

Neutral Citation No. - 2024:AHC:199371

Judgment Reserved on 18.12.2024

Judgment delivered on 20.12.2024

Court No. - 2

Case :- WRIT TAX No. - 2177 of 2024

Petitioner :- M/S Vishva Electrotech Ltd

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

Counsel for Petitioner :- Vedika Nath, Yashonidhi Shukla

Counsel for Respondent :- Ravi Shanker Pandey, A.C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard learned counsel for the petitioners, and Sri Ravi Shanker Pandey, learned Standing Counsel for the State-respondents.
2. By means of this writ petition, the petitioner has made the following prayer:-

“A. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 26.11.2024 (Annexure No.1) passed by respondent no.2

B. Issue a writ, order or direction in the nature of mandamus commanding the respondent no.3 to pass the order treating the petitioner to be the owner of the goods

C. Issue a writ, order or direction in the nature of certiorari quashing the impugned order passed under Section 129 (3) of the Act dated 06.11.2024 (Annexure No.3)

C.

E.”

3. Learned counsel for the petitioner has submitted that the petitioner is a company duly registered under the GST Act, which deals in various goods related to Air Pump, Gas Compressor, Fans and Ventilators. The petitioner is having multi-registration as it is

actively involved in different states and in the State of UP., the company is registered at Ghaziabad.

4. He submits that the stock transfer was made from its Orissa branch to Kanpur, Uttar Pradesh by the petitioner (the consignor of the goods). The goods were in transit through Truck No. DL1LAJ3127 which was supported by E-Invoices and a valid E-way Bill. The goods in transit were intercepted on 28.10.2024 by the respondent no.3 and GST MOV-01 was issued in the name of the driver at Kanpur and the order of physical verification of the goods were issued on 29.10.2024 in Form GST MOV-02. Admittedly, I.D. of the driver was created and on physical verification, no difference or variance was found in quantity of the goods as per the invoice, but by mistake, in the e-way bill, place of destination as Ghaziabad was mentioned.
5. He further submits that in the e-way bill, e-tax invoice, the goods were sent to Kanpur office, but by inadvertent mistake, the delivery place was mentioned as Ghaziabad and on this ground alone, the goods were detained.
6. He next submits that when the petitioner came to know about it, the petitioner moved an application in terms of Government Circular dated 31.12.2018 whereof Column No.1 and Rows No.6, specifically states that *“if the invoice of any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner”*, but instead of treating the petitioner as a owner of the goods, the order has been passed in the name of driver. He further submits against the said order, an application was filed, but the same has been rejected against which an appeal was preferred, which was also met the same fate.
7. In support of his submission, learned counsel for the petitioner has relied upon the judgement of this Court passed in the case of ***M/s Riya Traders Vs. State of U.P. and another (Writ Tax No. 28 of 2023)***, decided on 17.01.2023.

8. He further submits that the circular is binding upon the authorities and the authorities are bound to follow the same.
9. In support of his submission, he placed reliance upon the judgment of Hon'ble Apex Court passed in the case of *Union of India Vs. Arviva Industries (I) Ltd., [2008] 12 STT 28 (SC)*, decided on 10.01.2007.
10. He further submits that a specific pleadings with regard to Circular dated 31.12.2018 has been made in para no.19 of the present writ petition, but the same has not been denied in paragraph no. 15 of the counter affidavit.
11. *Per contra*, learned Standing Counsel supports the impugned order. He further submits that in the e-way bill, place of delivery of goods was shown as Ghaziabad, but the goods were being transported to Kanpur, Uttar Pradesh and therefore, the proceedings have rightly been initiated against the petitioner.
12. After hearing the parties, the Court has perused the records.
13. Admittedly, the goods were being transported as stock transfer from Orissa branch to Kanpur, Uttar Pradesh. When the goods were intercepted, the requisite documents required under the GST Act, were found to be accompanied therewith. Further, on physical verification, no discrepancy whatsoever was found with regard to quantity of goods in transit, rather mere a discrepancy was found that in the e-way bill, place of transferee was mentioned as Ghaziabad whereas in tax invoice, it was mentioned as Kanpur.
14. The aforesaid circular clearly refer that in case, goods in transit are accompanied with specified documents then either consignor or consignee should be treated as the owner of the goods.
15. In the case in hand, petitioner is both i.e. the consignor and consignee as the goods in question is a stock transfer from State of Orrisa to Kanpur, Uttar Pradesh and, therefore, the petitioner ought to have been treated as the owner of the goods.

16. Once the petitioner being the owner of the goods, approached the authorities, they were bound by the Circular dated 31.12.2018 to consider him the owner of the goods. The relevant part of the Circular dated 31.12.2018 is being quoted as follows: -

6.	<i>Who will be considered as the 'owner of the goods' for the purposes of section 129 (1) of the CGST Act?</i>	<i>It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the cosignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.</i>
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17. Further, the specific pleadings have been raised in para no.19 of the present writ petition, which has not been denied in corresponding paragraph no.15 of the counter affidavit filed by the respondents.
18. The Hon'ble Apex Court in the case of *Arviva Industries (I) Ltd.* has specifically held that the circulars are binding upon the authorities, it is not a case of the respondents that the Circular dated 31.12.2018 has been rescinded or superseded.
19. In view of the judgment of this Court passed in the case of *M/s Riya Traders (supra)* wherein it has specifically been held that once the consignor and consignee of the goods comes forward, then the proceedings should have been initiated against the owner of the goods in accordance with the law. Therefore, the authorities were not justified not recognizing the petitioner as the owner of the goods, which is evident from the material available on record.

- 20.** In view of the facts as stated above, the impugned orders cannot sustain in the eyes of law and the same are hereby quashed.
- 21.** The writ petition is accordingly **allowed** with direction to the respondent concerned to consider the petitioner as the owner of the goods as contemplated in Circular dated 31.12.2018 as well as in view of the judgment passed in the case of *M/s. Riya Traders (supra)* by this Court, and pass an order within ten days from the date of production of certified copy of this order.

Order Date :- 20.12.2024

Pravesh Mishra/-

(PIYUSH AGRAWAL, J.)