

**Chief Justice's Court**

**Case :-** WRIT TAX No. - 2148 of 2025

**Petitioner :-** M/s Tata Hitachi Constrution Machinery Company Private Limited

**Respondent :-** State of Uttar Pradesh and 2 Others

**Counsel for Petitioner :-** Atul Gupta, Aayushi Srivastava

**Counsel for Respondent :-** C.S.C., Ankur Agarwal (S.C.)

**Hon'ble Arun Bhansali,Chief Justice**

**Hon'ble Kshitij Shailendra,J.**

1. This writ petition is directed against order dated 28.04.2025 passed by the Assistant Commissioner, Sector – 5 (Mobile Squad – 5), Gautam Buddha Nagar, Uttar Pradesh, wherein the petitioner has been imposed with penalty under Section 129(3) of the U.P. G.S.T. Act, 2017 (for short 'the Act').
2. Submissions have been made that the goods, when the same were being carried, were stopped at Sirsa Cut and it was found that though the e-way bill, was being carried, the part-B of the same was not filled up based on which, notice was issued to the petitioner. Though the petitioner appeared and a response was filed. The respondent authority, came to the conclusion that as the movement was without filling up part-B, it was not valid in view of violation of provisions of Rule 138 of the G.S.T. Rules 2017 and hence the penalty was imposed.
3. Learned counsel for the petitioner made submissions that the non-filling of part-B, is only a technical breach and there has been no intention to evade tax and that no finding in this regard has been recorded by the authority and, therefore, in view of the series of orders passed by this Court laying down that unless there is an

intention to evade tax only on account of non-filling up of part-B of the e-way bill by itself, would not attract penalty under Section 129 of the Act, and therefore, the order impugned deserves to be set aside. Reliance has been placed on the judgment in **M/s Precision Tools India vs. State of U.P. and others, Writ-Tax No. 415 of 2023** decided on 29.01.2024.

4. Learned counsel for the respondents supported the order impugned. Submissions have been made that the lack of requisite document, i.e. unfilled part-B of the e-way bill is not in dispute. Submissions have been made that the intention to evade tax may not be relevant in such circumstances and, therefore, the imposition of penalty cannot be faulted. However, it is not disputed that this Court has consistently taken view as laid down in the case of **Precision Tools India (supra)**.

5. We have considered the submissions made by counsel for the parties and have perused the material available on record.

6. A perusal of the order impugned passed by Assistant Commissioner, Sector – 5 (Mobile Squad – 5), Gautam Buddha Nagar, Uttar Pradesh would reveal that except for noticing violation of provisions of Rule 138 on account of non-filling up of part-B of e-way bill, not a word has been indicated pertaining to any attempt to evade tax.

7. In view of the series of orders passed by this Court laying down that unless an attempt is made to evade tax and a finding in this regard is recorded, mere non-filling of part-B of e-way bill would not attract penalty under Section 129 of the Act, the order impugned passed by the respondents cannot be sustained.

8. Consequently, the petition is **allowed**. The order dated 28.04.2025 passed by the Assistant Commissioner, Sector – 5

(Mobile Squad – 5), Gautam Buddha Nagar, Uttar Pradesh is set aside. As the petitioner has given bank guarantee for the amount of penalty under protest, the bank guarantee shall be returned back to the petitioner within a period of two weeks from the date of this order.

**Order Date :- 9.5.2025**

Mukesh Pal/Jyotsana

(Kshitij Shailendra, J)      (Arun Bhansali, CJ)