

M/S Exch. Therm Engineering Company v. State Of U P And 4 Others

WRIT TAX No. 1108 of 2019 | 2024-01-16 | Allahabad High Court

Official court-text rendition | Finin2min Judgment Intelligence

Neutral Citation No. - 2024:AHC:7376

Case :- WRIT TAX No. - 1108 of 2019

Petitioner :- M/S Exch. Therm Engineering Company 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

1. Heard Ms. Pooja Talwar, learned counsel for the petitioner and Sri Rishi Kumar, learned Additional Chief Standing Counsel
2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by an order dated May 1, 2018 passed under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") levying penalty upon the petitioner and the subsequent appellate order dated March 15, 2019 dismissing the appeal filed by the
3. Upon perusal of the record, it appears that the only controversy involved in the present petition is with regard to non filling up of Part 'B' of the e-Way Bill. The undisputed facts are that firstly the invoice in fact had the details of the truck that was carrying the goods; secondly, the goods were not in variance with the invoice; and thirdly, the Department has not been able to indicate any kind of intention of the petitioner to evade tax.
4. Ms. Pooja Talwar, learned counsel for the petitioner has relied upon two judgments of this Court in VSL Alloys (India) Pvt. Ltd v. State of U.P. and another reported in 2018 NTN [Vol.67]-1 and M/s Citykart Retail Private Limited through Authorized Representative v. Commissioner Commercial Tax and Another reported in 2023 U.P.T.C. [Vol.113]-173 to buttress her argument that non filling up of Part 'B' of the e-Way Bill by itself without any intention to evade tax cannot lead to imposition of penalty under Section 129(3) of the Act.
5. Sri Rishi Kumar, learned Additional Chief Standing Counsel has relied upon the order passed by the appellate authority to show that part 'B' of the e-Way Bill was not filled up.
6. One may look into the judgment passed in M/s Citykart

Retail Pvt. Ltd.'s case (supra) and lay reliance on two paragraphs

"7. In view of the contentions of the parties and the material placed on record, it is clear that the only allegation levelled against the petitioner leading to seizure of the goods was that Part-B of the e-way bill was not filled up. There is no allegation that the goods being transported were being transported without payment of tax. The explanation offered by the petitioner for not filling the Part-B of e-way bill, is clearly supported by the Circulars issued by the Ministry of Finance wherein the problem arising in filling the part-B of e-way bill was noticed and advisories were issued.

8. In the present case, prima-facie no intent to evade the duty can be ascertained, only on the allegation that Part-B of the e-way bill was not filled, more so, in view of the fact that the vehicle in which the goods were being transported on a Delhi number, the said issue being decided in the judgment dated 13.04.2018 in the case of VSL Alloys India Pvt. Ltd. (supra) covers the issue raised in the present case also, as such, for the reasoning recorded above, the impugned order dated 18.04.2018 and the appellate order dated

7. In the present case, the facts are quite similar to one in M/s Citykart Retail Pvt. Ltd.'s case (supra) and I see no reason why this Court should take a different view of the matter, as the invoice itself contained the details of the truck and the error committed by the petitioner was of a technical nature only and without any intention to evade tax. Once this fact has been substantiated, there was no requirement to levy penalty under Section 129(3) of the

8. In light of the above, the orders dated May 1, 2018 and March 15, 2019 are quashed and set aside. The petition is allowed.

Consequential reliefs to follow. The respondents are directed to return the security to the petitioner within six weeks from date.

Order Date :- 16.1.2024 Kuldeep

2024-01-17T16:21:34+0530 High Court of Judicature at Allahabad