

Court No. - 2

Case :- WRIT TAX No. - 153 of 2021

Petitioner :- M/S Uttam Electric Store

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

**Hon'ble Piyush Agrawal, J.**

Heard Shri Suyash Agarwal, learned counsel for the petitioner and learned ACSC for the State - respondents.

This writ petition has been filed challenging the impugned order dated 30.09.2020 passed by the respondent no. 3 as well as the impugned order dated 21.08.2019 passed by the respondent no. 2.

Learned counsel for the petitioner submits that the petitioner is engaged in the business of supply of electricals goods. On 19.08.2019, the petitioner supplied electrical goods to M/s Chandpur Enterprises Limited, Chandpur, Bijnaur, which was consigned to M/s Udit Engineers, Aligarh, to which e-way bill was also generated, but in the e-way bill, the place of delivery was mentioned as "Chandpur (UP)", instead of the consignee of Aligarh, namely, M/s Udit Engineers. He further submits that the said error was human error, which could be ignored. He further submits that there is neither any discrepancies with regard to quality, quantity or any other details mentioned in the accompanying documents, such as, tax invoice, e-way bill, etc. The goods were detained on its onward journey, on 21.08.2019, on the ground that the goods were being dispatched on a place different than mentioned in the documents. Thereafter, proceedings under section 129 of the UPGST Act were initiated and show cause notice was issued. On 21.08.2019, the impugned penalty order was passed, against which the petitioner preferred an appeal, which has been dismissed vide impugned order dated 30.09.2020.

Learned counsel for the petitioner submits that the authorities below have not recorded any finding with regard to *mens rea*, which is essential for levying the penalty under section 129(3) of the GST Act. In support of his submissions, he has placed reliance on the judgements of this Court in ***Nancy Trading Company Vs. State of U.P. & 3 Others*** [Writ Tax No. 892 of 2023, decided on 15.07.2024] and ***Shyam Sel & Power Limited Vs. State of U.P.*** [(2023) 11 Centax 99 (All.)].

Per contra, learned ACSC supports the impugned orders and submits that the present proceedings have rightly been initiated against the petitioner as the goods accompanied were not as per the Act and the Rules as there was discrepancy. The goods consigned to Aligarh, but in the accompanying document, i.e., e-way bill, the place of delivery was mentioned as Chandpur (UP). He further submits that no

reply was submitted after the goods were detained and seized.

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

It is not in dispute that the purchaser was of Chandpur, but the goods were to be consigned to M/s Udit Engineers, Aligarh. When the goods were onward journey, the same were intercepted as in the e-way bill, the place of delivery was mentioned as Chandpur (UP), instead of Aligarh. This error can occur due to human error while filling up the form/e-way bill. Further, there is no finding recorded by any of the authorities below that there was a *mens rea* for evading payment of tax. Even before this Court, there is no pleading on behalf of the State that there was any intention to evade tax.

This Court in *Nancy Trading Company* (supra) has observed thus:-

"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."

In view of the aforesaid facts & circumstances of the case, the impugned order dated 30.09.2020 passed by the respondent no. 3 as well as the impugned order dated 21.08.2019 passed by the respondent no. 2 cannot be sustained in the eyes of law. The same are hereby quashed.

The writ petition succeeds and is allowed.

Any amount deposited in the said proceedings 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 :- 26.7.2024
Amit Mishra