

Court No. - 1

Case :- WRIT TAX No. - 739 of 2020

Petitioner :- M/S Hawkins Cookers Limited

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

(Judgment dictated in Open Court)

1. Heard Sri Shubham Agrawal, counsel appearing on behalf of the petitioner and Sri Ravi Shanker Pandey, learned Additional Chief Standing Counsel appearing on behalf of the respondents.

2. This is an application under Article 226 of the Constitution of India, wherein the writ petitioner seeks a writ of certiorari for quashing the penalty order dated February 14, 2020 and the order passed in appeal dated October 13, 2020.

Facts of the case

3. Petitioner is engaged in the business of manufacturing and selling of pressure cookers under the brand name of Hawkins. The principal place of business of the petitioner is situated at 83/6, B.M. Market, Juhi, Kanpur, The factory of the petitioner is situated at Plot No. A- 1, A-2, A-14, A-15, SIDA Industrial Estate, Satharia, Jaunpur. Petitioner purchases/stock transfers various parts/raw materials for manufacturing of pressure cookers from outside the state of UP, for being delivered in its factory (manufacturing unit)

situated at Satharia, Jaunpur. The petitioner had purchased the raw materials for manufacturing of pressure cookers in the month of January 2020, from various suppliers situated in Maharashtra. Petitioner, thereafter, stock transferred certain raw materials from Maharashtra, for being delivered to its factory. In four out of the 8 E-Way bills, the place of supply has been correctly mentioned to be the factory of the petitioner situated at Satharia, Jaunpur. In the other 4 E-Way bills, the place of supply has been wrongly mentioned to be the principal place of business of the petitioner situated at Kanpur, where no manufacturing is done. The reason for the aforesaid mistake having been done by some of the parties is that on filling the GSTIN (registration number) of the petitioner while generating the E-Way bill, the principal place of business is automatically reflected in the place of supply(which is auto populated). It is the duty of the person generating the E-Way bill to change the place of supply if the same is different from the principle place of business.

4. The goods were intercepted on January 31, 2020 and the memo of detention was issued on February 1, 2020 and subsequently the goods were seized on February 3, 2020 by issuing MOV-06.

Contentions of the Petitioner

5. Mr. Shubham Agarwal, Advocate has submitted that due to an inadvertent error/overlooking by the accountants of the suppliers who generate the E-Way bill, they failed to change the place of supply which is automatically displayed. Thus the E-Way bills have been generated containing the wrong

place of supply of goods at Kanpur instead of Satharia, Jaunpur. The delivery of raw materials cannot be taken by the petitioner at Kanpur, since the raw materials are required for manufacturing of pressure cookers which is done only at its factory in Satharia, Jaunpur, and not at the principal place of business. Thus the mentioning of wrong place of supply in the E-Way bill was merely a technical breach.

6. He further submitted that the addresses that were wrongly written in the four e-way bills were addresses of the registered office of the petitioner. He submitted that the same was a technical error only as there was no intention of the petitioner to hide the destination in the e-way bills. Infact, he submitted that all the invoices and the bilties that were accompanying the goods bear the correct address of destination that is Jaunpur. The mistake committed in the four e-way bills with regard to mentioning of the registered office of the petitioner can only be seen as a clerical and typographical error and nothing more. He relied on a judgement of this Court in **M/s Hindustan Herbal Cosmetics Vs. State of U.P. and 2 others** in Writ Tax No.1400 of 2019 dated January 2, 2024, where this Court on a similar factual matrix had quashed the penalty order and the order passed in appeal.

7. Per contra, Mr. Pandey, submitted that the error/mistake in this case was grave in nature and raised a presumption of evasion of tax. He relied on the judgement in the cases of **Pushpa Devi Jain Vs. Assistant Commissioner of Revenue** reported in **2023-T.L.D.-89** and **Carpenters Clasics India Pvt. Ltd. Vs. Assistant State Tax Officer & 2**

Others reported in **(2019 U.P.T.C. [Vol. 101] - 14)** and in **The Assistant State Tax Officer Ernakulam and Another Vs. M/s Indus Towers Limited, Pallarivatton** reported in **(2018 U.P.T.C. [Vol.99] - 881)** to buttress his argument that non-compliance of the provisions of the Uttar Pradesh Goods and Service Tax, Act, 2017 (hereinafter referred to as the 'Act') and Rule 138 of the Act, would result in imposition of penalty. He further supported the impugned orders.

Analysis and Conclusion

8. Upon a perusal of the detention order, the order imposing penalty and the order passed in appeal, a common thread appears to run through the same, i.e. there was non-compliance of the Rules by putting the wrong address in four of the e-way bills. The common thread that also runs through these orders is that the invoices and the bilties in all the eight invoices and in four of the e-way bills was correct in all respect including the address. Undisputedly, the address in four of the e-way bills was incorrect. However, what is to be seen is that this particular address was not an anonymous address, but was the address of the registered office of the petitioner. The explanation provided by the petitioner with regard to a mistake on the part of the supplier to have populated the incorrect address is not far fetched, especially since the correct addresses were mentioned in all the eight invoices and the eight bilties.

9. From the above factual matrix, it does not appear that there was any intention whatsoever to evade tax.

10. The judgement in **Pushpa Devi Jain (Supra)** is in

relation to an expired e-way bill and the factual matrix therein is distinguishable from the present case. The Kerla High Court's judgement in **Carpenters Clasics India Pvt. Ltd. (Supra)** is also on a completely different footing as there was no e-way bill provided at all. Accordingly, this judgement is of no help to the department. The judgement in **Indus Towers Limited, Palarivatton (Supra)** deals with the factual matrix where no declaration was uploaded on the site of the department, and accordingly, reasonable presumption of intention to evade tax was raised in that case. Therefore, this case is also distinguishable on the facts itself.

11. As held by this Court in umpteen cases, where penalty is being imposed under Section 129 of the Act an intention to evade tax should be present. Now, such an intention to evade tax may be presumed by the department in cases where there is wholesale disregard of the Rules. For example, in the event the goods are not accompanied by the invoice or the e-way bill is completely absent, a presumption may be raised that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods. However, when most of the documents are accompanied with the goods and there are some typographical and/or clerical error, a presumption to evade tax does not arise. It is then upon the department to indicate that there was an intention to evade tax.

12. In the present case, it is palpably clear that the goods were accompanied with the relevant invoices, bilty documents and the e-way bills. It is to be noted that the

invoices and bilty documents also contain the correct address of the destination and only four out of eight of the e-way bills had the incorrect address. Even this incorrect address was the registered office of the petitioner. In such a case, no presumption to evade tax arises at all. The mere technical error committed by the petitioner cannot result in imposition of such harsh penalty upon the petitioner. As quoted in the **Arthashastra by Chanakya** that '*Governments should collect taxes like a honeybee collects honey from a flower without disturbing its petals.*'

13. In the light of the above, I am of the view that the penalty imposed in this particular case is without any basis in law, and accordingly, impugned penalty order dated February 14, 2020 and the order passed in appeal dated October 13, 2020 are quashed and set aside.

14. The writ petition is allowed.

Order Date :- 12.2.2024

Dev/-

(Shekhar B. Saraf,J.)