

Court No. - 1

Case :- WRIT TAX No. - 298 of 2024

Petitioner :- M/S Ridhi Sidhi Granite And Tiles

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- C.S.C.,Rishi Raj Kapoor

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Rishi Raj Kapoor, learned counsel for the petitioner and the learned Additional Chief Standing Counsel appearing on behalf of the State.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the petitioner is aggrieved by the order dated September 23, 2023 passed by the Additional Commissioner, Grade-2 (Appeal)-I, State Goods and Services Tax, NOIDA dismissing the appeal filed by the petitioner and the order in original dated April 10, 2021.

3. Upon perusal of the record, it appears that apart from an error with regard to the address of the consignee in the E-Way Bill, there were no other issues with the said consignment. The invoice contained the address, the goods matched the description in the invoice and all other materials were intact. The imposition of tax is only on the basis of a technical error with regard to address of the consignee that was wrongly written in the E-Way Bill. The authorities have not been able to indicate any mens rea on the part of the petitioner for evasion of tax.

4. In a catena of judgments, this Court has held that

presence of mens rea for evasion of tax is a sine qua non for imposition of penalty and mere technical error would not lead to imposition of penalty [see **M/s Modern Traders v. State of U.P. and others** (Writ Tax No.763 of 2018, decided on 9.5.2018), **M/s Galaxy Enterprises v. State of U.P. and others** (Writ Tax No.1412 of 2022, decided on 6.11.2023 and **Hindustan Herbal Cosmetics v. State of U.P. and others** (Writ Tax No.1400 of 2019, decided on 2.1.2024)].

5. In light of the above, the orders dated September 23, 2023 and April 10, 2021 are quashed and set aside. The amount deposited by the petitioner be refunded to it within a period of one month from date. Other consequential reliefs to follow.

6. The writ petition is, accordingly, allowed.

Order Date :- 1.3.2024

Dev/-

(Shekhar B. Saraf,J.)