

Case :- WRIT TAX No. - 1175 of 2022

Petitioner :- M/S Jyoti Traders

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

Counsel for Petitioner :- Rishi Raj Kapoor

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

Heard Sri Rishi Raj Kapoor, learned counsel for the petitioner and Sri Rishi Kumar, learned Standing Counsel for the State.

This writ petition has been filed for quashing the order dated 31.07.2021 passed by the first appellate authority and the order dated 01.07.2020 passed by the Assistant Commissioner, Sales Tax/State Tax, Mobile Squad, II Unit, Shamli imposing tax and penalty upon the petitioner.

The case of the petitioner is that the goods were being transported from Maharajganj, U.P. to Ludhiana, Punjab and e-way bill was generated on 17.02.2018. The goods were intercepted by the mobile squad of the tax department on 21.02.2018 at Shamli. Thereafter, a show cause notice was issued under Section 129 (3) of U.P. GST Act. The same was replied by the petitioner and the goods were subsequently released vide order of this Court after the petitioner has filed indemnity bond. An order of penalty for depositing the penalty and taxes was passed by the respondent no. 3 on 01.07.2020 against which an appeal was preferred which was rejected vide order dated 31.07.2021.

Sri Rishi Raj Kapoor, learned counsel for the petitioner, has submitted that the GST Council vide notification dated 23.01.2018 made effective from 01.02.2018, dispensed with the requirement of e-way bill till 31.03.2018. He has relied upon

the decision of Division Bench of this Court in case of **M/S Godrej & Boyce Manufacturing Co. Ltd. Vs. State of U.P. & Others, 2018 (38) VLJ 48**. Reliance has also been placed upon a decision of coordinate Bench of this Court in case of **M/S HBL Power Systems Ltd. Vs. State of U.P. & Others, 2022 (7) TR 6136**.

Learned Standing Counsel while opposing the writ petition invited the attention of the Court to paragraph no. 6 of the counter affidavit wherein it has been stated that the e-way bill which was downloaded by the assessee on 17.02.2018 had expired when the goods were intercepted by mobile squad on 21.02.2018. He further contends that at the time when the goods were intercepted the assessee was not having the requisite e-way bill, as mandated under the Act/Rules.

Having heard learned counsel for the parties and perused the material on record.

This Court finds that the GST Council had already dispensed with the mandatory provision of carrying e-way bill till 31.03.2018. The matter was settled by Division Bench of this Court in case of **M/S Godrej & Boyce Manufacturing Co. Ltd. (Supra)** extending the benefit to all those assessee who during the relevant period had carried the goods without the e-way bill and matter is no more *res integra*. A coordinate Bench of this Court in case of **HBL Power Systems Ltd. (Supra)** has also taken the similar view.

In view of the said fact, the taxing authorities were not justified in levying tax and imposing penalty.

The order dated 31.07.2021 passed by the first appellate authority and the order dated 01.07.2020 passed by the

Assistant Commissioner, Sales Tax/State Tax, Mobile Squad, II Unit, Shamli, are unsustainable in the eyes of law and same are hereby quashed.

Writ petition stands allowed.

Needless to say that the amount, so deposited by the petitioner pursuant to the order, shall be released within a period of fifteen days.

Order Date :- 9.1.2023

Shekhar