

**Neutral Citation No. - 2023:AHC:200726****Court No. - 5**

**Case :-** WRIT TAX No. - 527 of 2023

**Petitioner :-** M/S New India Traders

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

**Counsel for Petitioner :-** Pranjal Shukla

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

**With**

**Case :-** WRIT TAX No. - 529 of 2023

**Petitioner :-** M/S New India Traders

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

**Counsel for Petitioner :-** Pranjal Shukla

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

**HON'BLE PIYUSH AGRAWAL,J.**

1. Heard Shri Pranjal Shukla, learned counsel for the petitioner and Shri B.K. Pandey, learned Additional Chief Standing Counsel for the State - respondents.
2. The instant Writ Petitions are being entertained in view of the fact that no GST Tribunal has been constituted in the State of Uttar Pradesh pursuant to the notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.
3. Since the issues involved in both the writ petitions are similar, therefore, the same are being decided by the common order. Writ Tax 527 of 2023 is taken as a leading case for deciding the controversy involved in both the writ petitions.

**Writ Tax 527 of 2023**

4. The present writ petition has been filed challenging the order dated 04.08.2022 passed by the Assistant Commissioner, Mobile Squad – 3, SGST, Bareilly as well as the order dated 30.01.2023

passed by the Additional Commissioner, Grade – 2 (Appeal), Bareilly.

5. The brief facts of the case are that the petitioner is a Proprietorship concern. In the normal course of its business, on 04.08.2022, the goods were loaded from the business premises of the petitioner for M/s Wave Industries Private Limited, Amroha, along with requisite tax invoice, e-way bill, etc. The goods in transit were intercepted and on physically verification, the weight mentioned in the e-way bill was higher than the actual weight. Thereafter, on 04.08.2022 itself show cause notice was issued and penalty order was passed imposing Rs. 1,70,860/-. Aggrieved against the penalty order, the petitioner preferred an appeal, which was dismissed vide order dated 30.01.2023. Hence, this writ petition.
6. Learned counsel for the petitioner submits that due to mistake of the Accountant, while generating the tax invoice and e-way bill, wrong weight of the scrap iron was mentioned, but the said fact was rectified before the movement of the goods from its originating place. He further submits that before the goods were detained and seized, the correct copy of the tax invoice and e-way bill was produced along with the reply to the notice, but without considering the same, the impugned demand and penalty order has been passed, against which appeal was preferred, which was also dismissed. He further submits that for the first time in the appellate order, an inference has been drawn against the petitioner that the petitioner has submitted fresh tax invoice no. 33 after correcting the weight therein and therefore, the intention of the petitioner was not fair and the impugned order has been passed. He further submits that before taking an adverse inference on the said count, neither any notice was issued, nor any opportunity was given to the petitioner for rebutting the same. He prays for allowing the writ petition.

7. Per contra, learned Additional Chief Standing Counsel supports the impugned order and submits that that perusal of the record shows that tax invoice no. 33 and e-way bill were generated on a day prior to the movement of goods. When the goods were detained and seized, the petitioner generated new tax invoice on the same number, which was accompanied the goods (bill no. 33) after correcting the weight both in the tax invoice as well as in the e-way bill. This shows the intention of the petitioner to evade tax and the same is in contravention to the provisions of the Act. He prays for dismissal of the writ petition.
8. After hearing the learned counsel for the parties, the Court has perused the record.
9. On perusal of the record shows that the goods were moving from Bareilly to Amroha along with tax invoice and e-way bill, GR, etc. On interception, it was found that there was different of weight as mentioned in the e-way bill and actual weighment being undertaken by the authorities and it was found that the weight mentioned in the e-way bill was higher than the actual weight of the goods. If in the e-way bill more weight was there than the actual found, no adverse inference could be drawn.
10. It also appears from the record that after detaining the goods, show cause notice was issued. Before the seizure order could be passed, the correct e-way bill was produced cancelling the earlier e-way bill. This Court, on various occasions, has held that if, after issuance of show cause notice and before passing the seizure order, documents are produced, no adverse inference can be drawn, but in the case in hand, the petitioner has issued two bills of the same number with correct weight and the same was produced before the authorities below.
11. On the said premise, the penalty and seizure order was not passed, but while rejecting the appeal, an adverse inference has been

drawn that the petitioner has issued two tax invoices of the same number. Once the authorities intend to take an adverse view, the petitioner has to be informed and put to notice to rebut the same and therefore, the impugned order cannot be sustained in the eyes of law. In the instant case, the petitioner was not put to any notice or opportunity being afforded to bring material on record to contest its case, which is in clear violation of the principles of natural justice.

12. In view of the above, the order dated 04.08.2022 passed by the Assistant Commissioner, Mobile Squad – 3, SGST, Bareilly as well as the order dated 30.01.2023 passed by the Additional Commissioner, Grade – 2 (Appeal), Bareilly cannot be sustained in the eyes of law. The same are hereby quashed.
13. The writ petitions succeed and are allowed.
14. The matter is remanded back to to the Additional Commissioner for deciding the issue afresh after giving full opportunity of hearing to all the stake holders in accordance with law, preferably, within a period of three months from the date of production of a certified copy of this order.
15. The petitioner undertakes to serve the certified copy of this order within a period of three weeks from today.

**Order Date :-17/10/2023**

*Amit Mishra*