

**Court No. - 1**

**Case :-** WRIT TAX No. - 788 of 2024

**Petitioner :-** M/S Bmr Enterprises

**Respondent :-** State Of Up And 3 Others

**Counsel for Petitioner :-** Rahul Agarwal

**Counsel for Respondent :-** C.S.C.

**Hon'ble Shekhar B. Saraf,J.**

1. Heard Sri Rahul Agrwal, learned counsel for the petitioner and Sri R.S. Pandey, learned Standing Counsel for the State.

2. This writ petition has been filed assailing the penalty order dated August 9, 2023 passed by respondent no. 3 and the order dated October 31, 2023 passed by appellate authority, respondent no. 4.

3. The petitioner before this Court is a registered dealer under the Goods and Service Tax Act, 2017 (hereinafter called as "Act of 2017"). It is engaged in the business of trading electronic goods. The dealer was transporting goods from its unit at Agra to M/s Rawat Sales at Mathura. The goods were being shifted through Truck No. UP 83 CT 2724 which was accompanying delivery challan, e-way bill and bilty on 8.8.2023. The mobile squad on August 9, 2023 intercepted the goods and detained the vehicle in question along with the goods on the premise that in the e-way bill the vehicle number has been mentioned as UP 80 CT 7024. Detention order was passed on August 9, 2023. Thereafter, a penalty order under Section 129(3) of the Act of 2017 was passed imposing a tax and penalty totaling to Rs. 2,67,970/-. Against the said order, an appeal under Section 107 of the Act was preferred by the dealer before the Additional Commissioner, Grade-II (Appeal)-2 State Tax, Agra. The appeal was dismissed vide order impugned dated October 31, 2023. Hence, the present writ petition.

4. Sri Rahul Agrawal, learned counsel for the petitioner submitted that it was a case of sale of goods by the dealer from its unit at Agra to M/s Rawat sales in Mathura. The goods which were in transit were accompanied by necessary

documents and the e-way bill. The only mistake on the part of the person in-charge who had downloaded the e-way bill was wrong entry of the Vehicle No. UP 80 CT 7024 in place of UP 83 CT 2724. Except this fact the goods were being transported along with all the necessary documents. According to learned counsel, there was no intention to evade the tax on behalf of dealer and reliance has been placed upon decision of the Apex Court in case of **Assistant Commissioner (ST) and others vs. M/s. Satyam Shivam Papers Pvt. Ltd. and another, 2022 UPTC (110) 269**. The said judgment has been relied upon by Division Bench of this Court in case of **M/s. Gobind Tobacco Manufacturing Corporation and another vs. State of U.P. and others, 2022 UPTC (111) 1080**. Reliance has also been placed upon another Division Bench judgment of this Court in case of **M/s. Ramdev Trading Company and another vs. State of U.P. and others, 2017 UPTC 1200**.

5. Per contra, learned Standing Counsel submitted that the circular of the year 2018 issued by the Commissioner provides that in case of any mistake in entering details of the transporter in the e-way bill, one or two digit can be ignored by the taxing authorities, but where the entire digit as has been entered in the e-way bill is not matching with the vehicle in transit, the explanation afforded by the dealer cannot be accepted. He further contends that the registration number of vehicle through which the goods were in transit was UP 83 CT 2724, while the number entered in the e-way bill was UP 80 CT 7024.

6. I have heard respective counsel for the parties and perused the material on record.

7. The sole controversy engaging the attention of the Court is as to whether the wrong mention of number of Vehicle No. UP 83 CT 2724 through which the goods were in transit and detained by the taxing authorities would be considered as a human error and will be covered under the circular No.41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018, as the number mentioned in the e-way bill was UP 80 CT 7024 and the mistake is of only of 80 CT 7024 in place of 83 CT 2724.

8. It is not in dispute that goods were being transported by the dealer through stock transfer from its unit at Agra to M/s Rawat sales in Mathura. From perusal of the e-way bill

which has been brought on record, it is clear that the vehicle number has been mentioned as UP 80 CT 7024.

9. As there is no dispute to the fact that it is a case of sale of goods and there is no intention on the part of dealer to evade any tax, the minor discrepancy as to the registration of vehicle in State in the e-way bill would not attract proceedings for penalty under Section 129 and the order passed by the detaining authority as well as first appellate authority cannot be sustained. Moreover, the Department has not placed before the Court any other material so as to bring on record that there was any intention on the part of the dealer to evade tax except the wrong mention of part of registration number of the vehicle in the e-way bill.

10. In view of said fact, the orders dated August 9, 2023 and October 31, 2023 are unsustainable in the eyes of law and both the orders are hereby set aside. Consequential reliefs to follow.

11. Writ petition succeeds and is hereby allowed.

**Order Date :- 14.5.2024**

Dev/-

**(Shekhar B. Saraf,J.)**