

**Neutral Citation No. - 2023:AHC:200160**

**RESERVED**

**Court No. - 5**

**Case :-** WRIT TAX No. - 687 of 2019

**Petitioner :-** M/S Vacmet India Ltd.

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

**Counsel for Petitioner :-** Ankur Agarwal, Suyash Agarwal

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

**HON'BLE PIYUSH AGRAWAL, J.**

1. Heard Shri Suyash Agarwal, learned counsel for the petitioner and Shri Rishi Kumar, learned Additional Chief Standing Counsel for the State - respondents.
2. The instant Writ Tax is being entertained in view of the fact that no GST Tribunal has been constituted in the State of Uttar Pradesh pursuant to the notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.
3. The present writ petition has been filed challenging the order dated 23.02.2019 passed by the Additional Commissioner, Grade – 2 (Appeal), State Tax, Mathura as well as the order dated 16.05.2018 passed by the Assistant Commissioner, State Tax, Mobile Squad, Unit – 4, Mathura under section 129(3) of the UPGST Act.
4. Brief facts of the case are that the petitioner is a Company registered under the Companies Act, 1956 and deals in production of polyester films, BOPP films, specialty coated films and metallized paper, etc. in India. On 14.05.2018, while the goods were transported from manufacturing unit of the petitioner at Agra to its unit at Kosi Kalan, Mathura, the vehicle was intercepted and detention order in Form GST MOV 06 under section 129(1) UPGST Act was passed on the ground that part – B of the e-way

bill was not filled up. Thereafter, a show cause notice was issued on the same day, i.e., 14.05.2018, proposing to impose tax amounting to Rs. 1,82,000/- on the estimated value of Rs. 6,50,000/-, together with penalty of Rs. 1,82,000/-. The petitioner submitted its reply stating that non-filling up of Part B of e-way bill was a mistake on the part of the transporter and as soon as the petitioner realized the mistake, e-way bill was updated and the Part B was filled up. Thereafter, on 16.05.2018, the respondent no. 2 passed the penalty order under section 129(3) of the UPGST Act. Against the penalty order, the petitioner preferred an appeal before the respondent no. 1, which also dismissed vide impugned order dated 23.02.2019 affirming the penalty order dated 16.05.2018. Hence, this writ petition.

5. Learned counsel for the petitioner submits that the petitioner, being a registered dealer, is adhering to the provisions of GST in letter and spirit. In the normal course of business, the petitioner made a stock transfer from its Agra unit to its Kosi Kala unit at Mathura, which was accompanying with all proper documents, such as, stock transfer of challan, e-way bill, transporter bill and no discrepancy was found in the said documents, except Part 'B' of e-way bill, which was required to be filled up by the transporter was not filled, but as soon as the said discrepancy came to the notice of the petitioner, the same was updated and filled up immediately and produced before the authority concerned, along with its reply. He further submits that in the goods in question, there is no liability of tax as the goods were being sent from the petitioner's one Unit to another. He further submits that there is no element of any evasion of tax. He further submits that the goods were in transit, which was accompanying with documents and there was a technical breach, after issuance of show cause notice, the same was rectified and therefore, the authority concerned ought to have released the goods without any demand/penalty. He further submits that specific ground was

raised before the authorities concerned that there was no intention to evade payment of tax as the goods in question were going from the petitioner's one unit to another unit at Mathura as stock transfer and since there was no element of tax evasion involved in the present case, the proceedings ought to have been dropped by the authorities below. In support of his submissions, he has placed reliance on the judgement of this Court in ***Shyam Sel & Power Limited Vs. State of U.P.*** [(2023) 11 Centax 99 ) All]) as well as the judgement of the High Court of Telangana in ***M/s Same Deutzfahr India P Limited Vs. State of Telangana*** [Writ Petition No. 13392/2020, decided on 23.09.2020]. He prays for allowing the writ petition.

6. Per contra, learned ACSC supports the impugned orders and submits that at the time of interception of the goods in question, genuine documents were not produced as required under rule 138 of the GST Rules as the e-way bill, part 'B' was not filled up and therefore, the proceedings have rightly been initiated against the petitioner. He further submits that in the event the goods were not detained, the petitioner ought to have succeeded in not disclosing the goods in its books of account. He prays for dismissal of the writ petition.
7. After hearing learned counsel for the parties, the Court has perused the records.
8. Admitted, the goods in question were going to petitioner's one unit to another, i.e., from Agra to Mathura, as stock transfer. The said goods were accompanying with stock transfer challan, in which no discrepancy, whatsoever, was pointed out. Further, the consignment note/bilty was also accompanying the goods, in which also no discrepancy was pointed out. E-way bill was also accompanying the goods, in which part 'A' was duly filled, but part 'B' was not filled up, on the basis of which, the present proceedings were initiated against the petitioner. At the time of

interception of the goods, when it came to the notice of the petitioner, the same was duly filled up and produced before the authorities along with the reply, but not being satisfied with the reply, the impugned penalty order was passed against the petitioner, which was confirmed by the appellate authority in appeal. In the appeal, a specific point was raised that the goods in question are raw material, which were going from one unit to another unit as stock transfer and there was no intention of the petitioner to evade any tax as there was no liability for payment of tax for stock transfer being made from one unit to another, but still, by the impugned order, the penalty order has been confirmed.

9. The record further reveals that in pursuance of the show cause notice, the petitioner filed reply along with duly filled up Part 'B' of e-way bill. Once it was brought to the notice of the authorities that the discrepancy, which was pointed out, was rectified before passing of the seizure order, the authority ought to have taken a lenient view in the facts & circumstances of the present case.
10. In the present case, the goods were sent from one unit to another. Learned ACSC could not point out any provision under the GST Act, which could show that while stock transfers are made within the State of Uttar Pradesh from one unit to another, i.e., Agra to Mathura, the tax is to be charged as the goods in question, which were raw material and not a finished goods.
11. The specific point was raised before the authority also, but the authority failed to consider the same. Since the respondents have utterly failed to show any intention to evade payment of tax in the present case, the impugned order cannot be justified.
12. This Court in *Shyam Sel & Power Limited* (supra) has held as under:-

*“9. Admittedly, the goods in question were coming from West Bengal to Kanpur, along with tax invoice of the petitioner, consignment note of the transporter and e-way bill of the purchaser. Though the e-way bill was cancelled by the purchaser, but it is stated that the same has not been intimated to the petitioner. Once the goods were seized and the petitioner, after inquiring the fact from the purchaser about the attending fact which led to cancellation of e-way bill by the purchaser, it was communicated to the respondents, but not being satisfied, the goods were detained and the seizure order was passed. While issuing notice or seizing or passing the demand order under section 129(3) of the CGST Act, no observation had been made with regard to intent to evade payment of tax. Section 68 of the CGST Act requires the person in-charge of the vehicle carrying certain documents accompanying the consignment of goods above Rs. 50,000/- such as, tax invoice and e-way bill. On inspection of the vehicle, e-way bill of the purchaser was not found OK and therefore, proceedings have been initiated under section 129(3) of the CGST Act.*

*10. For invoking the proceeding under section 129(3) of the CGST Act, section 130 of the CGST Act was required to be read together, where the intent to evade payment of tax is mandatory, but while issuing notice or while passing the order of detention, seizure or demand of penalty, tax, no such intent of the petitioner was observed. Once the dealer has intimated the attending and mediating circumstances under which e-way bill of the purchasing dealer was cancelled, it was a minor breach. The authority could have initiated proceedings under section 122 of the CGST Act instead of proceedings under section 129 of the CGST Act. Section 129 of the CGST Act must be read with section 130 of the said Act, which mandate the intention to evade payment of tax. Once the authorities have not observed that there was intent to evade payment of tax, proceedings under section 129 of the CGST Act ought not to have been initiated, but it could be done under section 122 of the CGST Act in the facts & circumstances of the present case. It is also not in dispute that after release of the goods, the same were sold to P.L. Trading Company.*

*11. Section 129 of the CGST Act deals with detention, seizure and release of goods in case violation of the provisions of the CGST Act is found. Section 130 deals with confiscation of goods or conveyance and levy of penalty. Both the sections revolve around a similar issue and provide for the proceedings available at the hands of the proper Officer upon him having found the goods in*

violation of the provisions of the Act, Rule 138 of the Rules framed under the CGST Act being one of them. Upon a purposive reading of the sections, it would suffice to state that the legislation makes intent to evade tax a sine qua non for initiation of the proceedings under sections 129 and 130 of the CGST Act.

12. This aspect is no more *res integra* and the same stands finalized in the judgement of the Apex Court in **M/s Satyam Shivam Papers Private Limited** (supra); wherein, it has been categorically stated that:-

“As notices hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioners to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioners.”

13. Further, the High Court of Telangana in **M/s Same Deutzfahr India P Limited** (supra) has held as under:-

14. Once it is clear that petitioner has additional place of business in the State of Telangana in Bonglur village, Ibrahimpatnam Mandal and the goods were being transported to that address from its Corporate office at Ranipet, Tamil Nadu State, it cannot be said that the petitioner was indulging in any illegal activity when the tax invoice shows that the supplier is the petitioner's Corporate office in Ranipet, Tamil Nadu State and that it was shipped to its Depot in Bonglur village in Ibrahimpatnam Mandal.

15. There was no occasion for the 3rd respondent to collect tax and penalty from the petitioner on the pretext that there is illegality in the transport of goods as it would merely amount to stock transfer and there is no element of sale of goods or services in it.

14. Since the goods in question were stock transfer from one Unit to another within the State of Uttar Pradesh (Agra to Mathura) and in absence of any provision being pointed out by the learned ACSC or any authority below that the goods (stock transfer) in transit were liable for payment of tax, no evasion of tax could be attributed to the goods in question. Once there was no intention to evade payment of tax, the entire proceedings initiated against the petitioner are vitiated and are liable to be set aside.

15. In view of the aforesaid facts & circumstances of the case, the order dated 23.02.2019 passed by the Additional Commissioner, Grade – 2 (Appeal), State Tax, Mathura as well as the order dated 16.05.2018 passed by the Assistant Commissioner, State Tax, Mobile Squad, Unit – 4, Mathura cannot be sustained in law and the same are hereby quashed.
16. The writ petition succeeds and is allowed.
17. The fine/penalty, if any, deposited by the petitioner pursuant to the impugned orders shall be refunded to the petitioner within a period of one month from the date of receipt of a certified copy of this order, failing which the petitioner shall be entitled to interest @ 8% per annum from the date of deposit of the amount till the actual payment made to the petitioner.
18. The respondents - Authorities are at liberty to recover the interest from the erring Officer concerned.
19. List the matter after two months in Chamber, by which time an affidavit of compliance of refund of the amount shall be filed.

**Order Date :-17/10/2023**

*Amit Mishra*