



Court No. - 9

Case :- WRIT TAX No. - 892 of 2023

Petitioner :- Nancy Trading Company

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Naveen Chandra Gupta, Arjit Gupta, Manish Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal, J.

This writ petition has been filed for quashing the order passed under Section 129(3) of the U.P. GST Act as well as CGST Act r/w Section 20 of the IGST Act passed by the respondent no.4 as well as order dated 26.05.2023 passed by respondent no.3.

Matter requires consideration.

Let a counter affidavit be filed by the State within four weeks from today. Rejoinder affidavit, if any, be filed within one week thereafter.

List after expiry of five weeks.

Order Date :- 24.7.2023

SK Goswami



Court No. - 37

Case :- WRIT TAX No. - 892 of 2023

Petitioner :- Nancy Trading Company

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Naveen Chandra Gupta, Arjit Gupta, Manish Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot, J.

Sri Naveen Chandra Gupta, learned counsel assisted by Sri Arjit Gupta, learned counsel for the petitioner prays for and is granted four weeks to file rejoinder affidavit.

List in the third week of January, 2024.

Order Date :- 29.11.2023

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Court No. - 1

Case :- WRIT TAX No. - 892 of 2023

Petitioner :- Nancy Trading Company

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Naveen Chandra Gupta, Arjit Gupta, Manish Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf, J.

On the prayer made by counsel appearing on behalf of the petitioner, time to file rejoinder affidavit is extended by four weeks.

List this matter on March 18, 2024.

Order Date :- 8.2.2024

Rakesh

(Shekhar B. Saraf, J.)



Court No. - 1

Case :- WRIT TAX No. - 892 of 2023

Petitioner :- Nancy Trading Company

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arjit Gupta, Manish Gupta, Naveen Chandra Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf, J.

On the prayer made by counsel appearing on behalf of the petitioner, time to file rejoinder affidavit is further extended by four weeks.

List this matter on May 6, 2024.

Order Date :- 18.3.2024

Rakesh

(Shekhar B. Saraf, J.)



Court No. - 2

Case :- WRIT TAX No. - 892 of 2023

Petitioner :- Nancy Trading Company

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arjit Gupta, Manish Gupta, Naveen Chandra Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

Rejoinder affidavit filed today is taken on record.

Heard Sri N.C.Gupta, learned counsel for the petitioner and learned standing counsel for the respondents.

Judgment reserved.

Order Date :- 9.7.2024

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Court No. - 2

Case :- WRIT TAX No. - 892 of 2023

Petitioner :- Nancy Trading Company

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arjit Gupta, Manish Gupta, Naveen Chandra Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

1. Heard Sri N.C.Gupta, learned counsel for the petitioner and learned standing counsel for the respondents.
2. By means of the present writ petition the petitioner has prayed for issuing a direction for quashing the order dated 26.12.2022 passed by respondent no.4 by which penalty has been imposed as well as the appellate order dated 26.5.2023 passed by respondent no.3 confirming the order dated 26.12.2022.
3. Learned counsel for the petitioner submits that the goods in question were in transit along with tax invoice, GR's, E waybills. The said goods were detained on the ground that E Tax Invoice was not generated as per Rule 48 of the Goods and Services Tax Rules, 2017 (for short the Rules). He further submits that as per Rule 138A of the Rules there is no provision for carrying E Tax Invoice, hence it was not correct on the part of the authorities to seize the goods and pass the impugned orders against the petitioner. He further submits that once the E Waybill was generated, it was within the knowledge of the authorities about the movement of the goods, hence there was no intention to avoid payment of tax. He further submits that the authorities have not recorded any finding with regard to any intention to avoid tax. He further submits that the annual turn over of the petitioner was much less than the prescribed limit for generating the E Tax Invoice. He further submits that the dealers who were having annual turn over above Rs. 20 crores was required to issue E Tax Invoice. He further submits that now

the said limit has been reduced to annual turn over of Rs. 10 crores by notification dated 1st August, 2022. He further submits that there was a bona fide mistake as the petitioner was not aware that the said limit has been reduced from Rs. 20 crores to Rs. 10 crores. He prays for allowing the writ petition.

4. Per contra, learned standing counsel submits that Section 129(3) of the UPGST and CGST Act 2017 empowers the authorities to initiate proceedings and the petitioner is duty bound to issue tax invoice as per Rule 48 (4) of the Rules which has not been done in the present case, therefore the action taken by the authorities is justified. He prays for dismissal of the writ petition.

5. After hearing the learned counsel for the parties, the Court has perused the records.

6. It is admitted that while transiting the goods in question all documents as required under Rule 138 A of the Rules were accompanying with the goods. Only a technical error has been committed by the petitioner for not generating E Tax Invoice before movement of goods in question. It is not in dispute that Waybill was generated. It is not the case of the Revenue that there was any discrepancy with regard to quality and quantity of the goods as mentioned in Tax Invoice, E Waybill as well as G.Rs accompanying the goods. The error committed by the petitioner for not generating E Tax Invoice before movement of goods is a human error. It is also not in dispute that prior to 1st August, 2022 the dealers who were having annual turn over of more than Rs. 20 crores was required to issue E Waybill. The said limit has now been reduced with effect from 1st August, 2022 to Rs. 10 crores, hence there was bona fide mistake on the part of the petitioner for not generating E Tax Invoice but in absence of any specific finding with regard to mens rea for evasion of tax, the proceeding under section 129 (3) of the Act should not have been initiated. On the pointed query to the learned standing counsel as to whether any finding was recorded by the authorities at any stage with regard to mens rea for evasion of tax has been recorded, the answer was very fairly in negative.

7. In view of the above, in absence of any finding with regard to mens rea the proceeding under section 129(3) of the Act cannot be initiated. The

impugned order dated 26.12.2022 passed by respondent no.4 as well as the order dated 26.5.2023 passed by respondent no.3 are hereby quashed. The writ petition is allowed.

8. Any amount deposited in the said proceeding shall be returned back to the petitioner within a period of one month from the date of production of a certified copy of the order.

Order Date :-15. 07.2024
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