

Court No. - 2

Case :- WRIT TAX No. - 728 of 2023

Petitioner :- M/S Ram Krishna Gupta

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

Counsel for Petitioner :- Nikhil Pandey, Vedika Nath

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

1. Heard Ms. Yashonidhi Shukla, learned counsel for the petitioner and Mr. Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the State- respondents.

2. By means of present writ petition, the petitioner has assailed the orders dated 20.02.2023 by which the penalty was imposed upon the petitioner as well as order dated 19.10.2022, by which the same was confirmed by the appellate authority on the ground that the Part-B of the E-way bill was not duly filled.

3. Learned counsel for the petitioner submits that the goods in question was duly covered by all required documents under the Act, such as tax invoice, e-way bill and R.R. In the e-way bill, Part-B was not duly filled, hence the proceedings were initiated. He further submits that there was no intention to avoid payment of tax. It was a technical error, hence no adverse inference can be drawn against the petitioner.

4. In support of his submission, he has placed reliance upon the judgments **Roli Enterprises Vs. State of U.P., 2024 158 taxmann.com 468 (Allahabad)** and **Citykart Retail Pvt. Ltd. Vs. Commissioner, Commercial Tax U.P. Gomti Nagar, (2022) 144 taxmann.com 155 (Allahabad)**.

5. Per contra, learned Standing Counsel supports the impugned order and prays for dismissal of the instant writ petition.

6. After hearing the parties, the court has perused the record.

7. Admittedly, the goods in question were duly accompanied with all required documents such as tax invoice, e-way bill and R.R. There is no finding that there was any discrepancy in quantity and quality of the goods. Further, no material has been brought on

record to show that there was any evidence with regard to evasion of tax. Further, only on the allegation that Part-B of the e-way bill was not filled, no adverse inference can be with regard to evasion of tax.

8. This Court in para nos. 7 & 8 of the case of **Citykart Retail Pvt. Ltd. (supra)** has held as under:

"7. In view of the contentions of the parties and the material placed on record, it is clear that the only allegation levelled against the petitioner leading to seizure of the goods was that Part-B of the e-way bill was not filled up. There is no allegation that the goods being transported were being transported without payment of tax. The explanation offered by the petitioner for not filling the Part-B of e-way bill, is clearly supported by the Circulars issued by the Ministry of Finance wherein the problem arising in filling the part-B of e-way bill was noticed and advisories were issued.

8. In the present case, prima-facie no intent to evade the duty can be ascertained, only on the allegation that Part-B of the e-way bill was not filled, more so, in view of the fact that the vehicle in which the goods were being transported on a Delhi number, the said issue being decided in the judgment dated 13.04.2018 in the case of [VSL Alloys India Pvt. Ltd.](#) (supra) covers the issue raised in the present case also, as such, for the reasoning recorded above, the impugned order dated 18.04.2018 and the appellate order dated 14.05.2019 are set aside."

9. Similarly, this Court in para no. 6,7 & 8 of the case of **Roli Enterprises (supra)** has held as under:-

"6. One may look into the judgment passed in M/s Citykart Retail Pvt. Ltd.'s case (supra) and lay reliance on two paragraphs that are quoted below:

"7. In view of the contentions of the parties and the material placed on record, it is clear that the only allegation levelled against the petitioner leading to seizure of the goods was that Part-B of the e-way bill was not filled up. There is no allegation that the goods being transported were being transported without payment of tax. The explanation offered by the petitioner for not filling the Part-B of e-way bill, is clearly supported by the Circulars issued by the Ministry of Finance wherein the problem arising in filling the part-B of e-way bill was noticed and advisories were issued.

8. In the present case, prima-facie no intent to evade the duty can be ascertained, only on the allegation that Part-B of the e-way bill was not filled, more so, in view of the fact that the vehicle in which the goods were being transported on a Delhi number, the said issue being decided in the judgment dated 13.04.2018 in the case of [VSL Alloys India Pvt. Ltd.](#) (supra) covers the issue raised in the present case also, as such, for the reasoning recorded above, the impugned order dated 18.04.2018 and the appellate order dated 14.05.2019 are set aside."

7. In the present case, the facts are quite similar to one in M/s Citykart Retail

Pvt. Ltd.'s case (supra) and I see no reason why this Court should take a different view of the matter, as the invoice itself contained the details of the truck and the error committed by the petitioner was of a technical nature only and without any intention to evade tax. Once this fact has been substantiated, there was no requirement to levy penalty under Section 129(3) of the Act.

8. In light of the above, the orders dated November 10, 2020 and January 10, 2022 are quashed and set aside. The petition is allowed. Consequential reliefs to follow. The respondents are directed to return the security to the petitioner within six weeks."

10. In view of the above facts as well as above-quoted judgment, the impugned orders cannot sustain in the eyes of law and the same are hereby set aside.

11. The writ petition is **allowed**, accordingly.

12. Any amount deposited earlier by the petitioner shall be refunded to the petitioner within one month from the date of production of certified copy of this order.

Order Date :- 9.7.2024

Pravesh Mishra