Court No. - 1

Case :- WRIT TAX No. - 937 of 2022

Petitioner :- M/S Roli Enterprises
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Shubham Agrawal
Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1.   Heard Mr. Shubham Agrawal, learned counsel for the petitioner and Sri Rishi Kumar, learned Additional Chief Standing Counsel for the State respondents.

2.   This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by an order dated November 10, 2020 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 January 10, 2022 dismissing the appeal filed by the petitioner.

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 bilty 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.   Mr. Shubham Agarwal, 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 his 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 that are quoted below:

"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 14.05.2019 are set aside."

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 Act.

8.   In light of the above, the orders dated November 10, 2020 and January 10, 2022 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.

Order Date :- 16.1.2024
Kuldeep

(Shekhar B. Saraf,J.)