

**A.F.R.**

Neutral Citation No. - 2024:AHC:85850

**Court No. - 1**

**Case :-** WRIT TAX No. - 1348 of 2022

**Petitioner :-** M/S Ace Manufacturing Systems Limited

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

**Counsel for Petitioner :-** Atul Gupta,Prakhar Shukla

(Judgment dictated in open Court)

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

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the seizure order dated October 23, 2021, penalty order dated October 29, 2021 and the appellate orders dated April 16, 2022 and July 22, 2022.

2. The case of the petitioner herein is that the cargo being transported had been declared as Over Dimensional Cargo (hereinafter referred to as 'the ODC'). However, the authorities in the instant case concluded that since the goods had travelled at a faster speed and reached the destination quickly, the vehicle cannot be categorised as the ODC.

3. The counsel appearing on behalf of the petitioner submits that the respondent authorities did not undertake the task of calculating the height of the goods which clearly would have indicated that the goods would be classified as the ODC since the same were 13.9 feet above the ground. Counsel on behalf of the petitioner also relied on a circular issued by the Commissioner, State Tax dated January 17, 2024, which states in paragraph 2.4 as follows:-

“2.4 स्पष्ट है कि Over Dimensional Cargo का निर्धारण उपरोक्त प्रावधानों के दृष्टिगत किया जाना अपेक्षित होगा। Over Dimensional Cargo से संबंधित वाहन होने के दशा में केवल इस आधार पर अभिग्रहण किया जाना है कि ऐसे किसी वाहन के नियम 138(10) के अधीन विहित अधिकतम दूरी एवं समय सीमा की तुलना में कम समय से अधिक दूरी तय की है विधिक रूप से उचित नहीं है। अतः उपरोक्त प्रकार के प्रकरणों में माल तथा वाहन का अभिग्रहण किया जाना सिवाय उस स्थिति के जहाँ आलोच्य वाहन द्वारा उपरोक्तानुसार प्राप्त अधिक समयावधि का प्रयोग समान प्रपत्रों के आधार पर माल के पुनर्परिहवन हेतु किया जा रहा है, उचित नहीं है”

4. In the above circular, it has also been pointed out that a vehicle other than a double decked transport, the vehicle height of which exceeds 3.8 meters, would be classified as the ODC.
5. Counsel on behalf of the petitioner has submitted that 3.8 meters amounts to 12.46 ft whereas in the case of the petitioner the height of the goods was 13.8 ft.
6. Counsel on behalf of the respondents submits that the speed at which the goods have travelled clearly indicates that the vehicle cannot be categorised as ODC.
7. The above submission of the counsel on behalf of the respondents cannot be accepted as the circular issued by the Commissioner clearly indicates that the speed of a vehicle is not a criterion to decide the nature of the Cargo. It is to be further noted that the other documents in the vehicle i.e. invoice, e-way bill and bilty were all in order and matched with the goods in question. The sole reason for imposing penalty in the present case is the fact that the goods had travelled at a fast speed, and therefore, according to the authorities could not be categorised as the ODC.

8. In my view, the entire premise on the basis of which penalty has been imposed against the petitioner is based on surmises and conjectures and is also against the departmental circular that clearly indicates that imposition of tax on the ODC goods that had travelled at a faster speed is not a tenable ground.

9. In the present case, the entire imposition of penalty is based on surmises and conjectures without there being any basis or finding with regard to intention to evade tax. One may rely upon the judgments of this Court in the case of **Girish and Company vs. State of U.P. and others** (Writ Tax No.897 of 2019, Neutral Citation No.-2024:AHC:9778) and **M/s Hindustan Herbal Cosmetics vs. State of U.P.** and others (Writ Tax No.1400 of 2019, Neutral Citation No.-2024:AHC:209) where it has been held that presence of *mens rea* for evasion of tax is a sine qua non for imposition of penalty.

9. The imposition of penalties on the petitioner rests on shaky ground, devoid of any substantive basis or findings indicating an intention to evade tax. This deficiency in evidentiary support undermines the legitimacy of the penalties and raises questions about the procedural fairness of the administrative actions taken against the petitioner. In the absence of concrete evidence demonstrating wilful misconduct or deliberate intent to circumvent tax obligations, the imposition of penalties appears arbitrary and unjustified.

9. The jurisprudential principle that *mens rea*, or the presence of a guilty mind, is a prerequisite for imposition of penalties holds immense significance. It serves as a bulwark against the arbitrary exercise of governmental authority and safeguards the rights of individuals against unwarranted punitive measures. Its application in the realm of taxation underscores the importance of ensuring procedural fairness. By requiring the

establishment of *mens rea* as a prerequisite for penalty imposition, the legal framework strikes a delicate balance between regulatory enforcement and individual rights, thereby fostering transparency and accountability in the administration of tax laws.

9. The mere fact that the goods in question were transported at a faster speed does not constitute sufficient grounds for penalization, in light of the departmental circular explicitly excluding transit speed as a criterion for classification. The reliance on speculative assumptions and conjectural reasoning to justify the imposition of penalties is antithetical to the principles of fairness and equity that underpin the rule of law. Moreover, the arbitrary imposition of penalties without any discernible basis undermines the credibility and integrity of the tax administration system. It erodes public trust in the fairness and impartiality of governmental actions and fosters a perception of arbitrariness and caprice. Such actions not only prejudice the rights of the affected parties but also undermine the legitimacy of the regulatory framework as a whole, casting doubt on the efficacy and reliability of tax enforcement mechanisms.

10. The rationale behind the *mens rea* requirement is twofold. Firstly, it serves to preserve the integrity of the legal system by distinguishing between inadvertent errors and intentional misconduct. By requiring evidence of wilful intent, it ensures that penalties are reserved for those who deliberately flout the law, thereby safeguarding against unjust punishment and preserving public confidence in the fairness of the tax regime. Secondly, the *mens rea* requirement acts as a deterrent against tax evasion, signalling to taxpayers that deliberate non-compliance will be met with severe consequences. The prospect of facing penalties serves as a powerful disincentive for individuals and entities tempted to engage in fraudulent or deceitful conduct, thereby promoting voluntary compliance with tax laws and fostering a culture of

accountability and transparency. In the absence of wilful intent, penalties lose their deterrent effect and instead become arbitrary exercises of state power, subjecting innocent taxpayers to undue hardship and injustice. It is imperative that penalty imposition be grounded in sound reasoning and substantive evidence of wilful misconduct.

10. In light of the above, the instant writ petition is allowed. Accordingly, let there be a writ of certiorari issued against the orders dated October 23, 2021, October 29, 2021, April 16, 2022 and July 22, 2022. The said orders are quashed and set-aside. Consequential reliefs to follow.

11. The respondents are directed to return the amount of security and penalty paid by the petitioner within six weeks from the date of this order. There shall be no order as to the costs.

**Order Date :-** 13.5.2024

Rakesh

(Shekhar B. Saraf, J.)