

**Court No. - 18**

Case :- WRIT - C No. - 22285 of 2019

Petitioner :- M/S Citykart Retail Pvt. Ltd. Thru. Authorizd Representative

Respondent :- The Commissioner Commercial Tax U.P. Gomti Nagar
Lko. And Anr.

Counsel for Petitioner :- Amit Harsh,Prabhat Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

Heard the counsel for the petitioner and the learned Standing Counsel.

The present petition has been filed challenging the demand/penalty order dated 18.04.2018 (Annexure no.9) passed by the respondent no.1 as well as the appellate order dated 14.05.2019 passed by the respondent no.2. It is also prayed that the amount of penalty deposited by the petitioner may be directed to be refunded.

The contention of the counsel for the petitioner is that the petitioner is a company engaged in the business of Trading of Ready-made garments etc. and is registered with UP GST as well as VAT Act 2008. It is stated that on 17.04.2018, the respondent no.1 inspected the vehicle transporting the goods of the petitioner at Auraiya, U.P. The said goods were being transported from Gurgaon Haryana to Rae Bareli U.P. and at the time of inspection, the department found that the e-way bill was incomplete as Part-B of the e-way bill was not available. Consequently, the vehicle in question was detained for verification. Subsequently, the mobile squad seized the goods and issued a show cause notice to the petitioner (Annexure no.5). The petitioner gave a reply to the said show cause notice explaining that the vehicle number through which the goods were being transported was

DL01M6498, however, on account of some technical error, the vehicle number could not be registered, as such, the vehicle number was not reflected in Part-B of the e-way bill which led to the seizure of the goods. He argues that this issue was addressed by the department itself while issuing the Clarificatory Circular, as contained in Annexure no.13, where the technical glitch arising out of the number plates bearing Delhi Number was recorded and it was advised that while filling the form, it should be filled in a particular manner as the form which accepts the e-way bill does not have any provision for zero to be mentioned. The said clarification dated 18.03.2018 is on record as Annexure no.13.

In the light of the said, the counsel for the petitioner argues that the error in not filling the form in part B of the e-way bill was on account of the technical glitch which itself was realized by the department who had issued the Circular dated 18.03.2018. In the light of the said, he argues that there was no ill motive or intent for avoiding the payment of duty. He further argues that in any case there is no finding recorded against the petitioner of there being any intent to avoid the payment of duty.

It is argued that in terms of the order passed by the assessing authority, the petitioner was called upon to pay the tax of Rs.1,36,300/- and penalty of the like amount which the petitioner paid and has got the goods released in his favour. The appellate authority while deciding the appeal recorded the submission of the petitioner, however, did not take note of the circular issued by the Ministry of Finance or Clarificatory Circular issued by the department as contained in

Annexure no.13 and proceeded to dismiss the appeal. He also places reliance on the circular dated 14.09.2018 issued by the Ministry of Finance highlighting that the powers under section 129 of the CGST Act should not be invoked in case of minor errors as disclosed in paragraph 5 of the Circular which includes an error in one or two digits/characters of the vehicle number are missing. He further places reliance on the judgment of this **Court dated 13.04.2018 passed in Writ Tax No.637 of 2018 (VSL Alloys India Pvt. Ltd. vs. State of U.P. and another)** wherein in similar circumstances, the court had interfered and had set aside the seizure order. In the light of the said, the counsel for the petitioner argues that the order impugned imposing penalty as well as the demanding tax is bad in law and is liable to be set aside.

The Standing Counsel on the other hand defends the impugned order and places reliance on the averments made in paragraph 8 of the counter affidavit to the effect that the stand taken by the department that the Part-B of the e-way bill was not filled on technical glitch, merits rejection.

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.

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.

The writ petition is **allowed** with direction to the respondents to refund the amount collected and paid by the petitioner in pursuance to the impugned order within a period of two months from today.

The Standing Counsel is directed to communicate the respondents authority about this order for compliance in accordance with law.

Order Date :- 6.9.2022

VNP/-