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Neutral Citation No. - 2023:AHC:223893

RESERVED

Court No. - 5

Case :- WRIT TAX No. - 1421 of 2022

Petitioner :- M/S Shiv Trading
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 learned ACSC for the State - respondent.

2. The instant Writ Tax is 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. The present writ petition has been filed challenging the order dated 01.06.2022 passed by the Additional Commissioner, Grade - 2 (Appeals - 1st), Muzaffarnagar by which the appeal of the petitioner has been dismissed.

4. Learned counsel for the petitioner submits that the instant proceedings under section 74 of the GST Act have wrongly been initiated against the petitioner. He further submits that the petitioner is a registered proprietorship firm and engaged in the business of purchase and sale of iron machinery parts and hardware. In its normal course of business, the petitioner made purchase during the period 2018-19 from one M/s Krishna Trading Company, Mathura and due tax invoice, payments, etc. were made through banking channel and thereafter, Input Tax Credit (ITC) was availed. He further submits that on 24.01.2019, an inspection was carried out and found that M/s Krishna Trading Company was non-existent and therefore, adverse inference has

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been drawn that the transactions shown by the petitioner were bogus, fictitious and fake and thereafter, impugned order dated 22.11.2021 was passed for the month of May to December, 2018 imposing tax and penalty along with interest upon the petitioner amounting to Rs. 45,21,097.75/-, against which the petitioner preferred an appeal before the respondent no. 2, but vide impugned order dated 01.06.2022, the appeal of the petitioner has been rejected.

5. He further submits that the petitioner, being a registered dealer, submitted all documentary evidence, such as, tax invoice, e-way bills, bilty, before and after the loading of goods weighment slips, etc. and payments were made through banking challen, but still the authorities below have disbelieved and initiated the impugned proceedings against the petitioner. In support of this submissions, he has placed reliance on the judgements various High Courts as well as the Apex Court in ***Suncraft Energy Private Limited & Another Vs. Assistant Commissioner & Others*** [MAT No. 1218/2023, decided on 02.08.2018], ***Divya Agencies Vs. State Tax Officer & Others*** [Writ Petition No. 29769/2023, decided on 12.09.2023], ***The Commissioner of Central Excise & Customs Vs. M/s Juhi Alloys Limited*** [Central Excise Appeal No. 21/2014, decide don 15.01.2014], ***LI & Fung India Private Limited Vs. Assistant Commissioner of Income Tax & Another*** [Writ Petition No. 11596/2016, decided on 08.03.2017], **iM/s CJ Darcl Logistic Limited Vs. Union of India & Others** [Writ Petition (T) No. 215/2022], ***M/s Arhaan Ferrous & Non-Ferrous Solutions Private Limited Vs. The Deputy Assistant Commissioner & Others*** [Writ Petition No. 24411/2023, decided on 03.08.2023], ***M/s D.Y. Beathel Enterprises Vs. State Tax Officer*** [Writ Petition (MD) No. 2127/2021, decided on 24.02.2021], ***M/s Sri Ranganathar Valves Private Limited Vs. Assistant Commissioner (CT)*** [Writ Petition No. 38488/2015, decided on 02.09.2020], ***M/s Bright Star Plastic Industries Vs.***

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Additional Commissioner of Sales Tax & Others [Writ C No. 15265/2021, decided on 04.10.2021], ***Sanchita Kundu & Another Vs. Assistant Commissioner of State Tax & Others*** [WPA No. 4231/2022, decided on 05.05.2022], ***Arise India Limited Vs. Commissioner of Trade Taxes, Delhi & Others*** [Writ C No. 2106/2015, decided on 26.10.2017], ***Commissioner of Trade Tax, Delhi Vs. Arise India Limited*** [SLP (Civil) No. 36750/2017, decided on 10.01.2018], ***M/s Onyx Designs Vs. Assistant Commissioner of Commercial Taxes & Another*** [Writ Petition No. 17989/2018, decided on 17.06.2019] and ***M/s LGW Industries Limited & Others Vs. Union of India & Others*** [WPA No. 23512/2019, decided on 13.12.2021]. He prays for allowing the writ petition.

6. Per contra, learned ACSC supports the impugned order and submits that the weighment slips, bilty, which were submitted by the petitioner in support of its claim showing actual movement of goods, were not genuine, but fake documents as on inquiry being made, neither the transport company nor the place where the weighment was made were found in existent. There were no actual movements of goods and therefore, the proceedings have rightly been initiated against the petitioner. In support of his submission, he has placed reliance on the judgement of the Apex Court in the case of ***State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited*** [Civil Appeal No. 230/2023, decided on 13.03.2023, wherein, it has been held that it is the burden upon the dealer to prove beyond doubt its claim of ITC. He further submits that the dealer has to show the actual movement of goods. Once, on inquiry, it was found that the person who issued the weighment slip and bilty were non-existent, the present proceedings are justified. He further submits that recently, this Court in ***M/s Malik Traders Vs. State of U.P. & Others*** [Writ Tax No. 1237/2021, decided on 18.10.2023] has held that the *prima facie* burden is on the dealer to furnish details

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of actual physical movement of the goods and in absence of such documentary evidence, ITC cannot be legally granted. He prays for dismissal of the writ petition.

7. After hearing learned counsel for the parties, the Court has perused the records.

8. It is admitted fact between the parties that the goods have been shown to be purchased from M/s Krishna Trading Company, Mathura. In support thereof, tax invoice, e-way bill, weighment receipt before & after loading, bilty, etc. were filed and on the basis of the said documents, ITC was availed by the petitioner. Thereafter, on scrutiny, neither M/s Krishna Trading Company was found to be in existent, nor the persons, who issued the bilty and weighment slip, was found in existent. Once the very basis to show that the movement of goods has taken place was doubted, the petitioner, apparently, failed to prove actual physical movement of goods.

9. The authorities have categorically recorded the fact that the petitioner failed to show actual movement of goods and therefore, the judgements cited by the petitioner, as referred to hereinabove in the preceding paragraphs, are of no aid to the petitioner. The petitioner also could not distinguish the judgements of the Apex Court in ***M/s Ecom Gill Coffee Trading Private Limited*** (supra).

10. The Apex Court in ***M/s Ecom Gill Coffee Trading Private Limited*** (supra) has held as under:-

> *9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production*

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of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.

11. Further, this Court in ***M/s Malik Traders*** (supra) has held as under:-

> ***17.*** *Patna High Court in the case of* ***M/s Astha Enterprises (supra)*** *has held as under :-*
>
> > *"9. …. It was held that the dealer who claims Input Tax Credit has to prove beyond doubt, the actual transaction by furnishing the name and address of selling dealer, details of the vehicle delivering the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. It was also held that to sustain a claim of Input Tax Credit on purchases, the purchasing dealer would have to prove and establish the actual physical movement of the goods and genuineness of transactions, by furnishing the details referred to above and mere production of tax invoices would not be sufficient to claim ITC."*
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> ***18.*** *Similarly, this Court in the case of the* ***Commissioner Commercial Tax Vs. M/s Ramway Foods Ltd. (supra)*** *has held that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual physical movement of goods, genuineness of transactions, etc. and if the dealer fails to prove the actual physical movement of goods, the benefit cannot be granted.*

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> ***19.*** *The judgement relied upon by the counsel for the petitioner of Calcutta High Court in the cases of* ***M/s LGW Industries Limited and others (supra)*** *and* ***Sanchita Kundu and another (supra)*** *is of no aid to the petitioner as recently Hon'ble the Apex Court in the case of* ***M/s Ecom Gill Coffee Trading Private Limited (supra)*** *has specifically held that onus is to be discharged by the petitioner to prove and establish beyond doubt the actual transaction and physical movement of goods. But in the case in hand, the petitioner has failed to prove and establish actual physical movement of goods and genuineness of transaction as such the proceedings has rightly been initiated.*
>
> ***20.*** *Further, the case law relied upon by the counsel for the petitioner of this Court in* ***Ashish Trading Company (supra)*** *is also of no aid to the petitioner as in that case in para 14, the Court has recorded a finding of fact that order of the first appellate authority is cryptic as no details were provided. But the facts of the present case is different as stated in previous paras and recent judgement of Apex Court in the case of* ***Ecom Gill Coffee Tradiving Pvt. Ltd. (supra)*** *is squarely applicable in the facts of the present case.*
>
> ***21.*** *In view of the facts as stated above, no interference is called for by this Court in the impugned orders. The writ petition fails and is* ***dismissed*** *accordingly.*

12. From the perusal of the record shows that the petitioner failed to discharge its onus to prove and establish beyond doubt the actual transaction, actual physical movement of goods as well as the genuineness of the transactions and as such, the proceedings have rightly been initiated against the petitioner under section 74 of the GST Act.

13. In view of the discussions made in foregoing paragraphs, no interference is called for in the impugned order. The writ petition lacks merits and is hereby dismissed.

Order Date :**-28/11/2023**
Amit Mishra