

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Neutral Citation No. - 2024:AHC:19158

Court No. 1

Present:

The Hon'ble Justice Shekhar B. Saraf

WRIT TAX No. - 141 of 2023

M/s GLOBE PANEL INDUSTRIES INDIA PVT. LTD.

v.

STATE OF U.P. AND OTHERS

For the petitioner : Shubham Agarwal, Advocate
For the Respondents : Rishi Kumar, Additional Chief
Standing Counsel

(Judgment dicated in open Court)

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the penalty order dated January 16, 2023 passed by the respondent No.3/Assistant Commissioner, State Tax Department, Sector 1, Mobile Squad, Deoria under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as “the Act”) and the appellate order dated January 30, 2023 passed by the respondent No.2/Additional Commissioner, Grade-2 (Appeal)-I, State Tax, Judicial Division, Gorakhpur.

2. Learned counsel appearing on behalf of the petitioner submitted that the particular vehicle was accompanied by two e-Invoices and two E-Way Bills. He further submitted that the goods matched the description in the e-Invoices and the E-Way Bills. The only discrepancy that was found at the time of detention was that one of the E-Way Bills had expired. Apart from this discrepancy, there is no other finding with regard to intention of the petitioner to evade tax. He relied upon the documents to indicate that the vehicle had broken down. The same is evidenced by the letter of the mechanic, who had repaired the particular vehicle. Furthermore, the

movement of the goods have been traced by way of the 'fast tag' chart. He further submits that none of these documents were considered by the authorities. He further relies upon the judgments in **M/s Pepsico India Holdings Limited Lucknow v. Commissioner of Trade Tax** reported in **2003 U.P.T.C. 856** and **Jain Shudh Vanaspati Limited Ghaziabad and Others v. State of U.P. and Others** reported in **1983 U.P.T.C. 198** to buttress his arguments that the penalty cannot be imposed merely for the reason that the said goods were not accompanied by requisite documents.

3. Learned Additional Chief Standing Counsel submitted that the E-Way Bill is the necessary part of the documents and the expired E-Way Bill does not fulfil the requirements of the Rules. He further submitted that the authorities have considered the arguments raised by the petitioner and the orders indicate that the E-Way Bill has expired ten days before the date of detention. He further submitted that the petitioner could not explain the reason for not issuing a fresh E-Way Bill even though it was obvious that the petitioner was aware of the said expiry. He thus submitted that the penalty was in order.

4. This Court in **M/s Hindustan Herbal Cosmetics v. State of U.P. and Others** (Writ Tax No.1400 of 2019 decided on January 2, 2024) and **M/s Falguni Steels v. State of U.P. and Others** (Writ Tax No.146 of 2023 decided on January 25, 2024) held that mens rea to evade tax is essential for imposition of penalty. The factual aspect in the present case did not indicate any intention whatsoever to evade tax. Furthermore, the documents that have been relied upon by the petitioner have not been considered by the authorities. The authorities have dealt with the issue with regard to the expiry of the E-Way Bill and held that no explanation was offered by the petitioner with regard to the fresh generation of the E-Way Bill, as the same had expired ten days before the detention. However, it is to be noted that the goods in the vehicle were for two e-Invoices and two E-Way Bills and only one E-Way Bill had expired. There is no dispute with regard to the consignor and consignee nor any dispute with regard to the description of

the goods in the vehicle. In relation to the e-Invoices and the E-Way Bills, the authorities have not been able indicate any intention whatsoever on behalf of the petitioner to evade tax. Indubitably, there is a technical violation that has been committed by the petitioner. However, the authorities have not been able to indicate in any manner that the E-Way Bill had been used repeatedly nor have they made out any case with regard to an intention to evade tax by the petitioner. Accordingly, this Court is of the view that such a technical violation by itself without any intention to evade tax cannot lead to imposition of penalty under Section 129(3) of the Act. This view is fortified by a catena of judgments as indicated above.

5. In light of the same, this Court is unable to agree with the findings of the authorities, and accordingly, the impugned orders dated January 16, 2023 and January 30, 2023 are quashed and set aside.

6. This Court directs the respondents to refund the amount of tax and penalty deposited by the petitioner within a period of four weeks from date.

7. The instant writ petition is allowed in aforesaid terms. There shall be no order as to the costs.

Date: 05.02.2024
Kuldeep

(Shekhar B. Saraf, J.)