

Court No. - 1

Case :- WRIT TAX No. - 129 of 2024

Petitioner :- Ms Varun Beverages Limited

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

(Judgement dictated in Open Court)

1. Heard Sri Shubham Agrawal, learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondents.

2. In the present petition, the writ petitioner is aggrieved by the order of penalty dated March 6, 2020 passed under Section 129(3) of the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the UPGST Act") and the order of the Appellate Authority dated September 16, 2023.

3. The factual matrix indubitably is that the invoices contained the vehicle number in which the goods were being transported; secondly, only part B of the e-way bill could not be generated; thirdly, the department has not been able to indicate any intention of the petitioner to evade tax. Furthermore, in the present case, this was not a sale that was being made to third party, but the goods are transported from one branch of the petitioner to another branch. He relied upon judgment of this Court in **M/S Roli Enterprises Vs. State of U.P. and Others** (Writ Tax No.937 of 2022

decided on January 16, 2024) wherein this Court had considered two judgements of the Allahabad High 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 vs. Commissioner Commercial Tax and Another** reported in **2023 U.P.T.C. [Vol.113]-173** and held that non filling up of Part 'B' of the e-Way Bill by itself without any intention to evade tax would not lead to imposition of penalty under Section 129(3) of the UPGST Act.

4. Per-contra, learned counsel appearing on behalf of the respondents has relied upon the penalty order as well as the order passed by the Appellate Authority to indicate that part 'B' of the e-Way Bill was not filled up.

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 March 6, 2020 and September 16, 2023 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.

Order Date :- 7.2.2024

Dev/-

(Shekhar B. Saraf,J.)