

Court No. - 10

Case :- WRIT TAX No. - 958 of 2019

Petitioner :- M/S Varun Beverages Limited

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

Heard Sri Shubham Agrwal, learned counsel for the petitioner and Sri R.S. Pandey, learned Standing Counsel for the State.

This writ petition has been filed assailing the penalty order dated 12.06.2018 passed by respondent no. 2 and the order dated 01.07.2019 passed by appellate authority, respondent no. 3.

The petitioner before this Court is a registered dealer under the Goods and Service Tax Act, 2017 (*hereinafter called as "Act of 2017"*). It is engaged in the business of manufacturing and sale of aerated water, fruit juice based drinks etc. The dealer was making a stock transfer from its unit at Gautam Buddha Nagar, Greater NOIDA depot to a sale depot at Kuberpur, Agra. The goods were being shifted through Truck No. HR-73/6755 which was accompanying delivery challan, e-way bill and bilty on 10.06.2018. The mobile squad on 10.06.2018 intercepted the goods and detained the vehicle in question along with the goods on the premise that in the e-way bill the vehicle number has been mentioned as UP-13T/6755. Detention order was passed on 11.06.2018. Thereafter, a penalty order under Section 129(3) of the Act of 2017 was passed imposing a tax of Rs.1,86,834/- and penalty of the same amount, totaling Rs.3,73,668. Against the said order, an appeal under Section 107 of the Act was preferred by the dealer before the Additional Commissioner, Grade-II (Appeal-III) Commercial Tax, Agra. The appeal was

dismissed vide order impugned dated 01.07.2019. Hence, the present writ petition.

Sri Shubham Agrawal, learned counsel for the petitioner submitted that it was a case of stock transfer by the dealer from its unit at Gautam Buddha Nagar to sale depot at Agra. The goods which were in transit were accompanied by necessary documents and the e-way bill. The only mistake on the part of the person in-charge who had downloaded the e-way bill was wrong entry of the Vehicle No. UP-13T in place of HR-73. Except this fact the goods were being transported along with all the necessary documents. According to learned counsel, there was no intention to evade the tax on behalf of dealer and reliance has been placed upon decision of the Apex Court in case of **Assistant Commissioner (ST) and others vs. M/s. Satyam Shivam Papers Pvt. Ltd. and another, 2022 UPTC (110) 269**. The said judgment has been relied upon by Division Bench of this Court in case of **M/s. Gobind Tobacco Manufacturing Corporation and another vs. State of U.P. and others, 2022 UPTC (111) 1080**. Reliance has also been placed upon another Division Bench judgment of this Court in case of **M/s. Ramdev Trading Company and another vs. State of U.P. and others, 2017 UPTC 1200**.

Per contra, learned Standing Counsel submitted that the circular of the year 2018 issued by the Commissioner provides that in case of any mistake in entering details of the transporter in the e-way bill, one or two digit can be ignored by the taxing authorities, but where the entire digit as has been entered in the e-way bill is not matching with the vehicle in transit, the explanation afforded by the dealer cannot be accepted. He further contends that the registration number of vehicle through which the goods were in transit was HR-73/6755, while the number entered in the e-way bill was UP-13T/6755.

I have heard respective counsel for the parties and perused the material on record.

The sole controversy engaging the attention of the Court is as to whether the wrong mention of number of Vehicle No. HR-73/6755 through which the goods were in transit and detained by the taxing authorities would be considered as a human error and will be covered under the circular No. 41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018, as the number mentioned in the e-way bill was UP-13T/6755 and the mistake is of only of HR-73 in place of U.P.-13T.

It is not in dispute that goods were being transported by the dealer through stock transfer from its unit at Gautam Buddha Nagar to its sale depot at Agra. The bilty which is the document of the transporter mentions the vehicle number as HR-73/6755. From perusal of the e-way bill which has been brought on record, it is clear that the vehicle number has been mentioned as UP-13T/6755. It is apparently clear that mistake is as far as the registration of the vehicle in a particular State and in place of HR-73, UP-13T has been mentioned in the e-way bill, while number of the vehicle 6755 is same.

As there is no dispute to the fact that it is a case of stock transfer and there is no intention on the part of dealer to evade any tax, the minor discrepancy as to the registration of vehicle in State in the e-way bill would not attract proceedings for penalty under Section 129 and the order passed by the detaining authority as well as first appellate authority cannot be sustained. Moreover, the Department has not placed before the Court any other material so as to bring on record that there was any intention on the part of the dealer to evade tax except the wrong mention of part of registration number of the vehicle in the e-way bill. The vehicle through which the goods were transported

and the bilty showed the one and the same number while only there is a minor discrepancy in Part-B of the e-way bill where the description of the vehicle is entered by the dealer.

In view of said fact, the orders dated 12.06.2018 and 01.07.2019 are unsustainable in the eyes of law and both the orders are hereby set aside.

Writ petition succeeds and is hereby allowed.

Order Date :- 2.2.2023

V.S.Singh