

**Court No. - 39**

**Case :-** WRIT TAX No. - 1431 of 2023

**Petitioner :-** Bhole Baba Milk Food Industries Limited

**Respondent :-** Union Of India And 2 Others

**Counsel for Petitioner :-** Pooja Talwar

**Counsel for Respondent :-** A.S.G.I.,C.S.C.,Naveen Chandra Gupta,Satish Chaturvedi

**Hon'ble Saumitra Dayal Singh,J.**

**Hon'ble Donadi Ramesh,J.**

1. Shri Arjit Gupta, holding brief of Ms. Pooja Talwar, learned counsel for the petitioner, Shir Naveen Chandra Gupta, learned counsel for the GSTN, Shri Ankur Agrawal, learned counsel for the revenue and Shri Ankit Saran, learned counsel for the Bank.

2. The present writ petition has been filed for the following relief:-

*"(i) To issue a writ, order or direction in the nature of mandamus directing the respondents to permit the petitioner to file its GSTR 3B Return for the month April, 2023 treating to be within time.*

*(ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to refund the amount of interest of Rs.107710.51 and penalty of Rs.100 for the non-filing of Return on 20.05.2023 illegally debited from the Electronic Cash Ledger of the petitioner (Annexure No.1 of the writ petition)."*

3. At first, it may be noted, even according to the petitioner's own representation made to the GST Council (Annexure No.7 to the writ petition), the petitioner appears to have made the deposit of Rs.107710.51 and penalty of Rs. 100 for alleged non-filing of monthly return for the month of April, 2023.

4. On facts, it is admitted between the petitioner and its banker

namely the State Bank of India that the petitioner had generated corporate e-payment Challan No.23050900386618 on 19.05.2023 for Rs.2,08,30,721/-. According to that, it was generated on 19.05.2023 at 18:09:35 IST. It was approved by the Authorizer/bank on 25.05.2023 at 13:01:00 IST. The bank further states that the said amount was credited to the Tax Pooling Account of GST No.36959656818 against reference No.CKW9686117.

5. On the other hand the GSTN in its affidavit has stated that the said amount was not remitted by the Bank on 25.05.2023 at 13:00 P.M., but it was credited later.

6. Whatever be the true facts, this much is clear that the petitioner had initiated the payment of tax for the month of April, 2023 within time, in the manner prescribed. The amount was debited from its account, within prescribed time. To that extent, "failure" may never be attributed to the petitioner- in timely payment of the tax amount. The levy of late fee (Section 47) and interest (Section 50) under U.P. GST Act, 2017 may arise only in the event of "failure" on the part of an assessee to file a return and/ or payment of due tax within time.

7. Insofar as the delay may be attributed exclusively to the respondent-bank after such payment was made by the petitioner within time, on that statement itself the levy of penalty remains unwarranted. What errors may have been committed by the bank/ or GSTN may not involve the petitioner.

8. Thus, leaving it open to the GSTN and the Bank to devise a better mechanism to ensure prompt credit and debit entries to arise in real time as may not create any doubts or disputes in future, the present writ petition stands disposed of as below.

9. The amount of penalty Rs.1,07,710.51/- and interest Rs.100/-



deposited by the petitioner under protest may be adjusted against the tax liability for the month of April, 2024 onwards without incurring any liability as to interest on that amount.

**Order Date :- 16.4.2024**

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**(Donadi Ramesh,J.) (S.D. Singh,J.)**