

प्रेषक,

कमिश्नर, वाणिज्य कर,
उत्तर प्रदेश, लखनऊ।

सेवा में,

एडीशनल कमिश्नर, वाणिज्य कर, गौतमबुद्धनगर, जोन-नोएडा,
एवं समस्त एडीशनल कमिश्नर ग्रेड-1, वाणिज्य कर, उ0प्र0।

(वाद अनुभाग)

लखनऊ :: दिनांक :: 10 जून, 2024

महोदय,

कृपया अपर आयुक्त ग्रेड-1 (उच्च न्यायालय कार्य), राज्य कर, प्रयागराज के पत्र संख्या-651 दिनांक 17.05.2024 (प्रति संलग्न) का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा रिट याचिका संख्या-574/2019 सर्वश्री के0वाई0 टोबैको वर्क्स प्रा0लि0 बनाम उ0प्र0 सरकार व अन्य तथा रिट याचिका संख्या-827/2019 सर्वश्री के0 पान फ्रेगरेन्स प्रा0लि0 बनाम उ0प्र0 सरकार व अन्य के मामले में मा0 उच्च न्यायालय, इलाहाबाद के निर्णय दिनांक 13.05.2024 की प्रति संलग्न कर प्रेषित की गयी है। मा0 उच्च न्यायालय, इलाहाबाद के निर्णय दिनांक 13.05.2024 का पैरा-12 व 13 निम्नवत् है -

- " 12. A general caution is required to be given to the authorities in respect of the non-assistance and nonproviding 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."

मा0 उच्च न्यायालय द्वारा उक्त दिनांक को दिये गये आदेश में कमिश्नर, वाणिज्य कर, उ0प्र0 को न्यायालय के निर्देशों का अनुपालन कराये जाने के निर्देश दिये गये हैं।

अतः रिट याचिका संख्या-574/2019 सर्वश्री के0वाई0 टोबैको वर्क्स प्रा0लि0 बनाम उ0प्र0 सरकार व अन्य तथा रिट याचिका संख्या-827/2019 सर्वश्री के0 पान फ्रेगरेन्स प्रा0लि0 बनाम उ0प्र0 सरकार व अन्य के मामले में मा0 उच्च न्यायालय, इलाहाबाद के निर्णय दिनांक 13.05.2024 की प्रति संलग्न कर प्रेषित करते हुए निर्देशित किया जाता है कि मा0 उच्च न्यायालय द्वारा दिये गये निर्देश के अनुपालन में अपने अधीनस्थ सभी अधिकारियों को उक्त से अवगत कराएं कि मा0 उच्च न्यायालय के समक्ष लम्बित याचिकाओं के सम्बन्ध में मा0 न्यायालय द्वारा

वांछित प्रपत्र/अभिलेख तत्परता से मुख्य स्थायी अधिवक्ता/अपर मुख्य स्थायी अधिवक्ता, उच्च न्यायालय, इलाहाबाद को प्रभावी पैरवी हेतु उपलब्ध कराना तथा वाद के लम्बित रहने तक स्थायी अधिवक्ता के संतोषानुसार शंका समाधान कराना सुनिश्चित करें जिससे स्थायी अधिवक्ता द्वारा मा0 न्यायालय द्वारा पूछे गये प्रश्नों का उत्तर तत्परता से दिया जा सके। उपरोक्त के उल्लंघन पर कठोर कार्यवाही की जायेगी।

यह पत्र कमिश्नर, वाणिज्य कर, उ0प्र0 के अनुमोदनोपरान्त जारी किया जा रहा है।

संलग्नक-उपरोक्तानुसार।

भवदीय,


(अमर नाथ यादव)

एडीशनल कमिश्नर (विधि), वाणिज्य कर,
उत्तर प्रदेश, लखनऊ।

पृष्ठांकन पत्र संख्या व दिनांक उक्त।

प्रतिलिपि-निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. एडीशनल कमिश्नर ग्रेड-1/2 (उ0न्या0कार्य), वाणिज्य कर, प्रयागराज/लखनऊ को सूचनार्थ एवं आवश्यक कार्यवाही हेतु।
2. ज्वाइंट कमिश्नर (आई0टी0), वाणिज्य कर, मुख्यालय को इस निर्देश के साथ कि उक्त को विभागीय वेबसाइट पर समस्त अधिकारियों के सूचनार्थ प्रकाशित करने का कष्ट करें।


10.6.24
एडीशनल कमिश्नर (विधि), वाणिज्य कर,
उत्तर प्रदेश, लखनऊ।

14/5/24

प्रेषक,

अपर आयुक्त ग्रेड-1 (उ०न्या०कार्य) राज्य कर,
प्रयागराज ।

सेवा में,

आयुक्त, राज्य कर,
(वाद अनुभाग)
मुख्यालय, लखनऊ ।

पत्रांक 65/अपर आयुक्त ग्रेड-1(उ०न्या०कार्य) रा०क०प्रयागराज : दि० 17 मई, 2024
विषय : रिट याचिका संख्या-574/2019 सर्वश्री के०वाई० टोबैको वर्क्स प्रा०लि० बनाम उ०प्र० सरकार व
अन्य तथा रिट याचिका संख्या-827/2019 सर्वश्री के०पान फ्रेगरेन्स प्रा०लि० बनाम उ०प्र० सरकार व
अन्य के मामले में मा० उच्च न्यायालय इलाहाबाद द्वारा पारित आदेश के संबंध में।

महोदया,
उपर्युक्त विषयक वाद सुनवाई हेतु मा० उच्च न्यायालय इलाहाबाद के समक्ष दिनांक 13.05.2024 को प्रस्तुत हुआ। सुनवाई के उपरान्त मा० न्यायालय द्वारा विषयगत वाद को एलाउ (Allow) करते हुए निम्न आदेश पारित किया गया -

"..... A general caution is required to be given to the authorities in respect of the non-assistance and nonproviding 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."

उक्त के अनुपालन में आदेश दिनांक 13.05.2024 की प्रति संलग्न कर इस आशय से प्रेषित की जा रही है कि उक्त प्रकरण में मा० उच्च न्यायालय द्वारा दिये गये निर्देश के अनुपालन में अपने स्तर से फील्ड के अधिकारियों को यह निर्देश प्रसारित करने की कृपा करें कि मा० उच्च न्यायालय के समक्ष लम्बित याचिकाओं के संबंध में मा० न्यायालय द्वारा वांछित प्रपत्र/अभिलेख तत्परता से मुख्य स्थायी अधिवक्ता/अपर मुख्य स्थायी अधिवक्ता, उच्च न्यायालय इलाहाबाद को प्रभावी पैरवी हेतु उपलब्ध कराना तथा वाद के लम्बित रहने तक स्थायी अधिवक्ता के संतोधानुसार शंका समाधान कराना सुनिश्चित करें जिससे कि स्थायी अधिवक्ता द्वारा मा० न्यायालय द्वारा पूछे गये प्रश्नों का तत्परता से उत्तर दिया जा सके।
संलग्नक : उपरोक्तानुसार ।

(चन्द्र प्रकाश मिश्रा)
संयुक्त आयुक्त (कार्यपालक) राज्य कर,
प्रयागराज सम्भाग-बी, प्रयागराज।
प्रभार-संयुक्त आयुक्त (उ०न्या०कार्य) राज्य कर,
प्रयागराज ।

पू०प०सं० : / व दिनांक उक्त ।
प्रतिलिपि : मा० मुख्य स्थायी अधिवक्ता, उच्च न्यायालय इलाहाबाद की सेवा में सूचनार्थ प्रेषित ।

प्रभार-संयुक्त आयुक्त (उ०न्या०कार्य) राज्य कर,
प्रयागराज ।

989
05
21/24

मिस्त्री जीत
ज.सं.

Court No. - 1

Case :- WRIT TAX No. - 827 of 2019

Petitioner :- M/S Kay Pan Fragrance 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.,Krishna
Agarawal

Hon'ble Shekhar B. Saraf,J.

1. Heard Mrs. Pooja Talwar, learned counsel for the petitioner and Sri Arvind Kumar Mishra, learned 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 April 22, 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.)

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. This 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.

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"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.)