

Neutral Citation No. - 2025:AHC:26939

**Reserved on 20.2.2025**

**Delivered on 27.2.2025**

**Court No. - 2**

**Case :-** WRIT TAX No. - 251 of 2023

**Petitioner :-** M/S Saahaj Milk Producer Company Limited

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

**Counsel for Petitioner :-** Puneet Arun

**Counsel for Respondent :-** CSC

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

1. Heard Mr. Puneet Arun for the petitioner and Mr. Ravi Shanker Pandey, learned ACSC for the State-respondents.

2. By means of present petition, the petitioner is assailing the order dated 16.3.2021 passed by respondent no. 3 and the order dated 2.7.2022 passed by the respondent no. 4.

3. Learned counsel for the petitioner submits that the petitioner is a private limited company having GSTIN No. 09AAVCS0836Q2ZB and engaged in the business of manufacture and retail business of milk and milk related products. In the normal course of business, some stock was transferred from the business premisses of the petitioner situated at Aligarh to the business premisses of the petitioner situated at Firozabad and Agra and in pursuance thereof, the petitioner has issued two stock transfer

challan i.e. Challan No. HQ0330 and Challan No. HQ0331 both dated 12.3.2021 and also generated e-way bill nos. 471168443572 and 441168443573, thereafter, the goods were loaded in Vehicle No. UP81AB9203 for delivery to its own business unit situated at Firozabad and Agra for which the transporter issued a consignment note bearing Bilty No. 398 dated 12.3.2021.

4. He submits that the transportation of said goods was intra - state transfer of stock to its own business unit situated at different city within the State of UP. He further submits that as soon as the vehicle left for its destination on 12.3.2021, the driver of the vehicle has received information about his child's illness through his wife, therefore, he has diverted the route of the vehicle to his village and stayed there for three days but in the meantime, the validity of e- way bill was expired and when after three days the journey was started, then the vehicle was intercepted by respondent no. 3 on 15.3.2021 on the ground of expiry of e-way bill. He submits that petitioner has no control over the act of the driver of the vehicle.

5. He further submits that no discrepancy whatsoever was pointed out with regard to quality, quantity and the item as mentioned in the accompanying documents i.e. stock transfer challan, bilty, consignment note etc. Since the transportation of the goods was intra -state transfer, no liability under the Act can be

fastened or is leviable upon the petitioner.

6. He further submits that the authorities have not recorded any finding with regard to the intent of the petitioner to avoid the payment of legitimate tax and in the absence thereof, the penalty as well as the seizure cannot be justified in the eyes of law.

7. In support of his arguments, learned counsel for the petitioner has relied upon the judgements of this Court in the case of **M/s Shyam Sel and Power Ltd. Vs. State of UP and others, Neutral Citation No. 2023: AHC: 191074** and **M/s Vacmet India Ltd. Vs. Additional Commissioner, Grade 2 Appeal and others, Neutral Citation No. 2023: AHC:200160** as well as judgement of Telangana High Court in the case of **M/s Same Deutz Fahr India Pvt. Ltd Vs. State of Telangana and others (Writ Petition No. 13392 of 2020)** decided on 23.9.2020.

8. *Per contra*, learned ACSC has supported the impugned order and submits that at the time of detention / seizure of the goods, the genuine documents as contemplated under the GST Act as well as the Rules were not accompanying with the goods. It is admitted that validity of the e-way bill was expired but the petitioner in its own wisdom has not updated the same, therefore, the penalty is justified.

9. After hearing learned counsel for the parties, the Court has

perused the records.

**10.** Admittedly, the goods were in transit when the same was intercepted on the ground that validity of e-way bill accompanying with the goods, was expired. The petitioner at the time of detention / seizure has filed a letter dated 16.3.2021 stating therein that due to mistake of the driver of the vehicle, e-way bill was expired without knowledge of the petitioner. In the letter it is specifically stated that the goods in question was despatched to Aligarh as intra-state stock transfer from one unit to another unit. Since the goods in transit were not sold goods but intra-state stock transfer, therefore, no adverse view should be drawn.

**11.** The record further shows that no finding has been recorded by any of the respondent authority with regard to the intent of the petitioner to avoid the payment of legitimate tax and in the absence thereof, the penalty proceeding is vitiated.

**12.** Further, the mistake of the driver has been disbelieved only on the ground that at the time of making statement, the driver did not make statement that he visited his village due to illness of his child and stayed there for three days but on the very first instance, letter dated 16.3.2021 (Annexure no. 6 page 46 of this writ petition) was filed before the respondent authority stating therein that due to mistake of the driver, the validity of e-way bill was expired and without there being any intimation to the petitioner, the driver of

the vehicle has started his onward journey after expiry of e-way bill. The said fact has not been disbelieved at any stage.

**13.** This Court in the case of **Shyam Sel and Power Ltd. (supra)** has held as under :

*10. For invoking the proceeding under section 129(3) of the CGST Act, section 130 of the CGST Act was required to be read together, where the intent to evade payment of tax is mandatory, but while issuing notice or while passing the order of detention, seizure or demand of penalty, tax, no such intent of the petitioner was observed. Once the dealer has intimated the attending and mediating circumstances under which e-way bill of the purchasing dealer was cancelled, it was a minor breach. The authority could have initiated proceedings under section 122 of the CGST Act instead of proceedings under section 129 of the CGST Act. Section 129 of the CGST Act must be read with section 130 of the said Act, which mandate the intention to evade payment of tax. Once the authorities have not observed that there was intent to evade payment of tax, proceedings under section 129 of the CGST Act ought not to have been initiated, but it could be done under section 122 of the CGST Act in the facts & circumstances of the present case. It is also not in dispute that after release of the goods, the same were sold to P.L. Trading Company.*

**14.** Hon'ble the Apex Court in the case of **Assistant Commissioner (ST) & others Vs. M/s Satyam Shivam Papers Private Limited (SLP © No. 21132/21)** decided on 12.1.2022 has held as under:

*“As notices hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioners to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioners.”*

**15.** Again this Court in the case of **M/s Vacmet India Ltd**

**(supra)** has held as under :

*10. In the present case, the goods were sent from one unit to another. Learned ACSC could not point out any provision under the GST Act, which could show that while stock transfers are made within the State of Uttar Pradesh from one unit to another, i.e., Agra to Mathura, the tax is to be charged as the goods in question, which were raw material and not a finished goods.*

*11. The specific point was raised before the authority also, but the authority failed to consider the same. Since the respondents have utterly failed to show any intention to evade payment of tax in the present case, the impugned order cannot be justified.*

*12....*

*13....*

*14. Since the goods in question were stock transfer from one Unit to another within the State of Uttar Pradesh (Agra to Mathura) and in absence of any provision being pointed out by the learned ACSC or any authority below that the goods (stock transfer) in transit were liable for payment of tax, no evasion of tax could be attributed to the goods in question. Once there was no intention to evade payment of tax, the entire proceedings initiated against the petitioner are vitiated and are liable to be set aside.*

**16.** In view of the aforesaid discussions and looking to the law laid down by this Court as well as Apex Court as referred herein above, the impugned orders dated 16.3.2021 and 2.7.2022 cannot be justified in the eyes of law and same are hereby quashed.

**17.** The writ petition succeeds and is **allowed**.

**18.** Any amount deposited by the petitioner shall be refunded in accordance with law.

**Order Date :- 27.2.2025**  
Rahul Dwivedi/-