

Court No. - 38

Case :- WRIT TAX No. - 1005 of 2022

Petitioner :- M/S Fashion Safety Footwear Private Ltd.

Respondent :- Additional Commissioner And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

1. Present petition has been filed against the order of the First Appeal Authority. Since the Tribunal has yet not been constituted, the present petition is being entertained at this stage.

2. Matter requires consideration.

3. All respondents may file counter affidavit within a period of six weeks. Petitioner shall have two weeks' thereafter to file rejoinder affidavit.

4. List thereafter.

Order Date :- 1.8.2022

Abhilash

Court No. - 10

Case :- WRIT TAX No. - 1005 of 2022

Petitioner :- M/S Fashion Safety Footwear Private Ltd.

Respondent :- Additional Commissioner And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

Passed over on the illness slip of Sri Suyash Agarwal, learned counsel for the petitioner.

Order Date :- 19.1.2023

Shekhar

Court No. - 2

Case :- WRIT TAX No. - 1005 of 2022

Petitioner :- M/S Fashion Safety Footwear Private Ltd.

Respondent :- Additional Commissioner And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner and Sri Rishi Kumar, learned Additional Chief Standing Counsel for the State respondents.

2. By means of instant writ petition, the petitioner has assailed the order dated 08.03.2022 passed by Additional Commissioner, Grade-2 (Appeal)-II, Commercial Tax, Jhansi and order dated 10.01.2022 passed by Assistant Commissioner, Mobile Squad, Ghisoli, Lalipur.

3. Learned counsel for the petitioner submits the petitioner is a company registered under the UPGST Act and carrying the business of supply of footwear. By Tax Invoice No.264 dated 05.01.2022, it dispatched footwears from Agra to M/s Utex Industries, Kapsi Budruk, Tal. Kampee, District- Nagpur, Maharashtra, which was accompanied with all requisite documents; such as tax invoice, e-way bill and GR. The goods in question were intercepted on 08.01.2022 on the ground that Part B of the E-way bill was not duly filled, doubting about the same, the goods were detained. Thereafter, notice was issued to which the reply was submitted stating therein that Part B of the E-way bill was duly filled and the same was produced before the seizing authority, but not being satisfied from the same, the impugned order was passed, against which the petitioner preferred an appeal, which has also been dismissed.

4. He submits that the Part B of E-way bill could not be filled, which is a human error; whereas there was no variation and difference in the accompanying documents regarding the goods in question. He further submits that the GR was also accompanied with the goods therefor there was no intention to evade tax such as the department has not recorded any finding with regard to the same.

5. In support of her submission, he has placed reliance upon ***Writ Tax No. 415 of 2023 (Precision Tools India Vs. State of U.P. and 3 others) & Writ Tax No.937 of 2022 (M/s Roli Enterprises Vs. State of U.P. and 2 others).***

6. Per contra, learned Additional Chief Standing Counsel supports the impugned orders by submitting that since there was a violation of act and rule, the

proceedings have rightly been initiated.

7. After hearing the parties, the Court has perused the record.

8. It is not in dispute that there was no variation with regard to the documents and goods detained/seized. It is also not in dispute that the Part B of E-way bill, even before issuance of notice and before passing of the seizure order, was duly filled and was produced before the authority. It is also not the case of the revenue that the authorities below have recorded any finding with regard to *mens rea* i.e. intention of petitioner to evade payment of tax.

9. This Court in the case of ***M/s Roli Enterprises (supra)*** in para no. 6, 7 & 8 has held as under:-

"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."

10. Similarly, this Court in the case of ***Precision Tools India (supra)*** in para no. 6, 6, 7 & 8 has held as under:-

"5. Upon consideration of the arguments made by counsel appearing on behalf the

parties and upon perusal of the documents, it is clear that the department has been unable to indicate any intention of the petitioner to evade tax.

6. Furthermore, judgement relied upon by the petitioner are directly on the point and, accordingly, I see no reason to defer from the same.

7. In the present case also, the defect was of a technical nature only and without any intention to evade tax. Accordingly, the penalty imposed under Section 129(3) of the UPGST Act is unsustainable.

8. In light of the above, the orders dated April 22, 2021 and November 20, 2021 are quashed and set aside. The writ petition is allowed. Consequential reliefs to follow. The respondents are directed to return the security to the petitioner within six weeks."

11. In view of the above facts as stated as well as law laid down in the aforesaid judgments, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

12. Accordingly, the writ petition is ***allowed***.

13. Any amount deposited by the petitioner pursuant to the impugned orders, shall be refunded to him within a month from today.

Order Date :- 2.8.2024

Pravesh Mishra