

WRIT TAX No. - 4506 of 2025 at Allahabad : Kamla Machines Vs. State Of Up And 2 Others

Date of Decision - 6/11/2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

HON'BLE PIYUSH AGRAWAL, J.

1. The instant writ petition has been filed against the impugned order dated 30.08.2025 passed by the respondent no. 3 as well as the impugned order dated 22.08.2025 passed by the respondent no. 2.

2. Learned counsel for the petitioner submits that the petitioner is registered under the Haryana GST. He further submits that on 29.07.2025, the petitioner made inward supply of machinery parts from Honesty Machine Tools, Mumabai (Maharashtra). The said goods were to be supplied to the petitioner; whereas, the shipment was to be made to Ojas Enterprises, Muzaffarnagar (UP). He further submits that the goods in question were transported vide vehicle having registration number RJ 01 GB 8262. He further submits that the goods were purchased by the petitioner, but the same were to be delivered to the address of Ojas Enterprises, Muzaffarnagar. The e-way bill and other documents were generated before the movement of the goods clearly mentioning about the bill to ship transaction. The period of validation of e-way bill was upto 07.08.2025 and GR was also prepared. He further submits that while the goods were on its journey, before reaching its destination, the truck driver fell ill and therefore, he could not complete the journey within the valid period of e-way bill.

3. He further submits that after recovery from the illness, while the goods were in transit from Mumbai to Muzaffarnagar, the same were intercepted at Kharkoda pass, Meerut by the Mobile Squad, when all documents were produced. He further submits that no discrepancy, whatsoever, was found about the goods mentioned in the tax invoice and on physical verification. Thereafter, MOV 01 was issued on the same dated, i.e., on 08.08.2025, which clearly contemplates that the goods were moving from Mumbai to Muzaffarnagar.

4. He further submits that MOV 02 was issued on 12.08.2025 and thereafter, MOV 06 was issued on 14.08.2025 holding that the e-way bill has expired. Notice on DRC 01 was also issued, to which detailed reply dated 17.08.2025 was submitted by the petitioner; wherein,

in para (ii), it was specifically mentioned that the truck driver suffered illness and therefore, he could not travel and after recovery, he started the journey. Thereafter, order dated 15.08.2025 under section 129(3) of the GST Act was passed, which was affirmed by the respondent no. 2 vide impugned order dated 22.08.2025 amounting to Rs. 9,29,678/-. Aggrieved by the penalty order, the petitioner preferred appeal, which has been dismissed vide impugned order dated 30.08.2025.

5. Learned counsel for the petitioner submits that the appellate authority has travelled beyond the notice and has not understood the transaction of bill to ship and held that first, the goods ought to have reached the business place of the petitioner and thereafter, the goods should have been sold and sent from Haryana to Muzaffarnagar. He further submits that the said observation of the appellate authority is against the provisions of the GST Act as well as the circular/Government Order dated 17.01.2024 issued by the Commissioner of State Tax. He further submits that once the e-way bill was accompanying, though expired, no intention to evade tax can be attributed to the petitioner as the movement of goods was within the knowledge of the Department.

6. Learned counsel for the petitioner further submits that the transaction was on bill to ship basis, which is recognized business procedure under section 10(1)(b) of the IGST Act and even in the show cause notice dated 15.08.2025, the business model bill to ship has not been doubted by the respondent no. 2. He further submits that the movement of goods was duly covered with tax invoice and e-way bills which can be verified from the portal and as such, there was no intention to evade payment of tax and therefore, the entire proceedings are illegal. He further submits that before passing the impugned order, the respondent no. 2 has not provided any personal hearing, although specific request was made. He further submits that the e-way bill was expired and the same could not be undated on account of illness of the driver of the vehicle, the evidence of which was filed, but the same has not been considered. In support of his submissions, he has placed reliance on the judgements of M/s Trimble Mobility Solutions India Private Limited Vs. State of U.P. & Others [Writ Tax No. 205/2024, decided on 07.10.2025] and A.A. Plastics Private Limited Vs. Additional Commissioner & Others [Writ Tax No. 1006 of 2022, decided on 02.08.2024].

7. Per contra, learned ACSC supports the impugned orders and submits that before starting the journey, if the e-way bill was expired, it was incumbent upon the petitioner to get the e-way bill uploaded and then, start the journey and therefore, in absence thereof, the intention to evade payment of tax is established.

8. After hearing learned counsel for the parties, the Court has perused the record.

9. It is not in dispute that the transaction in question is bill to ship transaction. The goods were moving from the State of Maharashtra to Muzaffarnagar (U.P.) as is evident from Annexure No. 3 to the writ petition, i.e., the tax invoice, and e-way bill. Further, GR was also issued. The documents clearly establish that the goods were coming from the State of

Maharashtra to Muzaffarnagar. The bill to ship transaction has been recognized by the State as well as the circular/Government Order dated 17.01.2024 by the Commissioner, State GST, U.P. (Annexure No. 12 to the writ petition).

10. The goods in question have been only seized on the ground that the e-way bill has expired. This Court on various occasions has held that if the e-way bill has expired, no intention to evade payment of tax can be attributed in absence of any other material adversely found against the dealer. This Court in the case of M/s Trimble Mobility Solutions India Private Limited (supra) has taken the similar view and therefore, the issue in hand is squarely covered by the said judgement.

11. In the case in hand, the truck driver fell ill, due to which the journey could not be concluded. Therefore, intention to evade payment of tax is upon the Revenue for establishing mens rea and in absence thereof, the proceedings under section 129 of the GST Act cannot be initiated as held by this Court in A.A. Plastics Private Limited (supra).

12. In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court in the judgements cited above, the impugned orders cannot be sustained in the eyes of law. The same are hereby quashed.

13. The writ petition succeeds and is allowed.

(Piyush Agrawal,J.)

November 06, 2025

Amit Mishra