M/S Kay Pan Fragrance Pvt. Ltd. v. State Of U.P. And 4 Others

WRIT TAX No. 578 of 2019 | Decision: 2024-02-23 | Allahabad High Court

Neutral Citation No. - 2024:AHC:32107

Court No. - 1 Case :- WRIT TAX No. - 578 of 2019

Petitioner :- M/S Kay Pan Fragrance Pvt. Ltd. Respondent :- State Of U.P. And 4 Others Counsel for Petitioner :- Pooja Talwar Counsel for Respondent :- C.S.C.,A.S.G.I.,Krishna Ji Shukla

Hon'ble Shekhar B. Saraf,J.

1. Heard Mrs. Pooja Talwar, learned counsel appearing on behalf of the petitioner and Sri Ravi Shankar Pandey, learned Additional Chief Standing Counsel appearing on behalf of the State.

2. This is a petition under Article 226 of the Constitution of India, wherein the writ petitioner is aggrieved by penalty order dated December 11, 2017 passed under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act') and the order in appeal dated December 22, 2018 passed under Section 107 of the Act.

3. Mrs. Pooja Talwar, learned counsel appearing on behalf of the petitioner submits that the only discrepancy found by the authorities was that the e-way bill had expired. She further submits that there was no other discrepancy apart from the expiry of e-way bill. She further submits that the goods were accompanied by relevant documents and also matched the description as per invoice. She also submits that the reason for the expiry of e-way bill has been explained to the authorities, indicating that the medical condition of the driver was not good, and therefore, driver could not drive for long hours. It is also to be noted that the interception had taken place prior to April, 2018, accordingly, the judgement in M/s Axpress Logistics India Pvt. Ltd. Vs. Union of India and others (Writ Tax No.602 of 2018, decided on 9.4.2018) would apply in this particular case. Furthermore, one may take reference to the judgment of this Court in M/s Globe Panel Industries India Pvt. Ltd. v. State of U.P. and

others (Writ Tax No.141 of 2023 dated February 5, 2024)

passed by this Court, wherein this Court had dealt with the

similar issue and held as follows :-

“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.”

4. In light of the same, this Court is unable to agree with the

findings of the authorities, and accordingly, the impugned

orders dated December 11, 2017 and December 22, 2018

are quashed and set aside.

5. 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.

6. The instant writ petition is allowed in aforesaid terms.

There shall be no order as to the costs.

Order Date :- 23.2.2024 Dev/-

(Shekhar B. Saraf,J.)

2024-02-27T10:42:57+0530 High Court of Judicature at Allahabad