law and the same are hereby dismissed.

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

21. This Court directs the respondents to refund the amount of tax and penalty deposited by the petitioner, if any, within a period of four weeks from the date of production of certified copy of this order.

**Order Date :- 27.11.2024/Pravesh Mishra**