

Court No. - 2

Case :- WRIT TAX No. - 599 of 2024

Petitioner :- M/S Vishnu Singh

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Rishi Raj Kapoor

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Shri Rishi Raj Kapoor, learned counsel for the petitioner and learned ACSC for the State - respondents.

2. The instant writ petition has been filed against the impugned order dated 20.03.2024 passed by the respondent no. 2 as well as the impugned order dated 04.09.2023 passed by the respondent no. 3 under section 129(3) of the GST Act.

3. Learned counsel for the petitioner submits that the petitioner is a Proprietorship firm engaged in the business of execution of civil work contracts. On 29.08.2023, pursuant to the work order, the petitioner purchased 24.948 kgs. of durapave bitumen from M/s Indian Oil Corporation, Mathura, but due to technical mistake, at the time of generating the e-way bill, instead of tax invoice number, SAP Doc. No. 770455482 has wrongly been mentioned due to human error. On 30.08.2023, the vehicle along with goods transporting from Mathura to Mirzapur, was intercepted and seized at Anant Ram Toll Plaza, Etawah on the ground that different tax invoice number mentioned in the e-way bill, although the tax invoice, bilty, etc. accompanying the goods were valid. He further submits that the respondent no. 3 issued notice for levy of tax and penalty under section 129(3) of the GST Act, to which the petitioner filed reply, but the respondent no. 3, by the impugned order dated 04.09.2023, rejected the reply of the petitioner and imposed penalty and tax upon the petitioner. Aggrieved by the order dated 04.09.2023, the petitioner preferred an appeal, which has been rejected vide impugned order dated 20.03.2024.

4. Learned counsel for the petitioner further submits that there was no intention to evade payment of tax and it is due to technical/human error, the mistake was committed while generating the e-way bill. He further submits that except the aforesaid mistake, no other defects were pointed out by the authorities. He further submits that the authorities below have failed to record any finding with regard to intention to evade payment of tax and in absence of such finding, the impugned orders cannot be sustained in the eyes of law.

5. Per contra, learned ACSC supports the impugned orders and submits that the petitioner has violated rule 138 of the Rules and therefore, the proceedings have rightly been initiated against the petitioner. He further submits that till date, the

petitioner has not generated or updated the e-way bill.

6. Rebutting to the said submission, learned senior counsel for the petitioner submits that the purpose of e-way bill is only that the Department should come to know about the movement of goods from one place to another so that at the time of passing of the assessment order, particular transaction may not escape its liability to tax, if any. In support of his submission, he has placed reliance on the judgement of this Court in ***M/s Zhuzoor Infratech Private Limited Vs. Additional Commissioner, Grade - 2 & Another*** [Writ Tax No. 830/2024, decided 14.02.2025].

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

8. It is admitted that the goods in question were onward journey from Mathura to Mirzapur when it was intercepted at Etawah and on physical verification, it was found that there was mis-match in tax invoice and e-way bill. In the e-way bill, instead of tax invoice number, SAP document number was mentioned, which was also present in the tax invoice itself. The petitioner has brought on record copies of the tax invoice and e-way bill as Annexure No. 2 to this writ petition. Further, except the aforesaid discrepancy, no other discrepancy has been pointed out by the authorities below. Once the authorities below have not pointed out any other mis-match relating to quality, quantity, items of goods, etc. as disclosed in the tax invoice, the error can be a genuine human error while generating the e-way bill.

9. Further, the record shows that no finding has been recorded with regard to intention to evade payment of tax, which is essential for levying penalty. The human error, which has been committed while generating the e-way bill, cannot be the only ground for justifying initiation of proceedings under section 129 of the GST Act.

10. The purpose of e-way bill is that the Department should know the movement of goods. This Court in ***M/s Zhuzoor Infratech Private Limited*** (supra) has held as under:-

"11. The Court is of the opinion that e-way bill is the document which is generated and accompanying the goods in transit, so that department may come to know about the movement of goods from one place to another place. So that at the time of passing final assessment, the particular transaction may not escape from levy of tax as per the prevalent provisions, under the GST Act.

12. Further, the e-way bill can be cancelled within its validity as provided under the Act. The case in hand, the e-way bill was automatically generated on 14.12.2022, which was valid up to 16.12.2022. In the present case, the e-way bill has not been cancelled within its validity, therefore, no adverse view can be taken against the petitioner that if the goods were not intercepted, transaction in question could have escape to assessment.

13. This Court in the case of M/s Sun Flag Iron and Steel Company Limited Vs. State of UP and others; Neutral Citation No. 2023:AHC:215906 has held that the purpose of e-way bill is that the

department should know the actual movement of the goods and once the e-way bill is not cancelled within the prescribed period, the genuineness of the transaction cannot be questioned. Relevant paragraph of the said judgement is quoted hereunder:

11. Under the G.S.T. regime, all the details are available on the G.S.T. portal and it is admitted that e-tax invoice was raised and e-way bill was generated and the same was not cancelled within 24 hours as provided under the Act. Once the said fact is not disputed and the petitioner has not exercised its right either to withdraw the tax invoice or e-way bill in question, it was well within the knowledge of the department that movement of the goods in question has been undertaken by the petitioner. Merely on the technical ground that e-way bill accompanying with the goods in question was expired on 1.6.2023 whereas the vehicle had been intercepted in the intervening night of 2/3.6.2023.

12. The purpose of e-way bill is that the department should know the movement of goods. Once the e-way bill has been generated and same has not been cancelled by the petitioner within the time prescribed under the Act, the movement of goods as well as genuineness of transaction in question cannot be disputed.

14. Thus, merely on technical ground that in the e-way bill accompanying with the goods in question, the place of shipment has wrongly been mentioned, the seizure or levy of penalty cannot be made.

15. In view of aforesaid fact and circumstances of the case, the proceedings initiated against the petitioner is not justified in the eyes of law. "

11. In view of the aforesaid facts & circumstances of the case, as also the law laid down by this Court in ***M/s Zhuzoor Infratech Private Limited*** (supra), the impugned order dated 20.03.2024 passed by the respondent no. 2 as well as the impugned order dated 04.09.2023 passed by the respondent no. 3 under section 129(3) of the GST Act cannot be sustained in the eyes of law. The same are hereby quashed.

12. The writ petition succeeds and is allowed.

Order Date :- 20.2.2025

Amit Mishra