

**Court No. - 2**

**Case :-** WRIT TAX No. - 897 of 2022

**Petitioner :-** S/S Banaras Industries

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Aditya Gupta, Harsh Vardhan Gupta

**Counsel for Respondent :-** A.S.G.I., C.S.C., Sudarshan Singh

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

Heard Shri Harsh Vardhan Gupta, learned counsel for the petitioner, Shri Sudarshan Singh, learned counsel for the Union of India and learned ACSC for the State - respondents.

The instant writ petition has been filed against the impugned order dated 20.11.2020 passed by the respondent no. 5 as well as the impugned order dated 27.07.2021 passed by the respondent no. 4 under section 129(3) of the GST Act.

Learned counsel for the petitioner submits that the petitioner is a partnership concern and is duly registered under the GST Act having registration no. 09AARFB1585E1Z8. The petitioner is engaged in the business of manufacture of MS square, MTMS flat, etc. In its normal course of business, the petitioner sold the goods to M/s Alok Steel Traders. The said goods were transported by vehicle bearing registration no. UP65 R 8124. On the onward journey, the said goods were intercepted on 20.11.2020 by the Mobile Squad. At the time of interception of the goods, all the documents were accompanying the goods, except e-way bill, which could not be generated on account of technical glitch/slow internet. He further submits that before the seizure order could be passed, duly filled in e-way bill was produced before the authority concerned, but no weightage was given to the same and the impugned seizure order was passed imposing penalty and interest under section 129(3) of the UP GST Act. Aggrieved against the said order, the petitioner preferred first appeal, which has been dismissed vide impugned order dated 27.07.2021. Hence, this writ petition.

Learned counsel for the petitioner further submits that no discrepancy, whatsoever, was found accompanying the goods. He further submits that once the duly filled in e-way bill was submitted before passing of the seizure order, the goods ought to have been released. He further submits that even no finding has been recorded by any of the authorities below with regard to intention to evade tax, which is an essential ingredient for levying penalty and demand of tax. In support of his submission, learned counsel for the petitioner has relied upon the judgements in ***M/s Falguni Steels Vs. State of U.P. & Others*** [Writ Tax No. 146/2023 decided on 25.01.2024] and ***M/s bans Steel Vs. State of U.P. & 2 Others*** [Writ Tax No. 577/2022, decided on 09.08.2024].

Per contra, learned ACSC supports the impugned orders and submits that had the goods in question not been seized, the petitioner would have succeeded in its attempt to evade payment of tax. He further submits that the e-way bill was submitted after the detention of goods, which itself shows the intention of the petitioner to evade payment of tax.

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

It is admitted between the parties that the goods in question were transported along with all relevant documents, except e-way bill. It is also not in dispute that the e-way bill was produced before the seizure order could be passed. The said fact is evident from the pleading before the authorities below as well as in paragraph nos. 12 & 13 of the writ petition, which have not been denied in the counter affidavit filed on behalf of the State. The record further shows that no finding has been recorded with the regard to intention to evade legitimate amount of tax.

This Court in ***M/s Falguni Steels*** (supra) has taken the view that even if the e-way bill was not generated at the time of interception of goods, but the same was produced before passed the seizure order as well as in absence of any ground with regard to intention to evade payment of tax, the impugned order cannot be sustained. Relevant paragraph nos. 15 to 17 of the said judgement is quoted below:-

*"15. What emerges from a perusal of the aforesaid judgments is that, if penalty is imposed, in the presence of all the valid documents, even if e-Way Bill has not been generated, and in the absence of any determination to evade tax, it cannot be sustained. Order dated February 21, 2019 passed by the Respondent No. 2 and the order dated October 20, 2019 passed by the Respondent No. 3, in the instant case stand on a foundationless ground, since there is no intention to evade tax, which could sustain the impugned orders.*

*16. In the present factual matrix, it is clear that the goods were accompanied by the tax invoices. Furthermore, the tax invoices contained the details of the vehicle that was transporting the goods. It is further to be noted that one e-Way Bill was generated before the detention and one subsequent to the detention, but before passing of the order under Section 129(3) of the UPGST Act, 2017/CGST Act, 2017. Under these circumstances, there does not appear to be any intention to evade the tax. In addition to the above facts, the explanation given by the petitioner with regard to the delay in generation of the e-Way Bill due to the barrier imposed by the local administration on the occasion of 'Maghi Purnima, Kumbh Mela 2019' has also not been taken into consideration by the authorities below. Finally, the authorities have failed to indicate any specific reason that would indicate an intention for evasion of tax. As held by this Court in *Hindustan Herbal Cosmetics v. State of U.P.*, reported in [2024] taxmann.com 200 (Allahabad), intention to evade tax is desideratum for the imposition of penalty. I am of the view that the authorities have acted beyond jurisdiction and imposed tax without there being any cogent reason for the same. In light of the above finding, I am of the view that the petitioner cannot be made to suffer due to mere technical mistakes that may have arisen, without there being any intention to evade tax.*

*17. Once both the e-Way Bills were presented before passing of the penalty order, and all the documents including the tax invoices, were found to be in order, the Respondent No. 2 had no*

sound rationale to pass the impugned order dated February 20, 2019. A bare reading of the said order would show that the presence of the tax invoices, was recorded by the Respondent No. 2. Furthermore, the Respondent No. 2 also rejected the e-Way Bills which were generated post the detention of the goods, since the same in its opinion, was contrary to the provisions of the UPGST Act, 2017/CGST Act, 2017. Nowhere in the said impugned order, it has been recorded that there was any definite intention to evade tax. The essence of any penal imposition is intrinsically linked to the presence of mens rea, a facet conspicuously absent from the record. The order, therefore, stands vulnerable to challenge on the grounds of disproportionate punitive measures meted out in the absence of concrete evidence substantiating an intent to evade tax liabilities. "

Similar view has been taken by this Court in **M/s bans Steel** (supra). Paragraph no. 15 of the said judgement is quoted below:-

*"15. However, in the present case, the consignment of two different dealers were loaded in the vehicle and two separate tax invoices i.e. tax invoice no. 21 dated 12.7.2019 and tax invoice no. 22 dated 12.7.2019 were generated. So far as tax invoice no. 21 dated 12.7.2019 is concerned, there is no dispute in this respect. However so far as tax invoice no. 22 dated 12.7.2019 is concerned, admittedly, E-way bill was not produced at the time of detention and the same was produced before passing the seizure order. It is not in dispute that before the seizure order could be passed, proper E-way bill was produced and the authorities, at no stage, have pointed out any discrepancy in the said E-way bill. Once the E-way bill was produced before the seizure order could be passed, the discrepancy, if any, was cured. In view of above, the aforesaid judgements relied upon by the learned ACSC have no application in the facts and circumstances of the present case, as such, the same are of no aid to the respondents. "*

In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court, the impugned order dated 20.11.2020 passed by the respondent no. 5 as well as the impugned order dated 27.07.2021 passed by the respondent no. 4 under section 129(3) of the GST Act cannot be sustained in the eyes of law. The same are hereby quashed.

The writ petition is allowed accordingly.

The respondent concerned is directed to refund the amount of tax & penalty, if any, deposited by the petitioner in pursuance of the impugned orders within a period of four weeks from today.

**Order Date :- 7.11.2024**

Amit Mishra