

**Court No. - 1**

**Case :-** WRIT TAX No. - 228 of 2020

**Petitioner :-** M/S Ashoka P.U. Foam (India) Pvt. Ltd.

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Rahul Agarwal

**Counsel for Respondent :-** C.S.C.

**Hon'ble Shekhar B. Saraf,J.**

1. Heard Mr. Rahul Agarwal, counsel appearing behalf of the petitioner and Mr. Ravi Shanker Pandey, 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 penalty order dated September 13, 2018 passed by the respondent No.4/Assistant Commissioner, State Goods and Services Tax, Agra and the order dated October 3, 2019 passed in appeal by the respondent No.3/Additional Commissioner Grade-2 (Appeal)-III, State Goods and Services Tax, Agra.
3. Upon perusal of the impugned order dated September 13, 2018, it is blatantly clear that in spite of recording the submissions of the petitioner, the appellate authority has not dealt with the same and in fact in the reasoning portion, has specified an incorrect submission of the assessee/petitioner.
4. The case of the petitioner was that the goods have been loaded on a particular vehicle, which broke down and upon such breaking down, the goods were loaded on another vehicle. At that point of time, the goods were seized. The petitioner had explained that the date on which the breakdown had taken place, there was Bharat Band and due to the same, the driver of the vehicle could not update the e-way bill. The factual position is that the goods were accompanied by invoice and e-way bill reflecting earlier vehicle number. Furthermore, it is to be noted that the revised e-way bill was produced before the authorities prior to the passing of the seizure

order.

5. The appellate authority, while passing the order in appeal, has made categorical finding that even if the documents are accompanied with the goods but there is a technical error, the same would amount to violation of provisions of Section 129 of the Uttar Pradesh Goods and Services Tax Act, 2017 read with Rule 138 of the Uttar Pradesh Goods and Service Tax Rules, 2017, even though there is no intention to evade tax.

6. 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)].

7. The imposition of penalties within the realm of tax laws should not be based solely on insignificant technical errors devoid of any financial consequences. The foundational principle guiding this approach is the commitment to maintain a tax system that is characterized by fairness and justice, where the severity of penalties corresponds to the gravity of the offense committed. While penalties serve a pivotal role in ensuring compliance with tax laws, legal frameworks stress the importance of establishing the actual intent to evade taxes as a prerequisite for their just imposition. This emphasis underscores the critical need to differentiate between inadvertent technical errors and purposeful attempts to circumvent tax obligations. Penalties, according to this principle, should be reserved exclusively for cases where concrete evidence points to a deliberate and fraudulent act against the tax system, rather than being applied to situations involving unintentional mistakes. The legal rationale supporting this principle recognizes that the primary purpose of taxation statutes is not to penalize inadvertent errors but rather to address intentional acts of non-compliance. Consequently, the burden of proof falls

squarely on tax authorities to demonstrate the genuine intent to evade tax before penalizing taxpayers. This safeguard is indispensable to shield individuals and entities from punitive measures arising from honest mistakes, administrative errors, or technical discrepancies that lack any malicious intent. The fundamental principle requiring an intent to evade tax for the imposition of penalties is crucial for preserving the fairness and integrity of taxation systems. In order to uphold a balanced and equitable approach to tax enforcement, it is imperative to recognize and acknowledge the distinction between technical errors and intentional evasion.

8. In light of the above, I am of the view that the orders impugned in this writ petition are not sustainable in law wherein the authorities have exceeded their jurisdiction and have not acted in accordance with the provisions of the statutes. Accordingly, the order September 13, 2018 and October 3, 2019 are quashed and set-aside. The amount deposited by the petitioner be refunded within a period of four weeks from date. Other consequential reliefs to follow.

9. The writ petition is, accordingly, allowed.

**Order Date :- 24.1.2024**

Rakesh

(Shekhar B. Saraf, J.)