

Neutral Citation No. - 2025:AHC:26934

Reserved on 18.02.2025

Delivered on 27.02.2025

Court No. - 2

Case :- WRIT TAX No. - 1388 of 2023

Petitioner :- Kitchen Equipments Manufacturing Co

Respondent :- Additional Commissioner Grade 2 (Appeal) And Another

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- R.S. Pandey, A.C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner and Sri R.S. Pandey, learned Additional Chief Standing Counsel for the State-respondents.
2. By means of instant writ petition, the following prayer has been made:

"(i) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 14.08.2023 passed by respondent no.1 in Appeal No.AD090423046221G Year 2022-23 under Section 129 (3) of the U.P.G.S.T.;

(ii) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 19.03.2023 passed by the respondent no.2 in GST MOV-09u/s 129(3) of the UPGST Act, 2017 (Annexure No.12);

(iii)

(iv)"

3. Learned counsel for the petitioner has submitted that the petitioner is a firm registered under the UPGST Act, 2017, which manufacture and supply of kitchen equipment. On 10.03.2023, the petitioner dispatched the goods through delivery challan no.

REF/KEMCO/002 to AAHAR the International food & Hospitality Fair Pragati Maidan, New Delhi for display from Ghaziabad. Thereafter, on 18.03.2023, the petitioner, on cessation of AAHAR Exhibition, 2023, dispatched the goods in question from Pragati Maidan, New Delhi to its place of business accompanying with material exit slip issued by the Indian Trade Promotion Organization.

4. He further submits that the Vehicle No. DL1AF 2278 carrying the goods in question were intercepted at Mohan Nagar, Ghaziabad and on the physical verification being made, certain discrepancies were found in the E-way bill i.e. in the E-way bill, place of loading was mentioned as Ghaziabad in stead of New Delhi, on said basis, the detention order was passed by the respondent no.2. Thereafter, the goods in question were released on the payment of penalty and tax being made under protest by the petitioner. Being aggrieved from the impugned order, petitioner preferred an appeal, which was dismissed vide order dated 14.08.2023 and order dated 19.03.2023 was affirmed. Hence the present writ petition.
5. He further submits that the goods were admittedly sent from Ghaziabad to New Delhi for the purpose of exhibition held at Pragati Maidan and after conclusion of the event, the same was returned from Pragati Maidan, New Delhi to Ghaziabad. Due to inadvertence or human error, the place of dispatch in the E-way bill was wrongly mentioned as Ghaziabad in place of New Delhi. He further submits that the goods in question are not a taxable goods as mentioned in Section 7 of the Act.
6. Once the goods in question are not taxable, the proceedings under Section 29 of the Act cannot be initiated against the petitioner.
7. In support of his claim, learned counsel for the petitioner has relied upon the judgement of this Court passed in the case of *Vacmet*

India Ltd. Vs. Additional Commissioner Grade-2 (Appeal). He further submits that none of the authorities have recorded an intention to avoid payment of tax and therefore, in absence of such finding, proceedings cannot be initiated.

8. In support of his submission, he has further placed reliance upon the judgment of this Court passed in the case of ***Shyam Sel and Power Ltd. Vs. State of U.P., (2023) 11 Centax 99 (All.)*** and he prays for allowing the writ petition.
9. *Per contra*, learned Additional Chief Standing Counsel supports the impugned orders and submits that in the event, the goods in question were not intercepted, the dealer petitioner ought to have succeeded in his attempt for avoid of payment of tax amount as the place of dispatch of goods in question were intentionally shown as Ghaziabad in place of New Delhi.
10. After hearing the parties, the Court has perused the records.
11. It is not in dispute that by either of the parties that the goods were dispatched along with genuine documents for display in Aahar Exhibition organized at Pragati Maidan, New Delhi to which a delivery challan as prescribed under Section 55 (1) was issued along with E-way bill and material entry slip at Pragati Maidan and when on 18.03.2023, the goods were returned, again a delivery challan along with exit material slip and the E-way bill was issued as per the provision of the Act. Only a technical error was crepted out i.e. the place of dispatch of goods was mentioned as Ghaziabad in place of New Delhi.
12. This Court in the case of ***The Commissioner Commercial Tax U.P. Lucknow Vs. S/S Saurabh Traders Railway Bus Stand Pilkhuwa Hapur*** in paragraph nos. 14, 17, 18, 19 & 20 has held as under:-

“14. Learned counsel for the respondent has placed reliance on the judgment passed by this Court in the case of I.C.I. India Limited Vs.

Commissioner of Sales Tax, (2003) 134 STC 286 (All), wherein in similar circumstances the Court has held as under :-

"13. In the present case, dealer's books of account was accepted. Tribunal recorded the finding to this effect. Admittedly, bill and bulity were produced at the time of the checking at the check-post and form XXXI had also been submitted along with bill and bulity. The purpose of form XXXI is, to bring to the notice of the department about the import of the goods so that the imported goods may not be escaped from consideration at the time of assessment. Merely because some off the columns of form XXXI were not filled which was merely a procedural defect it cannot be said that the provisions of Section 28-A has not been complied. No finding whatsoever has been recorded by any of the authority that there was any attempt on the part of the applicant to evade the tax. Inasmuch as goods were not for resale and were not liable to tax in the hands of the applicant it cannot be said that there was any violation of Section 28-A. In the circumstances, the penalty under Section 15-A(1)(0) is not sustainable.

14. In the result, the revision is allowed. The order of Tribunal dated September 3, 1990 is set aside and the penalty under Section 15-A(1)(o) is quashed.

17. Perusal sub Section 6 of Section 28A itself indicates that penalty can be imposed only after giving opportunity of being heard that the goods were being so transported in an attempt to evade payment of tax due or likely to be due under the Act and therefore mens rea becomes essential ingredient, and therefore the facts in the case of M/s M/s Guljag Industries (supra) are distinguishable in respect to the provisions of the Act, 2008 applicable in the State of Uttar Pradesh.

18. Non-filling up of column no. 6 i.e. not mentioning of bill / cash memo / chalan / invoice number may lead to an inference that in case of

non-checking of goods the declaration form may be re-used for importing goods of same quantity, weight and value to evade payment of tax but it cannot be the sole ground to impose penalty under Section 54(1)(14) of the Act, 2008. Satisfaction has to be recorded after giving opportunity to the dealer / person and after considering all the relevant materials / evidences on record that there was an intention to evade payment of tax. The guilty mind is necessary to be established to impose penalty under Section 54(1)(14) of the Act, 2008. If the last fact finding authority i.e. the tribunal has recorded a finding of fact that there was no intention to evade payment of tax, same cannot be interfered with in revision under Section 58 of the Act, 2008 provided the finding is perverse or it is based on consideration of irrelevant material or non consideration of relevant material.

19. In the present case also the vehicle was accompanied by Form 38 and all other documents were being carried along with other documents and only due to human error column would remain unfilled. It was the duty of the Officer managing the Check Post who after discovering that some column of Form 38 found unfilled should have filled the same himself in the light of Circular dated 03.02.2009 and should have allowed the vehicle to proceed alongwith the goods. It is undisputed that the goods transported were the same which were mentioned in the various documents (bill/builty/challan etc.) carried by the driver of the vehicle.

20. The judgment passed by this Court in the case of I.C.I. India Limited (supra) has clearly spelt out the law in this regard and a circular issued by the Revenue clearly indicates that the Officer managing the check post after verifying the goods on the basis of other documents available at that point of time and have filled up the blank column of Form 38 and there was no occasion for imposing penalty, as has been done by the Assessing Officer.

13. Further, the record shows that the authorities have not recorded any finding that the petitioner had intention to evade payment of tax, which is mandatory under the Act.
14. This Court in the case of *Shyam Sel (supra)* has specifically held that in absence of any finding with regard to evasion of payment of tax, the proceedings cannot be justified.
15. Further, the goods in question are not disputed to be taxable goods as the same were accompanied with the genuine delivery challan.
16. This Court in the case of *Vacmet India Ltd. (supra)* has held that if the goods are not taxable and accompanied with genuine documents, the proceedings are not justified.
17. In view of the facts as stated above, the proceedings cannot be justified in the eyes of law.
18. Accordingly, the impugned order are liable to be set aside and the same are hereby quashed.
19. In the result, the writ petition is *allowed*.
20. Any amount deposited by the petitioner pursuant to the impugned orders, shall be refunded to him in accordance with the law within two months from the date of production of certified copy of this order.

Order Date :-27.02.2025

Pravesh Mishra/-

(PIYUSH AGRAWAL, J.)