

Court No. - 7

Case :- WRIT TAX No. - 913 of 2022

Petitioner :- M/S Shakuntalam Associates

Respondent :- Additional Commissioner Grade-2 (Appeal)-V, Commercial Tax And 2 Others

Counsel for Petitioner :- Suyash Agarwal **Counsel for Respondent :-** C.S.C.

Hon'ble Piyush Agrawal,J.

Heard Shri Suyash Agarwal, learned counsel for the petitioner and learned ACSC for the State - respondents.

The instant writ petition has been filed against the impugned order dated 30.04.2021 passed by the respondent no. 2 as well as the impugned appellate order dated 23.10.2021 passed by the respondent no. 1.

Learned counsel for the petitioner submits that the goods in question were in transit from Delhi to Delhi accompanying with requisite documents, i.e., tax invoice, away bill, bilty, etc., but only on the e-way bill, the name of the transporter was not mentioned. On the said ground, the goods were detained and thereafter, seized and order under section 129(3) of the GST Act was passed. He further submits that the statement of the truck driver was recorded, who stated that the goods were coming from Delhi and were going to Rajendra Nagar, Pillar No. 171, Ghaziabad. On the said premise, the goods were seized, to which the petitioner filed detailed objection. Not being satisfied with the same, the impugned order was passed, against which the petitioner preferred an appeal specifically taking the ground that the goods were moving from Delhi to Delhi and the driver of the vehicle diverted his vehicle to transport company's godwon at Chikamberpur so that fully loaded vehicle be transported to Transport Nagar, Alipur, Delhi. He further submits that it is a matter of common knowledge that between Delhi and Ghaziabad, there is no man's land, where, various transport godwons are situated.

He further submits that wrong finding has been recorded that the place of destination was wrongly shown; whereas, the tax invoice and the GR specifically mention the place of destination as Chikamberpur, Delhi and the same are being mentioned in the e-way bill (Annexure No. 19 to the writ petition). He further submits that merely on a technical ground of breach for not mentioning the name of the transporter, the same will not amount to any intention to evade payment of tax.

Per contra, learned ACSC supports the impugned orders and submits that at no stage, the transporter's name was disclosed or any documentary evidence was

brought on record. He further submits that the driver, at the first instance, made a correct statement that the goods were going to Ghaziabad and therefore, the proceedings have rightly been initiated.

After hearing learned counsel for the parties, the Court has perused the record.

The record shows that the goods were transported from Delhi to Delhi, against which tax invoice, e-way bill, etc. were issued. On perusal of the e-way bill (Annexure No. 19 to the writ petition), it is clear that the transporter's name was not mentioned, but the truck number and all other details were clearly mentioned. An inference has been drawn on the statement of the truck driver that the goods were coming from Delhi meant for Ghaziabad. The record further shows that in the grounds of appeal, specific averment has been made that the goods gone for full truck load to its godwon, which has not been denied at any stage. Further, in absence of any finding with regard to intention to evade payment of tax, the penalty proceedings under section 129 of the GST Act cannot be attracted and therefore, the same cannot be justified as held by this Court in ***M/s. Varun Beverages Limited v. State of U.P. and 2 others*** reported in 2023 U.P.T.C. (113) 331 and also the judgment of the Supreme Court in ***Assistant Commissioner (ST) and others v. M/s. Satyam Shivam Papers Pvt. Ltd. And another*** reported in 2022 U.P.T.C. (110) 269 (SC).

In view of the aforesaid facts & circumstances of the case, the impugned order dated 30.04.2021 passed by the respondent no. 2 as well as the impugned appellate order dated 23.10.2021 passed by the respondent no. 1 cannot be sustained in the eyes of law. The same are hereby quashed.

The writ petition succeeds and is allowed.

Order Date :- 30.7.2025

Amit Mishra