

**Court No. - 1**

**Case :-** WRIT TAX No. - 316 of 2021

**Petitioner :-** M/S Luminous Power Technologies Private Limited

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

**Counsel for Petitioner :-** Shubham Agrawal

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

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

1. Heard Sri Shubham 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 May 21, 2018 passed by respondent no. 2 and the order dated August 5, 2019 passed by appellate authority, respondent no. 3.

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 manufacturing and sale of batteries. The dealer was making a stock transfer from its unit at Saharanpur depot to a sale depot at Ghaziabad. The goods were being shifted through Truck No.UP-11T/2175 which was accompanying delivery challan, e-way bill and bilty on 17.5.2018. The mobile squad on May 18, 2018 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-14BT/3276. Detention order was passed on May 18, 2018. Thereafter, a penalty order under Section 129(3) of

the Act of 2017 was passed imposing a tax of Rs.57,848/- and penalty of the same amount, totaling Rs.1,15,696. Against the said order, an appeal under Section 107 of the Act was preferred by the dealer before the Additional Commissioner, Grade-II (Appeal) Commercial Tax, Saharanpur. The appeal was dismissed vide order impugned dated August 5, 2019. Hence, the present writ petition.

3. Sri Shubham Agrawal, learned counsel for the petitioner submitted that it was a case of stock transfer by the dealer from its unit at Saharanpur to sale depot at Ghaziabad. 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-11T/2175 in place of UP-14BT/3276. 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**.

4. 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-11T/2175, while the number entered in the e-way bill was UP-14BT/3276.

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

6. The sole controversy engaging the attention of the Court is as to whether the wrong mention of number of Vehicle No.UP-11T/2175 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-14BT/3276 and the mistake is of only of 14BT/3276 in place of 11T/2175.

7. It is not in dispute that goods were being transported by the dealer through stock transfer from its unit at Saharanpur to its sale depot at Ghaziabad. 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-14BT/3276.

8. As there is no dispute to the fact that it is a case of stock transfer 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. The number of vehicle through which the goods were transported was manually corrected by the transporter while only there is a minor discrepancy in Part-B of the e-way bill where the description of the vehicle is entered by the dealer.

9. In view of said fact, the orders dated May 21, 2018 and August 5, 2019 are unsustainable in the eyes of law and both the orders are hereby set aside.

10 Writ petition succeeds and is hereby allowed.

**Order Date :- 12.4.2024**

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