

**Case :-** WRIT TAX No. - 1658 of 2018

**Petitioner :-** M/S S.R. Sales 51/17 Maa Kripa Complex Rani Ganj  
Nayaganj

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Rahul Agarwal

**Counsel for Respondent :-** C.S.C., Anant Kumar Tiwari

**Hon'ble Rohit Ranjan Agarwal, J.**

1. Heard Sri Devansh Misra, Advocate holding brief of Sri Rahul Agarwal, learned counsel for the petitioner and Sri Rishi Kumar, learned Standing Counsel for the State. Sri Anant Kumar Tiwari, Advocate has put in appearance on behalf of Union of India.

2. This writ petition has been filed challenging the penalty order dated 02.11.2018 passed under Section 129(3) of the U.P. Goods and Services Tax Act, 2017 (*hereinafter called as "GST Act, 2017"*) and the order dated 10.12.2018 passed by the Additional Commissioner Grade-II (Appeal)- I, State Goods and Service Tax, Kanpur.

3. The case is brief, is that the petitioner who is the consignee of the goods was bringing the goods through the transporter from State of Karnataka to the State of U.P. The goods were carried by the transporter from Birur, Karnataka after the required documents were handed over and e-way bill which was generated on 10.10.2018 at 8:38 p.m. The goods were carried through Truck No. MH-40BG/6078. The goods reached Amrawati on 17.10.2018 and it was shifted to another truck being Truck No. U.P.-78DT/6036 at 5:31 p.m. Thereafter, the goods were brought to Nagpur where the goods were transferred to Truck No. U.P.-78CN/4605 at 7:25 p.m. The goods which were in movement from Nagpur to the place of

destination were intercepted on 22.10.2018 at Lakhanpur, Kanpur. The truck was detained. Thereafter, detention order was passed by the authorities. Subsequently, the proceedings were initiated for imposing penalty after issuance of notice which was replied by the owner of the goods. A penalty order was passed on 02.11.2018, against which a first appeal was filed before respondent no. 4 which was rejected vide order impugned dated 10.12.2018. Hence, the present writ petition.

4. Sri Devansh Misra, learned counsel for the petitioner submitted that the goods were dispatched by the cosigner to the consignee i.e. petitioner through the transporter. The truck which was bringing the goods was changed twice at Amrawati and thereafter at Nagpur. He further contended that penalty order as well as appellate order has been wrongly passed solely on the surmises that Truck No. U.P.-78DT/6036 had already brought the goods into the State of U.P. and this was the second shipment by the consignee bringing in the goods into the State of U.P. using Truck No. UP-78CN/4605.

5. Per contra, learned Standing Counsel while defending the penalty order as well as order passed by the appellate authority submitted that first appellate authority had rightly found that the goods which were brought upto Nagpur by Truck No. U.P.-78DT/6036 was in fact carried upto Kanpur and it was the second transaction done by the petitioner bringing in the goods from Nagpur to the State of U.P. through Truck No. U.P.-78CN/4605. He then contended that during the examination of the documents of Truck No. U.P.-78DT/6036, it has been found that e-way bill which was carried by that truck was e-way bill No. 141063074371, while the goods which were detained from Truck No. U.P.-78CN/4605 carried e-way bill No. 161073493422.

6. Learned Standing Counsel has invited the attention of the Court to para 8 of the counter affidavit wherein it has been stated that transporter at the time of detaining of the truck had produced the original copy of invoice which is against the provisions of Rule 48 of U.P. Goods and Service Tax Rules, 2017. He further contends that the duplicate copy must have been used in transporting the goods through vehicle No. U.P.-78DT/6036.

7. Having heard learned counsel for the parties and from perusal of record, I find that this is a case where the authorities had proceeded merely on presumption that goods which were being transported from Birur (Karnataka) to Kanpur (U.P.) were in fact brought by the petitioner from Nagpur into the State of U.P. using two trucks, one U.P.-78DT/6036 and U.P.-78CN/4605. It was only when the Truck No. U.P.-78CN/4605 was detained at Lakhanpur, Kanpur on 22.10.2018, it was found that it was carrying the e-way bill No. 161073493422 along with all the required documents but a presumption was drawn that the earlier Truck No. U.P.-78DT/6036 had brought the goods from Nagpur to Kanpur (UP) using the same e-way bill.

8. There is no material on record to demonstrate that goods were brought twice by the petitioner. The petitioner had brought on record the e-way bill through annexure no. 2 to writ petition which demonstrates that cosigner has sent the goods through the transporter and e-way bill was generated on 10.10.2018 which clearly reflects that goods originated from Birur and the transporter changed the truck at Amrawati and thereafter at Nagpur. The truck in question which was detained at Lakhanpur, Kanpur on 22.10.2018 through which goods were being carried being U.P.-78CN/4605 accompanying e-way bill no. 161073493422, the presumption drawn by both the authorities cannot be accepted

without there being any material on record that earlier the petitioner had brought the goods from Nagpur through Truck No. U.P.-78DT/6036.

9. Further, I find that the argument raised by learned Standing Counsel cannot be accepted which is based on presumption and without any valid material on record. From perusal of the order impugned, I find that the proceedings has been initiated solely on the basis of presumption that goods having been brought into the State using two different vehicles by same e-way bill. Once, it was found that the vehicle was carrying the required documents along with the e-way bill, no question arose for taking some other view.

10. This Court finds that the orders passed on 02.11.2018 and 10.12.2018 are unsustainable in the eyes of the law and the same are hereby set aside.

11. The revision succeeds and is hereby allowed.

12. The amount already deposited shall be released in favour of the petitioner within 15 days from today.

**Order Date :- 2.2.2023**

V.S.Singh