Court No. - 1

Case :- WRIT TAX No. - 587 of 2022

Petitioner :- M/S Prahlad Rai Vijay Kumar
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Vishwjit
Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Vishwjit. learned counsel appearing on behalf of the petitioner and Sri Ravi Shankar Pandey, learned Additional Standing Counsel for the State.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the petitioner is aggrieved by the order imposing tax and penalty dated February 27, 2020 and the order passed in Appeal dated November 27, 2020.

3. Counsel appearing on behalf of the petitioner submits that the tax invoice and the e-way bill were accompanying the vehicle carrying the goods. He further submits that goods were in order and matched the invoices and e-way bill and the only defect was that the e-way bill had expired nine hours and thirty minutes prior to interception. Counsel has submitted that the explanation for the delay given by the petitioner was that the vehicle has broken down due to the same there had been delay in transportation. Counsel has submitted that this ground had not been taken into consideration by the authorities below and penalty under Section 129(3) of the Uttar Pradesh Goods and Services Act, 2017 (hereinafter referred to as the 'Act') was imposed.

4. Per contra counsel appearing on behalf of the respondents have submitted that in the event the e-way bill expired, there is a provision in the portal that allows the transporter/consignor/consignee to seek extension of the e-way bill. Undisputedly, such extension was not carried out by the petitioner, and therefore, the contravention of the Rules has taken place and the penalty imposed under Section 129(3) of the Act is in order and is required to be sustained.

5. This Court in **M/s Hindustan Herbal Cosmetics v. State of U.P. and Others** (Writ Tax No.1400 of 2019 decided on January 2,

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2024) and **M/s Falguni Steels v. State of U.P. and Others** (Writ Tax No.146 of 2023 decided on January 25, 2024) held that mens rea to evade tax is essential for imposition of penalty. The factual aspect in the present case clearly does not indicate any mens rea whatsoever for evasion of tax. The goods were accompanied by the relevant documents and the explanation of the petitioner with regard to slow movement of the goods clearly indicate that the truck had broken down resulting in delay. This factual aspect should have been considered by the authorities below. The breach committed by the petitioner with respect to not extending time period of the e-way bill is only a technical breach and it cannot be the sole ground for penalty order being passed under Section 129(3) of Act.

6. In light of the above, I am of the view that the finding of the authorities with regard to intention to evade tax is not supported by the factual matrix of the case, and accordingly, the impugned order dated February 27, 2020 passed by the Assistant Commissioner and the order dated November 27, 2020 passed by the Additional Commissioner are quashed and set aside.

7. This Court directs the respondents to refund the amount of tax and penalty deposited by the petitioner within a period of four weeks from date.

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

Order Date :- 16.5.2024
Rakesh

(Shekhar B. Saraf, J.)

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