

Neutral Citation No. - 2025:AHC:13336

Reserved on 23.1.2025

Delivered on 27.1.2025

Court No. - 2

Case :- WRIT TAX No. - 1914 of 2024

Petitioner :- M/S Osr Creation

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

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Shri Parth Goswami, holding brief of Shri Pranjal Shukla, learned counsel 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 22.11.2022 passed by Assistant Commissioner, State Tax, Mobile Squad 6, Noida, Gautam Buddha Nagar, respondent no. 3 as well as the order dated 9.8.2023 passed by Additional Commissioner, SGST, Grade -II, (Appeal -III), Noida, Gautam Buddha Nagar, respondent no. 2.

3. Learned counsel for the petitioner submits that the petitioner is a proprietorship concerned having its office at Krishna Nagar, East Delhi 110051, having GSTIN No. 07AKFPRF921G1Z2 and

engaged in the business of manufacturing and trading of furniture. The petitioner in the normal course of its business has sold the goods to Lotus Herbal Private Limited, B-9 Section 58, NOIDA on 21.11.2022 to which tax invoice, G.R. were generated but e-way bill could not be generated due to some technical error. He submits that since the purchaser of the goods was in dire need of the goods, therefore, the goods were being transported immediately with the direction to the transporter of the goods that goods in question will not enter the border of State of UP without having e-way bill. He further submits that e-way bill was generated on 21.11.2022 at 4:59 P.M., however during its onward journey, the goods in question was intercepted by the respondent no. 3 and same was detained at 6:00 P.M. He submits that before the goods could be detained or the seizure order be passed, the e-way bill was produced before the respondent authority. He submits that the said fact is noticed in the penalty order dated 22.11.2022 and a copy of the same is being annexed as Annexure no. 11 at page 65. He further submits that penalty has been imposed without considering the material on record. The petitioner challenged the said order in appeal in which it has specifically been pleaded that prior to passing of the seizure as well as detention order, the e-way bill was produced before the respondent authority but without giving due weightage to the same, the penalty order was affirmed by the appellate authority by the impugned order dated 9.8.2023.

4. In support of his submission, learned counsel for the petitioner has relied upon the judgment of this Court in the case of **M/s Bans Steel Through its Proprietor Alpana Jain Vs. State of UP (Neutral Citation No. 2024:AHC:129150)**.

5. *Per contra*, learned ACSC has supported the impugned order and submits that the goods in question were detained on 22.11.2022 at 4:26 P.M. and immediately thereafter the same was uploaded on the website with the endorsement that ‘documents are not ok’, and when the said fact was came to the notice of the petitioner, the petitioner immediately generated the e-way bill. He submits that in the event, the goods were not intercepted, the petitioner would have been succeeded in its attempt to avoid the legitimate tax.

6. In support of his arguments, learned ACSC has relied upon the judgment of this Court in the case of **M/s Akhilesh Traders Vs. State of UP and others (Neutral Citation No. 2024:AHC:29040)**.

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

8. Admittedly, the goods were intercepted in the evening of 22.11.2022 and at the time of interception the e-way bill was not available along with the goods, therefore, the detention as well as seizure order have been passed and notice was issued to the

petitioner. Thereafter the petitioner along with its reply to the show cause notice, has produced the e-way bill however the respondent authorities have proceeded further and imposed the penalty under Section 129 of the Act treating that the same is an after thought. The record shows that none of the authorities at any stage have pointed out any defect in the e-way bill produced by the petitioner along with the reply to the show cause notice. The record further reveals that none of the authorities at any stage have recorded any finding against the petitioner in respect of intention to avoid the payment of tax. Once the petitioner in its reply has brought on record the e-way bill, before passing the seizure order, which is evident from the Annexure No. 11 at page 65 that the e-way bill was produced, but the same was not accepted treating same as after thought.

9. This Court on various occasions have held that if the requisite documents, which were not accompanying with the goods, were produced before passing the seizure order and if there were no intention to avoid the legitimate tax, the levy of penalty was not justified.

10. This Court in the case of **M/s Bans Steel (supra)** has held as under:-

10. It is admitted between the parties that at the time of interception of the goods, no E-way bill in respect of tax invoice no. 22 dated 12.7.2019 was produced, therefore, the

goods were detained, however before the seizure order could be passed and after issuance of show cause notice, the E-way bill in respect of tax invoice no. 22 dated 12.7.2019 was produced, in which no discrepancy was pointed out by any of the respondent authorities. The only ground for detention being taken by the respondent authority is that once the goods in question was not accompanying with proper documents, there was intention to avoid the payment of tax.

11....

12...

13...

14...

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.

11. Further, in the case of **M/s Akhilesh Traders (supra)** relied upon by the counsel for the State, either at the time of interception of the goods or before passing the order, no documents were produced, therefore, the Court has justified the levy of penalty.

12. However in the present case, the required document i.e. e-way bill was produced along with the reply to the show cause notice before the seizure order was passed, therefore, the judgement

relied upon by learned counsel for the State is of no aid to him.

13. Once the e-way bill was produced before passing of the seizure order, it could not be said that there was any contravention of the provisions of the Act being made by the petitioner.

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

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

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

Order Date :- 27.1.2025
Rahul Dwivedi/-