

Court No. - 7

Case :- WRIT TAX No. - 1402 of 2024

Petitioner :- M/S Metloy Cast

Respondent :- Additional Commissioner Grade 2 And Another

Counsel for Petitioner :- Sundeep Agarwal **Counsel for**

Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Shri Sundeep Agarwal, learned counsel for the petitioner and Shri RaviShankar Pandey, learned ACSC for the State - respondents.
2. The instant writ petition has been filed against the impugned order dated 09.05.2024 passed by the Additional Commissioner, Grade - 2, State Tax, Agra as well as the impugned order dated 06.12.2023 passed by the Assistant Commissioner, Mobile Squad - 10, Agra.
3. Learned counsel for the petitioner submits that the petitioner is a partnership firm and engaged in the business of manufacture and supplier of broad range of pipe fitting, pump spares casting, etc. He further submits that on 28.11.2023, the petitioner made outward supply of some goods along with requisite e-way bill and tax invoice. He further submits that while filling the Part-B of the e-way bill in the portal, the portal closed/hanged and therefore, Part - B of the aforesaid e-way bill was not saved and therefore, the Part B of the e-way bill remained unfilled. He further submits that goods were intercepted in Korai, Agra on 01.12.2023 while moving from Ahmedabad to West Bengal and thereafter, the respondent no. 2 passed the detention order on 04.12.2023 and vide impugned order dated 06.12.2023, the penalty order has been passed. Aggrieved by the order dated 06.12.2023, the petitioner preferred an appeal under section 129(3) of the GST Act, which has been rejected vide impugned order dated 09.05.2024.
4. Learned counsel for the petitioner further submits that at the time of interception of the vehicle in question, all the requisite documents were produced and the goods were found as per the description mention in the tax invoice. He further submits that while passing the penalty order under section 129(3) of the GST Act, no reason has been assigned. He further submits that Part - B of the e-way bill could not be filled due to technical glitch. He further submits that there was no intention to evade payment of tax. He further submits that all other documents were duly filled, except Part - B of the e-way bill and the authorities below have not whispered a word indicating intention of the petitioner to evade payment of tax. In support of his submissions, he has placed reliance on the judgement of the Division Bench of this Court in *M/s Tata*

Hitachi Construction Machinery Company Private Limited Vs. State of U.P. & Others [Writ Tax No. 2148/2025, decided on 09.05.2025] as well as the judgements of this Court in **M/s Citykart Retail Private Limited Vs. the CCT & Another** [Writ C No. 22285/2019, decided on 06.09.2022] and **M/s Roli Enterprises Vs. State of U.P. & Others** [Writ Tax No. 937/2022, decided on 16.01.2024].

5. Per contra, learned ACSC supports the impugned orders and submits that the goods were in movement and Part - B of the e-way bill was not duly filled and therefore, the proceedings have rightly been initiated against the petitioner.
6. After hearing learned counsel for the parties, the Court has perused the record.
7. The short issue involved in the present case is with regard to penalty under section 129(3) of the GST Act on the basis of non-filling of Part -B of the e-way bill. The record shows that the stand of the petitioner was that due to technical glitch, Part - B of the e-way bill could not be filled, but there was no intention to evade payment of tax as well as none of the authorities below has recorded any finding with regard to intention to evade payment of tax. The Division Bench of this Court in **M/s Tata Hitachi Construction Machinery Company Private Limited** (supra) has categorically held that non-filling of e-way bill will not attract penalty under section 129(3) of the GST Act. The same view has been reiterated by this Court in **M/s Citykart Retail Private Limited** (supra) and **M/s Roli Enterprises** (supra). Further, the record reveals that due to technical error, Part - B of the e-way bill could not be filled, which has not been disputed at any stage.
8. In the light of the aforesaid facts, there was no intention of the petitioner to evade payment of tax, which would amount to levy of penalty under section 129(3) of the GST Act.
9. In view of the aforesaid facts & circumstances of the case, the impugned order dated 09.05.2024 passed by the Additional Commissioner, Grade - 2, State Tax, Agra as well as the impugned order dated 06.12.2023 passed by the Assistant Commissioner, Mobile Squad - 10, Agra cannot be sustained in the eyes of law. The same are hereby quashed.
10. The writ petition succeeds and is allowed.
11. The authority concerned is directed to refund any amount deposited by the petitioner in pursuance of the present proceedings initiated against the petitioner within a period of two months from the date of production of a certified copy of this order.

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Order Date :- 24.7.2025

Amit Mishra