

Court No. - 1**Case :-** WRIT TAX No. - 415 of 2023**Petitioner :-** Precision Tools India**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Shubham Agarwal**Counsel for Respondent :-** CSC**Hon'ble Shekhar B. Saraf,J.**

(Judgement dictated in Open Court)

1. Heard Ms. Upasana Agarwal, learned counsel holding brief of Sri Shubham Agarwal, 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 April 22, 2021 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 November 20, 2021 passed under Section 107 of the UPGST Act.

3. The grounds raised by Ms. Agarwal are that part A of the e-way bill was dully filled and due to some technical difficulties part B of the e-way bill could not be generated. She furthermore, submitted that the goods in question were personal made goods with exclusive specification that was supplied to the Railways and such goods could only be supplied to the particular consignee. She further submitted that there was no defect in the consignment nor any discrepancy in the documents. She 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 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.

Order Date :- 29.1.2024
Dev/-

(Shekhar B. Saraf,J.)