M/s. Falguni Steels v. State Of U.p. And Others

(High Court Of Judicature At Allahabad)

WRIT TAX No. - 146 of 2023 | 25-01-2024

Shekhar B. Saraf, J.

1. The instant writ petition has been filed by the petitioner, M/s Falguni Steels praying for the issuance of a writ of certiorari against the order dated February 21, 2019 passed by the Assistant Commissioner, Commercial Tax, (Mobile Squad), Unit – II, Prayagraj (hereinafter referred to as 'Respondent No. 2') and the order dated October 20, 2019 passed by the Additional Commissioner, Grade - 2, (Appeal) - I, Commercial Tax, Prayagraj (hereinafter referred to as 'Respondent No. 3').

Facts.

2. Factual matrix of the instant case has been laid down below:

a. The petitioner is an authorized dealer of the Steel Authority of India Ltd. (hereinafter referred to as 'SAIL'). On February 17, 2019, the petitioner purchased a consignment of TMT Bar under the Tax Invoice Nos. OS0020005822 & OS0020005823. The said tax invoices were issued by SAIL in accordance with the provision of Section 31 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017') read with Rule 46 of the Central Goods and Services Tax Rules (hereinafter referred to as the 'CGST Rules, 2017').

b. Thereafter, the petitioner obtained the service of a private road carrier for the transportation of its goods through vehicle bearing registration No. UP-70-AT-3747 from SAIL Yard, Naini, Allahabad, to Falguni Steels, Lookerganj, Allahabad. The tax invoices contained the number of the said vehicle.

c. The petitioner alleges that during the relevant time, the e-Way Bill portal of the Department was marred by glitches and technical shortcomings and owing to the said fact, e-Way Bills on several occasions could not be generated by the Transporters/Consignors/Consignees.

d. Owing to the above stated glitch, e-Way Bills could not be generated by the time of the onset of the transportation of the Good. The said e-Way Bills were generated on February 20, 2019 (No. 47051859886) and February 21, 2019 (No. 481051862043). The petitioner states that the said e-Way Bills were presented before the Respondent No. 2 at the time of the interception of the goods and before the issuance of the Show Cause Notice as well as passing of the order under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the 'UPGST Act, 2017'). However, the said e-way Bills were not taken into consideration by the Respondent No. 2.

e. The supplier SAIL had generated Invoices Nos. OS0020005822 and OS0020005823, both dated February 17, 2019 wherein the quantity, description of goods and the vehicle number were mentioned. The petitioner states that the transportation of the goods on the same day was not possible due to the barrier imposed by the local administration for transportation, due to the occasion of "Maghi Purnima, Kumbh Mela, 2019". These goods were transported on February 20, 2019 from SAIL Yard, Naini to Lookerganj, Allahabad.

f. Show Cause Notice (FORM GST MOV - 07) was issued to the petitioner under Section 129(3) of the UPGST Act, 2017 on February 21, 2019 alleging that the movement of the goods was in contravention to the provisions of the UPGST Act, 2017. The said Show Cause Notice required the

petitioner to show cause as to why tax of an amount of INR 1,29,862/- along with an equivalent penalty of INR 1,29,862/- ought not to be recovered from it.

g. The petitioner, thereinafter, deposited the amount of INR 2,59,724/- through CPIN No. 19020900359828 dated February 21, 2019 via Reserve Bank of India towards tax and penalty, after which, the Respondent No. 2, released the goods in favor of the petitioner. Aggrieved by the order dated February 21, 2019, passed by the Respondent No. 2, the petitioner preferred a statutory appeal before the Respondent No. 3.

h. Respondent No. 3, vide its order dated October 20, 2019, which was passed under Section 107 of the UPGST Act, 2017, upheld the order dated February 21, 2019, passed by the Respondent No. 2 and confirmed the tax liability and penalty, imposed by the Respondent No. 2.

i. Aggrieved from the order dated February 21, 2019 passed by the Respondent No. 2 and the order dated October 20, 2019, passed by the Respondent No. 3, the petitioner has preferred the instant writ petition before this Court.

Contentions of the petitioner.

3. Shri Ajay Kumar Yadav, learned counsel appearing for the petitioner has advanced the following arguments:

a. As per the FORM GST MOV-06, dated February 20, 2019, the Respondent No. 2 had inspected the vehicle no. UP-70-AT-3747 on February 20, 2019 at 23:37:09 at Bairahana Power House. However, as per the FORM GST MOV-07, dated February 21, 2019, the statement of the vehicle owner was taken at the same time on February 20, 2019 at 23:27:09 which is practically not possible. There is some controversy.

b. In the order passed by the Respondent No. 2, it has been stated that both the e-Way Bills were generated by the petitioner after detention (i.e. 23:37:09 on February 20, 2019). However, as per the facts of the case, the petitioner has generated one e-Way Bill before the detention and the second e-Way Bill after the detention due to technical glitches on the Portal.

c. The Respondent No. 3, also ended up faltering in its duties. Without mindfully appreciating the arguments advanced by the petitioner, it went ahead and upheld the order of the Respondent No. 2. The said order passed by the Respondent No. 2 is a non-speaking order as the Respondent No. 2 did not afford any reason behind the decision taken by it. The only reason afforded by the Respondent No .2 is that the e-Way Bill so produced is an afterthought and that the goods were to be mandatorily accompanied with an e-Way Bill and in the absence of the same, liability is bound to arise.

d. In response to the appeal filed before the Respondent No 3, it had issued a notice for personal hearing, wherein it had fixed the date of hearing on July 26, 2019. In response to this notice, the counsel of the petitioner appeared before the Respondent No. 3. Thereafter, the Respondent No. 3 had adjourned the date for hearing to October 10, 2019. Owing to some unavoidable reasons, the counsel of the petitioner failed to appear before the Respondent No. 3 as well as the counsel of the petitioner forgot to inform the petitioner about the said date of hearing. Thereafter, the Respondent No. 3 passed an ex parte order on October 20, 2019, in all haste and hurry coupled with malafide intentions. The said act of the Respondent No. 3 is in gross violation of the principles of natural justice and against the provisions of Sections 107 (8), 107 (9), and 107(10) of the CGST Act, 2017 and the UPGST Act, 2017.

e. Although the Respondent No. 3 passed an ex-parte order on October 20, 2019 within 10 days from the last hearing date the same was served to the petitioner only on March 20, 2020, that is after five months from the date of the passing of the said order. This shows that the order was passed in violation of the principles of natural justice.

f. The Respondent No. 3 passed the order without applying its mind and without considering the grounds of appeal and facts of the case. It upheld the order of the Respondent No. 2 without giving any reasonable findings on the grounds of appeal.

g. Impugned orders passed by the Respondent No. 2 and the Respondent No 3 are wholly illegal, arbitrary, against the principles of natural justice, and contrary to law. The Respondent No. 2 and the Respondent No. 3 have completely failed to appreciate the facts of the case as well as the applicable law.

h. It is a settled law that if the e-Way Bill is generated and produced before the passing of the order under Section 129(3) of the CGST Act, 2017/UPGST Act, 2019 and if the goods are carried with all the other relevant documents evidencing payment of due tax, then in that case the detention and seizure of goods is wholly baseless and the same defeats the purpose of the said Acts. The said position has been clarified by this Court in the case of Modern Traders v. State of UP (Writ Tax No. 762 3 of 2018). The writ petition in the said case was allowed and the penalty order therein was set aside.

i. In the instant case, the petitioner had also generated and produced the e-Way Bill on February 20, 2019 at 11:34 P.M. (i.e. before the detention which was made at 23:23:09 on February 20, 2019) and on February 21, 2019 at 12:46 A.M.(i.e. before the passage of the Order dated February 21, 2019 under Section 129(3) of the UPGST Act, 2017). In view of the same, the impugned order passed by the Respondent No. 2 is liable to be quashed with the grant of consequential relief to the petitioner.

j. There is no intention of the evasion of tax by the petitioner.

k. When goods were transported along with the specified documents, in which no discrepancy was found, detention of goods under Section 129 of the UPGST Act, 2017 was wholly without jurisdiction and illegal. Thus, even on assuming that the Respondent No 2 had jurisdiction to pass an order under Section 129 of the UPGST Act, 2017, then also the movement of goods was not in contravention of any provision of the UPGST Act, 2017 and the rules framed thereunder.

l. Even otherwise, a combined reading of Sections 68, 129, and 130 of the UPGST Act, 2017 shows that goods can be detained and tax and penalty can be demanded only when the goods are liable for confiscation, which can be only when the same are transported in contravention of the provisions of the UPGST Act, 2017/CGST Act, 2017 and the rules framed thereunder along with the intention to evade the payment of tax. In the instant case, there cannot be any intention to evade the payment of tax as the CGST and the SGST were already charged by SAIL and payments were also made. Additionally, the vehicle number was mentioned in the invoices and during the physical verification of the goods, no discrepancy was found.

m. In support of its contentions, the petitioner also relies on the judgment of this Court in M/s Axpress Logistics India Pvt Ltd. v. Union of India (Writ Tax No. 602 of 2018).

Contentions of the Respondents.

4. Shri Rishi Kumar, learned Additional Chief Standing Counsel, appearing on behalf the respondents, has made the following submissions:

a. At the time of inspection, e-Way Bill, which is mandatory, was not generated. This is a clear violation of the Rule 138(a) of the UPGST Rules, 2017. As per Rule 138 of the UPGST Rules, 2017, eWay Bill should mandatorily be generated before starting the movement of the vehicle and ought to be furnished before the intercepting authorities in the case of interception. Reply submitted by the authorized representative of the petitioner before the Respondent No. 2 was not satisfactory and hence the Respondent No. 2 passed the penalty order under Section 129(3) of the UPGST Act, 2017.

b. The Appellate Authority i.e. the Respondent No. 3 also provided ample opportunity of hearing to the petitioner on the appeal filed by it but no one appeared on behalf of the petitioner at the time of the hearing and hence the Appellate Authority decided the appeal on the basis of facts and documents available on record. Vide order dated October 20, 2019, the Respondent No. 3 upheld the penalty order passed by the Respondent No 2 and the said decision of the Respondent No 3 is just, proper, and in accordance with the law.

Analysis and Conclusion.

5. I have heard the learned counsel appearing for the parties and perused the materials on record.

6. Even though the petitioner failed to produce the e-Way Bill in time due to certain technical difficulties, the question which arises before me is whether or not there was any actual intent to evade tax on part of the petitioner.

7. In the case of VSL Alloys (India) Pvt. Ltd. v. State of U.P. and Another reported in 2018 SCC OnLine All 6080, while dealing with a situation where Part- B of the e-Way Bill was not generated, this Court observed that the petitioner therein was supposed to fill up Part- B of the e-Way Bill giving all the details including the vehicle number before the goods were loaded in a vehicle, and it failed to do so. However, there was no ill intention at the hands of the petitioner therein to evade tax, since the documents accompanying the goods contained all the relevant details. Relevant paragraphs from the said judgment have been extracted below :-

"13. We are in full agreement with the submission of the learned counsel for the petitioner and after perusal of the relevant documents, we find no ill intention at the hands of the petitioner nor the petitioner was supposed to fill up Part-B giving all the details including the vehicle number before the goods are loaded in a vehicle, which is meant for transportation to the same to its end destination.

14. In the present case, all the documents were accompanied the goods, details are duly mentioned which reflects from the perusal of the documents. Merely of none mentioning of the vehicle no. in Part-B cannot be a ground for seizure of the goods. We hold that the order of seizure is totally illegal and once the petitioner has placed the material and evidence with regard to its claim, it was obligatory on the part of respondent No. 2 to consider and pass an appropriate reasoned order. In this case, no reasons are assigned nor any discussion is mentioned in the impugned order of seizure and notice of penalty. Respondent No. 2 has also not considered the above notification dated March 7, 2018.

15. In view of the aforesaid facts, the impugned seizure order dated April 9, 2018 passed under section 129 (1) and also the consequential show-cause notice dated April 9, 2018 passed/issued

under section 129(3) of the Act are quashed. The respondents are directed to release the goods as well as vehicle, seized on April 9, 2018, forthwith in favour of the petitioner."

8. In the instant case before me, although the petitioner failed to generate the e-Way Bill on time, the Tax Invoices issued contained all the relevant details including the detail of the vehicle transporting the goods. Morever, the CGST and the SGST were already charged by SAIL. Therefore, no intention to evade tax is evident in this case.

9. In the case of M/s. Shyam Sel and Power Ltd. v. State of U.P. and Others reported in 2023:AHC:191074, this Court emphasized that for invoking the proceedings under Section 129(3) of the CST Act, 2017, intention to evade tax is mandatory. Relevant paragraphs have been extracted below:-

“10. For invoking the proceeding under section 129(3) of the CGST Act, section 130 of the CGST Act was required to be read together, where the intent to evade payment of tax is mandatory, but while issuing notice or while passing the order of detention, seizure or demand of penalty, tax, no such intent of the petitioner was observed. Once the dealer has intimated the attending and mediating circumstances under which e-way bill of the purchasing dealer was cancelled, it was a minor breach. The authority could have initiated proceedings under section 122 of the CGST Act instead of proceedings under section 129 of the CGST Act. Section 129 of the CGST Act must be read with section 130 of the said Act, which mandate the intention to evade payment of tax. Once the authorities have not observed that there was intent to evade payment of tax, proceedings under section 129 of the CGST Act ought not to have been initiated, but it could be done under section 122 of the CGST Act in the facts & circumstances of the present case. It is also not in dispute that after release of the goods, the same were sold to P.L. Trading Company.

11. Section 129 of the CGST Act deals with detention, seizure and release of goods in case violation of the provisions of the CGST Act is found. Section 130 deals with confiscation of goods or conveyance and levy of penalty. Both the sections revolve around a similar issue and provide for the proceedings available at the hands of the proper Officer upon him having found the goods in violation of the provisions of the Act, Rule 138 of the Rules framed under the CGST Act being one of them. Upon a purposive reading of the sections, it would sufice to state that the legislation makes intent to evade tax a sine qua non for initiation of the proceedings under sections 129 and 130 of the CGST Act.”

10. In J.K. Cement Ltd. v. State of U.P. and Others reported in, this Court stated that even if there is no e-Way bill being carried, if there is no discrepancy in the documents accompanying the goods and no intention to evade tax, then penalty cannot be levied. Relevant paragraph has been extracted below -

“11. On perusal of the impugned order it is also found that it is categorically mentioned that the origination as well as termination of the goods in question was in State of Madhya Pradesh meaning thereby the authorities are of the view that the goods were not to be unloaded in the State of UP or any intention to avoid tax. However, mainly on the ground of some small technical fault for not carrying the e-way bill, the penalty ought not to have been levied in the absence of any discrepancy in document accompanying the goods. In view of above, the impugned orders cannot be sustained in the eyes of law.”

11. In Roli Enterprises v. State of UP and Others reported in [2024] 158 taxmann.com 468 (Allahabad) this Court noted that the non - generation of Part B of e-Way Bill was a mere technical error, and since the invoice contained the details of the vehicle transporting the goods, there was

no intention on part of the petitioner therein to evade tax. Accordingly, the penalty levied in the said case, was held to be unjustified.

12. In Modern Traders v. State of U.P. and Others reported in 2018 SCC OnLine All 6054, which was relied upon by the petitioner, this Court was dealing with a case wherein the vehicle carrying the goods was intercepted solely on the ground that there was no e-Way Bill accompanying the goods. The e-Way Bill in the said case was generated as soon as information about interception of the vehicle was received. Accordingly, this Court concluded that once e-Way Bill has been produced and if all the relevant documents accompanied the goods, then seizing the goods and imposing penalty cannot be justified. Relevant paragraphs have been extracted below: -

"10. The learned counsel for the petitioner has also brought to our notice that respondent No. 3, with malice intention, has deliberately not mentioned the time in either of the orders passed being the seizure order under section 129(1) and penalty under section 129(3). Both the aforesaid orders are passed on May 5, 2018, i.e., before the date which has been indicated in the interception memo being May 6, 2018. Learned counsel for the petitioner has submitted that since the petitioner has placed the e-way bill on May 5, 2018 itself respondent No. 3 has illegally proceeded to pass the impugned orders before any physical verification done.

11. We find substance in the submission of the learned counsel for the petitioner. Once the e-way bill is produced and other documents clearly indicates that the goods are belongs to the registered dealer and the IGST has been charged there remains no justification in detaining and seizing the goods and asking the penalty."

13. Upon a bare reading of the aforesaid judgment, one cannot help, but draw a parallel between the factual situation in the aforesaid judgment, and the factual situation in the instant case. Before the order imposing penalty was passed, the petitioner in the instant case had generated both the e-Way Bills which the Respondent No. 2 failed to take into account. Furthermore, this failure on the part of the Respondent No. 2 was not corrected by the Respondent No. 3. Imposition of penalty must be backed by potent reasoning, which to me, seems missing here.

14. In Axpress Logistics Pvt Ltd. v. Union of India and Others reported in 2018 SCC OnLine All 6089, this Court quashed the penalty order issued under Sections 129(1) and 129(3) of the UPGST Act, 2017, since the petitioner therein had produced e-Way Bill before the detention and seizure of the goods and vehicle. Even though, in the case before me, the petitioner generated one e-Way Bill subsequent to the detention of goods, the other e-Way Bill was generated before the detention of goods. In any case, both the e-Way Bills were produced by the petitioner before the order imposing penalty was passed.

15. What emerges from a perusal of the aforesaid judgments is that, if penalty is imposed, in the presence of all the valid documents, even if e-Way Bill has not been generated, and in the absence of any determination to evade tax, it cannot be sustained. Order dated February 21, 2019 passed by the Respondent No. 2 and the order dated October 20, 2019 passed by the Respondent No. 3, in the instant case stand on a foundationless ground, since there is no intention to evade tax, which could sustain the impugned orders.

16. In the present factual matrix, it is clear that the goods were accompanied by the tax invoices. Furthermore, the tax invoices contained the details of the vehicle that was transporting the goods. It is further to be noted that one e-Way Bill was generated before the detention and one subsequent to the detention, but before passing of the order under Section 129(3) of the UPGST Act, 2017/CGST Act, 2017. Under these circumstances, there does not appear to be any intention

to evade the tax. In addition to the above facts, the explanation given by the petitioner with regard to the delay in generation of the e-Way Bill due to the barrier imposed by the local administration on the occasion of 'Maghi Purnima, Kumbh Mela 2019' has also not been taken into consideration by the authorities below. Finally, the authorities have failed to indicate any specific reason that would indicate an intention for evasion of tax. As held by this Court in Hindustan Herbal Cosmetics v. State of U.P. , reported in [2024] taxmann.com 200 (Allahabad), intention to evade tax is desideratum for the imposition of penalty. I am of the view that the authorities have acted beyond jurisdiction and imposed tax without there being any cogent reason for the same. In light of the above finding, I am of the view that the petitioner cannot be made to suffer due to mere technical mistakes that may have arisen, without there being any intention to evade tax.

17. Once both the e-Way Bills were presented before passing of the penalty order, and all the documents including the tax invoices, were found to be in order, the Respondent No. 2 had no sound rationale to pass the impugned order dated February 20, 2019. A bare reading of the said order would show that the presence of the tax invoices, was recorded by the Respondent No. 2. Furthermore, the Respondent No. 2 also rejected the eWay Bills which were generated post the detention of the goods, since the same in its opinion, was contrary to the provisions of the UPGST Act, 2017/ CGST Act, 2017. Nowhere in the said impugned order, it has been recorded that there was any definite intention to evade tax. The essence of any penal imposition is intrinsically linked to the presence of mens rea, a facet conspicuously absent from the record. The order, therefore, stands vulnerable to challenge on the grounds of disproportionate punitive measures meted out in the absence of concrete evidence substantiating an intent to evade tax liabilities.

18. These errors of jurisdiction, committed by the Respondent No. 2, ought to have been corrected by the Respondent No. 3, while hearing the statutory appeal. What is also astonishing to me is the reasoning afforded by the Respondent No. 3 to reject the statutory appeal. Respondent No. 3 records that while the provisions under the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as the 'UPVAT Act, 2008') mandated establishing a prior intent to evade tax, there was no such provision in the CGST Act, 2017/UPGST Act, 2017. This reasoning is palpably erroneous. A penal action devoid of mens rea not only lacks a solid legal foundation but also raises concerns about the proportionality and reasonableness of the penalties imposed. The imposition of penalties without a clear indication of intent may result in an arbitrary exercise of authority, undermining the principles of justice. Tax evasion is a serious allegation that necessitates a robust evidentiary basis to withstand legal scrutiny. The mere rejection of post-detention e-Way Bills, without a cogent nexus to intention to evade tax, is fallacious.

19. Mere technical errors, without having any potential financial implications, should not be the grounds for imposition of penalties. The underlying philosophy is to maintain a fair and just tax system, where penalties are proportionate to the gravity of the offense. In the realm of taxation, imposition of penalty serves as a critical measure to ensure compliance with tax laws and regulations. However, a nuanced understanding prevails within legal frameworks that for penalties to be justly imposed, there must be a demonstrated actual intent to evade tax. This principle underscores the importance of distinguishing technical errors from deliberate attempts to evade tax obligations. Penalties should be reserved for cases where an intentional act to defraud the tax system is evident, rather than for inadvertent technical errors. The legal foundation for this principle lies in the recognition that taxation statutes are not designed to punish inadvertent mistakes but rather deliberate acts of non-compliance. The burden of proof, therefore, rests on tax authorities to establish the actual intent to evade tax before imposing penalties on taxpayers. This safeguards individuals and entities from punitive measures arising from honest mistakes,

administrative errors, or technical discrepancies that lack any malicious intent. In the judgments cited above, the Courts therein have emphasized upon the need for a meticulous examination of the facts and circumstances surrounding each case to establish the presence or absence of intentional tax evasion.

20. To conclude, the requirement of intent to evade tax for the imposition of penalties is a fundamental principle that underpins the fairness and integrity of taxation systems. Recognising the distinction between technical errors and intentional evasion is essential for maintaining a balanced and equitable approach to tax enforcement. As nations continue their pursuit of effective tax administration, upholding this principle becomes paramount in fostering voluntary compliance, preserving trust in the tax system, and ensuring the judicious use of regulatory powers.

21. Since the petitioner in the instant case has prayed for the issuance of the writ of certiorari, it would be prudent on my part to, to lay threadbare the principles governing the issuance of a writ of certiorari.

22. The writ of certiorari, a legal remedy originating from the Latin term meaning "to be more fully informed", holds a paramount position within the realm of administrative law. It is a high prerogative writ issued by superior courts to review and quash decisions of lower courts, tribunals, or administrative bodies. This instrument plays a pivotal role in ensuring the rule of law and judicial oversight over administrative actions, providing a mechanism to correct errors and prevent the abuse of power. The writ of certiorari is not issued as a matter of course, but rather it is granted at the discretion of the superior court. Generally, certiorari is issued in cases involving errors of law apparent on the face of the record, jurisdictional issues, or procedural irregularities that may have a substantial impact on the fairness and legality of the proceedings.

23. Having already determined that the authorities in the instant case transcended their jurisdiction while passing the impugned orders, issuance of the writ of certiorari is necessitated in the instant case. Reference is made in this regard to the Central Council for Research in Ayurvedic Sciences and Another v. Bikartan Das and Others, reported in 2023 SCC OnLine SC 996, wherein Supreme Court upheld that writ of certiorari can be issued to correct errors of jurisdiction:–

"65. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory."

24. In Nagendra Nath Bora and Another v. The Commissioner of Hills Division and Appeal, Assam and Others reported in 1958 SCC OnLine SC 45, a Constitution Bench, upon examining various Indian and English precents, came to the conclusion that in that case an inferior tribunal has exceeded its jurisdiction or has not acted in accordance with the law, a writ of certiorari can be issued. Relevant paragraphs have been extracted below:

"36. So far as we know, it has never been contended before this Court that an error of fact, even though apparent on the face of the record, could be a ground for interference by the court exercising its writ jurisdiction. No ruling was brought to our notice in support of the proposition

that the court exercising its powers under Article 226 of the Constitution, could quash an order of an inferior tribunal, on the ground of a mistake of fact apparent on the face of the record.

37. But the question still remains as to what is the legal import of the expression 'error of law apparent on the face of the record'. Is it every error of law that can attract the supervisory jurisdiction of the High Court, to quash the order impugned This court, as observed above, has settled the law in this respect by laying down that in order to attract such jurisdiction, it is essential that the error should be something more than a mere error of law; that it must be one which is manifest on the face of the record. In this respect, the law in India and the law in England, are, therefore, the same. It is also clear, on an examination of all the authorities of this Court and of those in England, referred to above, as also those considered in the several judgments of this Court, that the common-law writ, now called order of certiorari, which was also adopted by our Constitution, is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction."

(emphasis added)."

25. In light of the aforesaid, it becomes apparent, that the impugned orders in the instant case are a result of the Respondent No. 2 and the Respondent No. 3 exceeding their jurisdiction and not proceeded in accordance with the essential requirement of the law where it was meant to adminiter. Therefore, a writ of certiorari is warranted in the instant case.

26. Accordingly, let there be a writ of certiorari issued against the order dated February 21, 2019 passed by the Respondent No. 2 and the order dated October 20, 2019 passed by the Respondent No. 3. The said orders are quashed and set aside.

27. This Court also directs the Respondent No. 2 to refund the amount of tax and penalty deposited by the petitioner, within a period of four weeks from date.

28. The instant writ petition is allowed in aforesaid terms. There shall be no order as to the costs.

29. Urgent photostat-certified copy of this order, if applied for, should be readily made available to the parties upon compliance with requisite formalities.