

Chief Justice's Court

Case :- WRIT TAX No. - 2415 of 2024

Petitioner :- M/s Aysha Builders and Suppliers

Respondent :- State of U.P. and another

Counsel for Petitioner :- Akhil Agnihotri

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

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. This writ petition has been filed by the petitioner aggrieved of the order dated 05.07.2023, whereby a penalty of Rs. 75,600/- has been imposed.

2. The facts as disclosed from the petition are that the goods in question with the tax invoice Nos. 76 and 77 by the petitioner were loaded in truck No. UP 78 DN 5211 from Harjinder Nagar, Kanpur to Panki, Kanpur. When the vehicle was in movement towards its destination, the same was intercepted by respondent no. 2 at Kanpur on 04.07.2023 at 22.16 hours.

3. A notice was issued to the petitioner *inter alia* on the ground that the vehicle in question was not carrying the e-way bill.

4. The plea raised is that at the time when the vehicle started, the server was down and, subsequently, the e-way bill was generated on 04.07.2023 at 10:20 PM. Based on the said submissions, it is sought to be contended in the present writ petition that as the petitioner has produced the e-way bill before the order dated 05.07.2023 has been passed by the authority, for non-production of e-way bill, the penalty cannot be imposed. Reliance has been placed upon **Axpress Logistics India Pvt. Ltd v. Union of India and 3 others : Writ Tax No. 602 of 2018**, decided on 09.04.2018.

5. Counsel for the respondents submitted that the vehicle in question was detained at 10.16 hours and, admittedly, the e-way bill has been generated after the detention and as such, the plea sought to be raised pertaining to producing the e-way bill, is of no consequences as the same has been generated only on account of the fact that the vehicle was detained and, therefore, the petition deserves dismissal. Further submissions have been made that the penalty has been deposited long back and the petition after 1½ years has been filed by way of an afterthought.

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

7. The averments in the petition in para-11 are very specific *inter alia* indicating that the goods and vehicle during its movement to its destination were intercepted by respondent no. 2 at Kanpur on 04.07.2023 at 22.16 hours. A look at the e-way bill, produced as annexure-4, clearly reflects that the same has been generated at 10:20 PM. Apparently, once the vehicle without the requisite e-way bill was detained, immediately, the e-way bill has been generated by the petitioner. The claim made that as the same has been generated before passing of the order on 05.07.2023, i.e., next date and, therefore, it cannot be said that there has been any deficiency and no penalty can be imposed, cannot be countenanced. If the plea raised in this regard is accepted, the same would provide a handle to the assesses to generate the e-way bills only in cases where the vehicles are detained and then produce the same before the authority before the notice is issued frustrating the very purpose.

8. So far as reliance placed on judgment in **Axpress Logistics India Pvt. Ltd (supra)** is concerned, the said case, apparently, has no application, inasmuch as in the said case, the Court has noticed

that the e-way bill under the U.P. GST Act was downloaded by the petitioner therein much before the detention and seizure of the goods and the vehicle and in the present case, admittedly, the e-way bill has been downloaded post detention and seizure of the goods and the vehicle.

9. Consequently, there is no substance in the writ petition. The same is, therefore, **dismissed**.

Order Date :- 24.1.2025

P.Sri./A.Prajapati

(Vikas Budhwar, J) (Arun Bhansali, CJ)