

Court No. - 1

Case :- WRIT TAX No. - 974 of 2022

Petitioner :- M/S Riadi Steels Llp

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Alope Kumar

Counsel for Respondent :- C.S.C.,Gaurav Mahajan

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Alope Kumar, learned counsel appearing on behalf of the petitioner, Sri Gaurav Mahajan, learned counsel appearing on behalf of the GST council 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 penalty dated April 6, 2022 and the order in Appeal dated June 22, 2022.

3. Counsel appearing on behalf of the petitioner submits that the e-invoice and the e-way bill were accompanying the vehicle carrying the goods. He further submitted that the e-way bill had expired four days prior to the date of detention. Counsel has submitted that the explanation for the delay in travel of the vehicle has also been given. He submitted that during the course of movement, the engine of the vehicle in question got overheated, and therefore, the driver was driving the vehicle slowly and intermittently stopping the vehicle so that the engine did not get overheated. The GPS tracking system was also produced before the authorities

that indicated that the vehicle was traveling as per the original route. In light of the same, counsel appearing on the behalf of the petitioner relies on a judgement passed in **M/s Globe Panel Industries India Pvt. Ltd. v. State of U.P. and Others** (Writ Tax No.141 of 2023 decided on February 5, 2024) wherein the factual matrix was quite similar to the present case.

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 Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 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, 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 coupled with GPS tracking system clearly indicate that the truck was moving slowly due to mechanical fault in the engine of the

vehicle. This factual aspect should be 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 orders dated April 6, 2022 and June 22, 2022 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 :- 21.2.2024
Dev/-

(Shekhar B. Saraf,J.)