

Court No. - 1**Case :-** WRIT TAX No. - 574 of 2019**Petitioner :-** M/S K Y Tobacco Works Pvt. Ltd.**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Pooja Talwar**Counsel for Respondent :-** C.S.C.,A.S.G.I.**Hon'ble Shekhar B. Saraf,J.**

1. Heard Mrs. Pooja Talwar, learned counsel for the petitioner and Sri Rishi Kumar, learned Additional Chief Standing Counsel appearing for the respondents.

2. The is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the seizure order dated August 13, 2018, the order dated August 14, 2024 imposing penalty under Section 129(3) of the Uttar Pradesh Goods and Service Tax Act, 2017 and the appellate order dated January 8, 2019.

3. Mrs. Pooja Talwar, learned counsel for the petitioner submits that the relevant documents were present in the vehicle and the goods matched invoice and the e-way bill. The sole ground on which the goods were detained and seized and penalty order was passed, was the statement supposedly given by the Driver of the vehicle who submitted that he was transporting the goods for the second time with the same documents. She further submitted that the primary documents being MOV-01 wherein the statement of the Driver is recorded has never been provided to the petitioner.

4. Upon such query being put by the Court, counsel

appearing on behalf of the respondents submits that he tried to obtain MOV-01 and the statement of the Driver. However, it appears that the Officer concerned has not been able to provide the MOV-01 till date, in spite of several requests made to him. Today, the counsel appearing on behalf of the respondents has provided a sheet of paper that is supposedly the statement given by the Driver. However, the same is not accompanied by the MOV-01.

5. In light of the same, this document is of very little evidentiary value.

6. Mrs. Pooja Talwar, counsel appearing on behalf of the petitioner has placed reliance on a judgement of a coordinate Bench of this Court authored by Hon'ble Saumitra Dayal Singh, J., in **M/s Anandeshwar Traders v. State of U.P. and Others** reported in **(2021 U.P.T.C. [Vol.107]-421)**, wherein his Lordship has held as follows :-

"10. Even if the dealer does not cancel the e-way bill within 24 hours of its generation, it would remain a matter of inquiry to determine on evidence whether an actual transaction had taken place or not. That would be subject to evidence received by the authority. As such it was open to the seizing authority to make all fact inquiries and ascertain on that basis whether the goods had or had not been transported pursuant to the e-way bills generated on 24.11.2019. Since the petitioner-assessee had pleaded a negative fact, the initial onus was on the assessing authority to lead positive evidence to establish that the goods had been transported on an earlier occasion. Neither any inquiry appears to have been made at that stage from the purchasing dealer or any toll plaza or other source, nor the petitioner was confronted with any adverse material as may have shifted the onus on the assessee to establish non-

transportation of goods on an earlier occasion.

11. The presumption could not be drawn on the basis of the existence of the e-way bills though there did not exist evidence of actual transaction performed and though there is no statutory presumption available. Also, there is no finding of the assessing authority to that effect only. Mere assertion made at the end of the seizure order that it was clearly established that the assessee had made double use of the e-way bills is merely a conclusion drawn bereft of material on record. It is the reason based on facts and evidence found by the assessing authority that has to be examined to test the correctness of the order and not the conclusions, recorded without any material on record."

7. In view of the ratio laid down in the above judgement, it is clear that it is the duty of the authorities to ascertain that whether the double movement of the goods has taken place actually. In the present case, no such burden of proof has been discharged by the respondents.

8. From the documents available, it is clear that the respondent authorities have not been able to indicate or prove any *mens rea* for evasion of tax.

9. In light of the same, the impugned orders dated August 13, 2018, August 14, 2024 and the appellate order dated January 8, 2019 are quashed and set aside. Consequential reliefs to follow.

10. The amount of penalty and security that has been deposited by the petitioner to be refunded within a period of six weeks from date.

11. Accordingly, this writ petition stands allowed.

12. A general caution is required to be given to the authorities in respect of the non-assistance and non-providing the relevant documents to the counsel appearing on behalf of respondent authorities resulting in failure of the department's lawyers to defend the case of the department in an effective manner. It is to be noted that this Court on several occasions has passed orders in favour of the assessee as the department has not able to defend its case by timely providing relevant documents to the State counsel.

13. The Commissioner, State Tax, U.P. is directed to take note of this fact and ensure that in future proper assistance is provided to the counsel appearing on behalf of the State/respondents. Registrar Compliance is directed to communicate this order to the Commissioner, State Tax, U.P. forthwith.

Order Date :- 13.5.2024
Dev/-

(Shekhar B. Saraf,J.)