

**Court No. - 10**

Neutral Citation No. - 2023:AHC:1614

Case :- WRIT TAX No. - 954 of 2022**Petitioner :-** M/S Anchor Health**Respondent :-** Additional Commissioner And Another**Counsel for Petitioner :-** Bipin Kumar Pandey, Aditya Pandey**Counsel for Respondent :-** C.S.C.**Hon'ble Rohit Ranjan Agarwal, J.**

Heard Sri Aditya Pandey, learned counsel for the petitioner and Sri Rishi Kumar, learned Standing Counsel for the State.

Rejoinder affidavit filed today is taken on record.

This writ petition has been filed assailing the order passed by the first appellate authority dated 10.12.2021 in appeal No. GST-0037/2020 under Section 129 (3) of UPGST Act read with Section 20 of IGST Act.

Petitioner before this Court is a private limited company registered under Indian Companies Act carrying on the business of manufacturing soaps at Haridwar Unit, Uttarakhand. Petitioner's company is registered under CGST Act. The dispute relates to the assessment year 2017-2018. The goods of the petitioner was being transported from Kutch, Gujarat to Haridwar, Uttarakhand. The goods which were being transported in the form of raw material through a truck were intercepted on 03.03.2018 at Muzaffarnagar. The detaining authority had issued a notice which was replied by the petitioner. The goods were subsequently released complying the provisions of Section 129 (1) (a) of the Act. Thereafter, the first appellate authority has proceeded to pass the order dated 10.12.2021 dismissing the appeal of the petitioner.

Sri Aditya Pandey, learned counsel for the petitioner, has submitted that at the time when goods were in transit there was no necessity of having TDS/e-way bill as the GST Council had

exempted for carrying of e-way bill till 31.03.2018. He further contended that the petitioner's company was using the bags for carrying raw material five to six times and explanation was furnished by the petitioner to the authorities as well as before the first appellate authority but only on the ground that the bags had two batch numbers, thus, the explanation afforded by the petitioner was not accepted and appeal was dismissed.

Learned Standing Counsel while opposing the writ petition has invited the attention of the Court to paragraph no. 14 of the counter affidavit wherein it has been stated that on the bags which were being used in transit of raw material found two batch numbers and, thus, it can be safely presumed that there were undeclared goods contrary to invoice.

In reply, Sri Pandey, learned counsel for the petitioner, submitted that the case of petitioner from day one is that the bags which were used in transportation of raw material were used five to six times and, thus, there was different batch numbers mentioned on the said bags and there was no concealment on the part of petitioner.

Having heard learned counsel for the parties and from perusal of the material on record, I find that as far as requirement of e-way bill/TDS is concerned, the matter is no more *res integra* and has already settled by Division Bench of this Court in case of **M/S Godrej and Boyce Manufacturing Co. Ltd. Vs. State of U.P. and Others (Writ Tax No. 587 of 2018)** decided on 18.09.2018 followed by coordinate Bench of this Court in **M/S H.B.L. Power Systems Ltd. Vs. State of U.P. and others, 2022 (7) TR 6136**. The Division Bench of this Court has held that on the basis of instructions of GST Council the requirement of having e-way bill till 31.03.2018 was dispensed with.

In view of the said fact, the order passed by the first appellate

authority requiring the petitioner to have e-way/TDS bill when the vehicle was detained on 03.03.2018 does not hold good and the order dated 10.12.2021 is set-aside to that extent.

Now coming to the second point, as far as the mention of two batch numbers on the bags is concerned, this Court finds that explanation furnished by the petitioner before the authorities as well as the first appellate authority was specific that it was used five to six times for transportation of raw material and it was not a finished product which was transported by the petitioner where requirement of new bags arises.

The explanation afforded by the petitioner appeals to the Court and the finding recorded by the first appellate authority does not hold any ground, in view of the said fact, the order dated 10.12.2021 passed by the first appellate authority in appeal No. GST-0037/2020 is hereby set-aside.

Any amount deposited by the petitioner before the first appellate authority shall be refunded within a period of fifteen days from the date of production of a certified copy of this order before him.

Writ petition stands allowed.

Order Date :- 4.1.2023

Shekhar