

**Court No. - 1**

**Case :-** WRIT TAX No. - 1422 of 2022

**Petitioner :-** S/S Meghdoot Enterprises

**Respondent :-** Additional Commissioner (Appeal), Central Goods And Services Tax And Central Excise And Another

**Counsel for Petitioner :-** Bipin Kumar Pandey

**Counsel for Respondent :-** C.S.C., Parv Agarwal

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

1. Heard counsel appearing on behalf of the parties.

2. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the order passed in appeal dated July 28, 2022 wherein the penalty imposed on the petitioner under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") has been affirmed.

3. Mr. Aditya Pandey, learned counsel appearing on behalf of the petitioner has submitted that the only ground for levy of the penalty was that the goods were unloaded at a place that was not registered in the registration certificate. He submitted that the godown where the goods were unloaded were earlier registered in the erstwhile Value Added Tax regime. He further submitted that this godown is also the place of business of the petitioner. He submitted that there was neither any discrepancy with regard to the tax invoices and the e-way bill nor was there any mismatch of the goods as enumerated in the tax invoices and in the e-way bill. He relied on a judgement of this Court in **M/s Hindustan Herbal Cosmetics v. State of U.P. and 2 Others** (decided on

January 2, 2024 Writ Tax No.1400 of 2019 [Neutral Citation No. - 2024:AHC:209]) to buttress his argument that without there being any *mens rea* for evasion of tax, no penalty can be imposed under Section 129 of the Act. He further submitted that neither the original order nor the order passed in appeal brings out any intention whatsoever for evasion of tax.

4. Per contra, learned counsel appearing on behalf of the revenue authority submits that the place of unloading of the goods was distinct from the address provided in the e-way bill of the consignee. He, accordingly, submits that this is a fatal flaw and burden of proof is shifted on the assessee to show that there was no intention to evade tax.

5. One may look into the relevant paragraph of the judgement of this Court in **M/s Hindustan Herbal Cosmetics (Supra)** that is delineated below :-

*"8. Upon perusal of the judgments, the principle that emerges is that presence of mens rea for evasion of tax is a sine qua non for imposition of penalty. A typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty. In the case of M/s. Varun Beverages Limited (supra) there was a typographical error in the e-way bill of 4 letters (HR – 73). In the present case, instead of '5332', '3552' was incorrectly entered into the e-way bill which clearly appears to be a typographical error. In certain cases where lapses by the dealers are major, it may be deemed that there is an intention to evade tax but not so in every case. Typically when the error is a minor error of the nature found in this particular case, I am of the view that imposition of penalty under Section 129 of the Act is without jurisdiction and illegal in law. "*

6. As evident from the judgement above, intention to evade tax is *sine qua non* for imposition of penalty. The facts in the present clearly indicate that the place where the goods were unloaded is the godown belonging to the petitioner and not to any third party. It is not in dispute that this particular godown was registered as place of business of the petitioner in the erstwhile Value Added Tax regime.

7. In light of the above, one may come to the conclusion that there is no intention to evade tax whatsoever. The imposition of penalty in such circumstances is not warranted. The judgement of the Madurai Bench of Madras High Court in **Algae Labs Pvt. Ltd., Rep. by its Managing Director, Shri Adhi Visvanathan, 7/116A, Chotta Panikan Theri Villai, South Thamaraikulam & Post Agasteeswaram Taluk, Kanyakumari - 629 701 v. State Tax Officer-I Adjudication, CTO Building Complex AR Lane Road, Palayakottai, Tirunelveli - 627 002** (decided on April 4, 2022, Writ Petition (MD) No.4958 of 2022 and W.M.P. (MD) No.4073 of 2022) also supports the case of the petitioner that unloading of goods at a different place by itself would not lead to imposition of penalty.

8. In light of the same, impugned order dated July 28, 2022 is quashed and set aside. The writ petition is allowed. Consequential reliefs to follow.

9. Any amount that has been deposited by the assessee in relation to the above demand shall be returned to the assessee within a period of six weeks from date.

**Order Date :- 21.3.2024 Dev/-**

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