

Court No. - 1**Case :-** WRIT TAX No. - 1034 of 2019**Petitioner :-** M/S Nokia Solutions And Networks India Pvt. Ltd.**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Nishant Mishra**Counsel for Respondent :-** C.S.C.**Hon'ble Shekhar B. Saraf,J.**

1. Heard Sri Tanmay Sadh, learned counsel holding brief of Sri Nishant Mishra, learned counsel for the petitioner and Sri Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the respondents.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order levying penalty and the order of the Appellate Authority dated May 18, 2019 passed by respondent No.2/Additional Commissioner Grade-2 (Appeal)-II, Commercial Tax, Meerut under Section 107 of the Act.

3. Learned counsel appearing on behalf of the petitioner submits that the following facts are not in dispute :

a. Petitioner supplied goods to M/s Idea Cellular Limited, Mangal Pandey Nagar, Meerut vide tax invoices no. 5204046997 & 5204046998 dated 18.6.2018 of Rs 1,16,583.98/- and Rs 22,77,755.98/- respectively, after charging IGST @ 18%;

b. After preparing invoices dated 18.6.2018, Petitioner generated e-way bills no. 7710 1550 4255 & 7410 1550 4256 in respect of the two transactions, which were valid till 21.6.2018. However, since the vehicle number was not informed by the

transporter, hence Part-B of e-way bills was not completed/filled up by the Petitioner while generating the e-way bills;

c. Even though the transporter was instructed to start movement of vehicles, only after updating Part B of e-way Bills, yet due to some miscommunication between transporter and the driver, the driver of the Vehicle No. DL1M-9583 started transportation from Delhi to Meerut, without updating Part-B of e-way bills;

d. On 19.6.2018, when the aforesaid vehicle was entering Meerut, the same was stopped by Respondent No. 3 at 06:50 AM. Upon interception, driver produced the papers available with him relating to the transaction in question. in question;

e. Immediately, after receiving the news of interception, transporter informed the same to the Petitioner whereupon Petitioner generated e-way bills again by updating Part-B of e-way bills at 09:50 AM in the morning of 19.6.2018;

f. Even though, the deficiency, even if, in Part B of e-way bills was cured by Petitioner by updating by Part B of e-way bills on 19.6.2018 at 09:50 AM and the same was also produced before Respondent No. 3, yet Respondent No. 3 proceeded to pass detention order dated 20.6.2018 on the sole ground that at the time of interception, Part B of e-way bills was not updated. On the same date, Respondent No. 3 also issued notice under Section 20 of IGST Act directing the driver to appear and explain as to why not tax and penalty be demanded for release of goods and vehicle;

g. Upon receipt of the aforesaid notice, Petitioner submitted reply before Respondent No. 3 stating the circumstances in which Part B of e-way bills was not updated initially and that the same was updated prior to passing of the detention order;

h. Respondent No. 3 then passed order dated 26.6.2018, by rejecting the reply furnished by Petitioner and confirming demand of tax and penalty of Rs 3,65,274/- each, on the sole ground that Part B of e-way bills were not filled and thus the same was not a valid e-way bills for transportation of goods;

i. Aggrieved with the order dated 26.6.2018, Petitioner filed statutory appeal before Respondent No. 2 on various grounds mentioned in the memo of appeal; and

j. By impugned order dated 18.5.2019, Respondent No. 3 dismissed the appeal filed by Petitioner and confirmed the order dated 26.6.2018 (wrongly mentioned as 20.6.2018) passed by Respondent No. 3.

4. Learned counsel appearing on behalf of the petitioner relies upon a 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 Act.

5. In the present case, apart from the factual aspect that the Part B of E-Way Bills was not filled up, there is no material on record to show that the petitioner had any mens rea to evade tax. It is to be noted that the invoice, that was being carried, matched with the goods in the truck and the goods were not in variance with the

invoice. Furthermore, the only reason upon which the presumption has been made by the authority concerned is that the tax may have been evaded as the distance between Delhi and Meerut is about 75 kilometers which would allow the petitioner to do multiple trips and evade tax.

6. The crux of the issue herein is that the petitioner explained the reason of non filling up of Part B of the E-Way Bills to the authorities. However, the authorities have not considered the explanation and rejected the same on the basis of only the factual aspect that the distance between Delhi and Meerut is about 75 kilometers. The presumption that has been made by the authorities that there was intention to evade tax is based only on the factual matrix that the distance between Delhi and Meerut is only about 75 kilometers, which could have allowed the petitioner to carry out multiple trips. In my view, no other material has been brought on record by the authorities to indicate that there was any mens rea on the part of the petitioner to evade tax. Furthermore, it is to be noted that the other columns of the E-Way Bills such as description of the goods, quantity of the goods and value etc. were found to be the same as in the tax invoice accompanying the goods. Furthermore, there was no mismatch between the goods that was being carried out in the vehicle and the invoice.

7. In light of the above, the reason of presumption of evasion of tax is without any basis in law, and accordingly, the order of detention and subsequent appellate order are illegal and required to be set aside.

8. It is to be noted that it is upon the authorities to pass orders under Section 129 of the Act on the basis of some investigation that may indicate an intention to evade tax. The same cannot be

solely on surmises and conjectures.

9. In light of the above, the order levying penalty and order dated May 18, 2019 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 four weeks from date.

Order Date :- 6.2.2024

Kuldeep

(Shekhar B. Saraf,J.)