M/S Kapil Transport Company Through Its Proprietor Kakkumal v. State Of U.P. Through Secretary Institutional Finance, U.P. Government, Lucknow And 2 Others

WRIT TAX No. 264 of 2020 | Decision: 2024-02-12 | Allahabad High Court

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Neutral Citation No. - 2024:AHC:23691

Court No. - 1

Case :- WRIT TAX No. - 264 of 2020

Petitioner :- M/S Kapil Transport Company Through Its Proprietor Kakkumal Respondent :- State Of U.P. Through Secretary Institutional Finance, U.P. Government, Lucknow And 2 Others Counsel for Petitioner :- Mukesh Kumar Upadhyay,Virendra Singh Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the order dated November 21, 2019 passed under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act') by the respondent No.3/Assistant Commissioner (Incharge) Commercial Tax Mobile Squad, Agra and the order in appeal dated February 13, 2020 passed under Section 107(11) of the Act by the respondent No.2/Additional Commissioner, Grade-2 (Appeal), Commercial Tax, Agra.

2. It is to be noted that the penalty was imposed upon the petitioner under Section 129(1)(b) of the Act and thereafter in appeal certain relief was granted to the petitioner.

3. The factual matrix in the present case is that the vehicle was carrying invoice showing that the goods being transported was "sindoor". Part-B of the e-way bill was not filled up. Upon detention, it was found that there was no "sindoor" in the vehicle and there were 21 other items such as (i) 50 Nag urea water, (ii) 640 liter engine oil, (iii) 160 kilograms iron hinges, (iv) 180 piece Chakla, (v) 1 Nag footwear sole, (vi) 720 piece footwear paddle, (vii) 580 piece lighter, (viii) 480 piece Chhilni, (ix) 420 piece Kaddukash, (x) 220 piece Khallad, (xi) 100 kilograms footwear Talva sole, (xii) 24 piece pump part, (xiii) 132 piece plastic tokari, (xiv) 240 piece plastic brush (xv) 480 piece slicer (xvi) 192 piece blender cutter, (xvii) 144 piece Atta Chalni, (xviii) 1632 piece

Sabundani, (xix) 280 Jodi sport shoes, (xx) 474 piece toilet brush and (xxi) 440 Jodi footwear. However, neither there was any invoice in relation to the above goods nor e-way bill in support of the same.

4. In the appeal, certain benefit was granted to the petitioner with regard to "sindoor" as it was found that though an invoice was present, however, no such "sindoor" was present in the truck. Accordingly, the penalty for the "sindoor" was reduced. In relation to other items, there is a clear fact finding by both the authorities that goods were not accompanied by any invoice or e-way bill.

5. Upon a perusal of the order in appeal, it is crystal clear that the petitioner could not justify the reasons for non production of the invoice and the e-way bill. In such cases, a presumption automatically arises that there was an intention to evade tax. This presumption would be rebuttable. However, the petitioner was not able to bring any evidence to rebut the said presumption of evasion of tax. In light of the same, I see no reason to interfere with the impugned orders.

6. Accordingly, the writ petition is dismissed.

Order Date :- 12.2.2024 Rakesh

(Shekhar B. Saraf, J.)

2024-02-12T15:44:51+0530 High Court of Judicature at Allahabad