A.F.R.

Neutral Citation No. - 2024:AHC:209

Court No. - 1

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Present:

THE HON'BLE JUSTICE SHEKHAR B. SARAF

WRIT TAX No. - 1400 of 2019

M/S. HINDUSTAN HERBAL COSMETICS

VS

STATE OF U.P. AND 2 OTHERS

For the Petitioner : Mr. Shubham Agrawal, Adv.

For the respondents : Mr. Ravi Shanker Pandey, learned Additional Chief Standing Counsel

1. This is an application under Article 226 of the Constitution of India wherein the petitioner assails the order passed by the Additional Commissioner Grade-2 (Appeal), Commercial Tax, Ghaziabad/respondent No.3 dated August 29, 2019 and the order of the imposition of the penalty dated May 24, 2018 passed by the Assistant Commercial, Commercial Tax, Squad Unit-VI, Ghaziabad/ respondent No.2.

2. The case of the petitioner is that the petitioner is a duly registered dealer under the Goods and Service Tax Act, 2017 (hereinafter referred to as 'the Act') and is a seller of cosmetics. The petitioner was supplying cosmetics to another registered dealer, namely, M/s Shree Sai Infotech in Jharkhand and the transaction was duly covered by a tax invoice, a bilty and e-way bill, all dated May 23, 2018.

3. It is a contention of the petitioner that the consignment of goods was sent by the petitioner in Vehicle No.DL1 AA 5332. When the vehicle was in transit, the same was intercepted on 23.5.2018 10.40 P.M. by the Goods and Service Tax authorities. The seizure order was passed on the ground that the vehicle number in Part-B of the e-way bill was incorrect as the e-way bill showed the vehicle bearing No.DL1 AA 3552 instead of DL1 AA 5332. Apart from the above factual position, it is clear that there was no other infraction on the part of the petitioner. Furthermore, the authorities have imposed penalty only on the ground that the vehicle number was not mentioned correctly. There is no allegation of any attempt by the petitioner for evasion of tax as the e-way bill, bilty and the tax invoice were matching and the consignee was also a registered dealer.

4. Counsel on behalf of the petitioner has submitted that number 5332 was typed incorrectly as 3552. He has submitted that this is so obviously a typographical error and similar mistake has also been made in the impugned order that has been passed by the authority concerned. He further relies upon a coordinate Bench judgment of this Court in ***M/s. Varun Beverages Limited v. State of U.P. and 2 others*** reported in ***2023 U.P.T.C. (113) 331*** and also upon the judgment of the Supreme Court in ***Assistant Commissioner (ST) and others v. M/s. Satyam Shivam Papers Pvt. Ltd. And another*** reported in ***2022 U.P.T.C. (110) 269 (SC)***.

5. Per contra, Mr. Ravi Shanker Pandey, learned Additional Chief Standing Counsel has submitted that the Department via a circular has allowed non imposition of penalty in cases where there are mistake of two digits in the vehicle number and no further. He has further submitted that the judgment in ***M/s. Varun Beverages Limited (supra)*** would not apply as the same was a case of stock

transfer and there was no question of any tax liability in that case. He has also attempted to distinguish the Supreme Court judgment on the ground that it was a case wherein the e-way bill had expired just before the vehicle was detained and seized.

Analysis and Conclusion

6. In the present case, one finds that there is definitely an error with regard to typing of the vehicle number and there is a difference of three digits instead of the permitted two digits (as per the government circular) as submitted by the learned Additional Chief Standing Counsel. However, law is not to remain in a vacuum and has to be applied equitably in appropriate cases. The judgment in ***M/s. Varun Beverages Limited (supra)*** may be referred to for this purpose. The relevant paragraphs of the said judgment are delineated below:-

> "7. The sole controversy engaging the attention of the Court is as to whether the wrong mention of number of Vehicle No. HR-73/6755 through which the goods were in transit and detained by the taxing authorities would be considered as a human error and will be covered under the circular No. 41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018, as the number mentioned in the e-way bill was UP-13T/6755 and the mistake is of only of HR-73 in place of U.P.-13T.
>
> 8. It is not in dispute that goods were being transported by the dealer through stock transfer from its unit at Gautam Buddha Nagar to its sale depot at Agra. The bilty which is the document of the transporter mentions the vehicle number as HR-73/6755. From perusal of the e-way bill which has been brought on record, it is clear that the vehicle number has been mentioned as UP-13T/6755. It is apparently clear that mistake is as far as the registration of the vehicle in a particular State and in place of HR-73, UP-13T has been mentioned in the e-way bill, while number of the vehicle 6755 is same.

9. As there is no dispute to the fact that it is a case of stock transfer and there is no intention on the part of dealer to evade any tax, the minor discrepancy as to the registration of vehicle in State in the e-way bill would not attract proceedings for penalty under Section 129 and the order passed by the detaining authority as well as first appellate authority cannot be sustained. Moreover, the Department has not placed before the Court any other material so as to bring on record that there was any intention on the part of the dealer to evade tax except the wrong mention of part of registration number of the vehicle in the e-way bill. The vehicle through which the goods were transported and the bilty showed the one and the same number while only there is a minor discrepancy in Part-B of the e-way bill where the description of the vehicle is entered by the dealer."

7. Furthermore, one may rely on the Supreme Court judgment in ***M/s. Satyam Shivam Papers (supra)*** wherein the Supreme Court has examined the applicability of the issue of *mens rea* under Section 129 of the Act. The relevant paragraphs of the said judgment are provided below:-

"6. The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.

7. Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As

noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic."

8. Upon perusal of the judgments, the principle that emerges is that presence of *mens rea* for evasion of tax is a *sine qua non* for imposition of penalty. A typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty. In the case of ***M/s. Varun Beverages Limited (supra)*** there was a typographical error in the e-way bill of 4 letters (HR – 73). In the present case, instead of '5332', '3552' was incorrectly entered into the e-way bill which clearly appears to be a typographical error. In certain cases where lapses by the dealers are major, it may be deemed that there is an intention to evade tax but not so in every case. Typically when the error is a minor error of the nature found in this particular case, I am of the view that imposition of penalty under Section 129 of the Act is without jurisdiction and illegal in law.

9. In light of the above findings, the impugned orders dated 29.8.2019 and 24.5.2018 are quashed and set-aside. The consequential reliefs to be provided to the petitioner within the next four weeks.

10. The writ petition is allowed accordingly.

Order Date :- 2.1.2024
Rakesh

(Shekhar B. Saraf, J.)