

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 16^h OF MARCH, 2022

WRITE PETITION NO.344 OF 2022

Between:-

**M/S CREATE CONSULTS, REPRESENTED THROUGH
ITS PROPRIETOR SHRI RALSTON ANIL RAJVAIDYA,
S/O ANIL RAJVAIDYA, AGED-ADULT, OCCUPATION-
BUSINESS, R/O MUMBAI (M.H.)**

PETITIONER

(BY SHRI SIDDHARTH SHRIVASTAVA, ADVOCATE)

AND

**1. THE STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY, DEPARTMENT OF COMMERCIAL
TAX, VALLABH BHAWAN, MANTRALAYA, BHOPAL
(MADHYA PRADESH)**

**2. COMMISSIONER, STATE GST,
MOTI BUNGLOW, COMMISSIONER OFFICER,
INDORE (MADHYA PRADESH)**

**3. JOINT COMMISSIONER, STATE TAX CUM APPELLATE
OFFICER STATE GST, DIVISION-2, BHOPAL ZONE,
DISTRICT-BHOPAL (MADHYA PRADESH)**

**4. STATE TAX OFFICER, OFFICE OF ASSISTANT
COMMISSIONER, COMMERCIAL TAX ANTI-
EVASION BUREAU, BHOPAL (MADHYA PRADESH)**

RESPONDENTS

(BY SHRI PIYUSH D. DHARMADHIKARI, GOVERNMENT ADVOCATE)

This petition coming on for admission this day, Hon'ble Shri

Justice Maninder S. Bhatti passed the following:

ORDER

The petitioner seeks to assail the order dated 24/06/2019 passed by Sales Tax Officer which is contained in Annexure P/3 and also the order dated 31/10/2019 passed by Joint Commissioner, State Tax cum Appellate Officer, State GST contained in Annexure P/5. The petitioner has further prayed that respondent Authorities be directed to refund the amount of Rs.89,422/- alongwith interest to the writ petitioner.

2. The factual matrix of the case in hand reveals that petitioner firm is engaged in the work of selling of P & G recycled bags. It is averred in the petition that one SIDWIN FABRIC PVT. LTD. approached the petitioner and placed an order of purchase of P & G recycled bags quantity measuring 4771.2 kg. The petitioner further submits that the said P & G recycled bags are procured from AVGOL India Pvt. Ltd. Thus, in pursuance of the demand raised by SIDWIN FABRIC PVT. LTD., petitioner requested the manufacturer i.e. AVGOL India Pvt. Ltd. to directly ship the consignment containing P & G recycled bags quantity 4771.2 kg directly to SIDWIN FABRIC PVT. LTD. at their plant located at Gambhoiharsol at Gujrat. However, while generating the e-way bill, on account of a bonofide error, instead of detail of AVGOL India Pvt. Ltd., petitioner mentioned its own details. Meaning thereby the petitioner made attempt to demonstrate that the e-way bill which was generated by petitioner for the aforedetailed transaction, should have been in the name of AVGOL India Pvt. Ltd but, on account of bonafide and inadvertent error, same was generated in the name of petitioner. It is further mentioned in e-way bill which finds mentioned at page no.20 of writ petition, the consignment was to be dispatched from Mumbai to Himmatnagar Gujrat. Whereas in the submission of petitioner, a courier receipt/invoice for the same dispatch was rightly prepared

on same day which is at page no.19, in the same, description of the consigner was rightly mentioned as AVGOL India Pvt. Ltd. and the same was to be dispatched from Bhopal to SIDWIN FABRIC PVT. LTD. Gambhoiharsol, Tehsil-Himmatnagar, Gujrat.

3. However, during the course of transportation, vehicle which was carrying the aforesaid consignment was stopped by respondents near Bhopal on 20.06.2019 and upon inspection of vehicle no. GJ-01-FT-7770, they found that courier invoices in which, consigner details were shown as AVGOL India Pvt. Ltd. whereas the e-way bill for the same transaction which was generated by petitioner, reflected the detail of petitioner instead of AVGOL India Pvt. Ltd.

4. Thus, the proceedings under Section 129 of Central Goods and Service Tax Act, 2017, were drawn which ultimately ensued in passing of an order of penalty dated 26/04/2019 by which, authority imposed the penalty of Rs.89,422/- upon the petitioner. Petitioner submits that under compulsion, petitioner deposited the said amount of penalty as well as tax and receipt of the same has been placed on record as Annexure P/4 to the writ petition. Thereafter, petitioner preferred an appeal before the appellate authority i.e. respondent no.3 under Section 107 of the GST Act, 2017. The appellate authority also vide order dated 31/10/2019 has dismissed the appeal and affirmed the order passed by Assistant Commissioner, State Tax. Petitioner further submits in paragraph 4 of the memorandum of writ petition that order dated 31/10/2019 passed by appellate authority was not communicated to the petitioner by its counsel who was representing it at Bhopal and petitioner was under impression that appeal was pending and was being prosecuted by its counsel and was not aware about its dismissal and thereafter, when petitioner came to know about the order, there was outbreak of Covid-19 on account of

which, petitioner got fettered in challenging the orders passed by the original as well as appellate authority and, thus, has prayed in paragraph 4 that the delay being bonafide deserves to be condoned.

5. The submission of petitioner as regards the merit of the case is to the effect that generation of e-way bill in the name of petitioner was a bonafide mistake and, the same according to the petitioner was typographical/clerical error and co-ordinate bench of this Court in an almost identical issue, set aside the orders while finding the mistake in that case to be a bonafide/clerical/typographical mistake and directed the respondents to consider the case of the petitioner for imposition of a minor penalty while treating the same to be a clerical mistake. Thus, by placing the reliance upon the decision passed by the co-ordinate bench dated 04/02/2021 passed in W.P. No. 12913/2020, the petitioner submits that the impugned order deserves to be quashed.

6. Per-contra, the counsel for respondents have supported the orders which are impugned in the writ petition, it is submitted on behalf of respondents that petitioner cannot take recourse to the order passed by co-ordinate bench inasmuch as, the facts of both the cases are distinguishable inasmuch as, in the present case, both the seller and the purchaser are experienced and registered tax payer in GST and they were well within the know of the proceedings pertaining to transportation of goods and, it could not have been expected from the petitioner to commit such a mistake of mentioning wrong place of dispatch of goods. Thus, respondents assert that the mistake is deliberate and cannot be said to be bonafide and has thus prayed for dismissal of the writ petition.

7. Having heard the submissions advanced on behalf of both the parties and upon consideration of the matter cogitatively, perusal of courier receipt/invoice which has been produced on record at page 19 shows that the cosigner name was AVGOL India Pvt. Ltd. and the consignee details were mentioned as SIDWIN FABRIC PVT. LTD. It is also important to note that in the same invoice, registration of truck number by which the consignment was to be transported was also mentioned as GJ-01-FT-7770. It is also relevant to note that the shipping date was mentioned as 20/06/2019. Now if this courier receipt is placed at juxtaposition with e-way bill which finds mention at page no. 20, the same would reveal that the transportation was to be carried out through vehicle bearing registration no. GJ-01-FT-7770 and the date was also mentioned as 20/06/2019. The same is evident from perusal of Part B of e-way bill system which finds mention at page no. 20. Meaning thereby, the entire details of the courier receipt were rightly mentioned in the e-way bill system however, the description of generator of e-way bill was wrongly mentioned and it was generated in the name of petitioner and, resultantly, all the orders impugned were passed while treating the present petitioner to be dispatcher of the goods and the statutory liability was fastened upon the petitioner by way of the order of imposition of tax as well as penalty.

8. The co-ordinate bench while dealing with almost an identical issue where also the petitioner in that petition erroneously entered its own name in the column of consignee whereas the details of their forwarding agent ought to have been mentioned in the e-way bill, the co-ordinate bench while finding the same to be a bonafide error, allowed the writ petition while quashing the order of imposition of penalty but simultaneously referred to a circular dated 14/09/2018 which is issued by the Ministry of Finance bearing no.CBEC/20/16/03/2017-

GST. A perusal of paragraph 12 of the order passed by the co-ordinate bench shows that the circular of Ministry of Finance was taken into consideration inasmuch as the same was issued pursuant to various representations made questioning the imposition of penalty in cases of minor discrepancies in details mentioned in the e-way bill and thus, circular clarified that in case of consignment of goods is accompanied with an invoice or any other specified document and also with an e-way bill proceeding under Section 129 of GST may not be issued and thus, while taking note of the aforesaid circular dated 14/09/2018, co-ordinate bench quashed the orders of imposition of penalty and further directed the respondents to consider the case of the petitioner for imposing of a minor penalty treating the same to be a clerical mistake as per circular dated 14/09/2018 bearing no. CBEC/20/16/03/2017-GST.

9. We are fully in agreement with the order passed by the co-ordinate bench and thus, since the facts of the present case are identical to the aforesaid case decided by the co-ordinate bench, apparently, courier receipt/invoice and e-way bill, pertains to same transaction but the generation of e-way bill is in incorrect name. The mistake appears to be bonafide inasmuch as the detail of vehicle, dispatch date is same. In our considered view, the case in hand appears to be a case where e-way bill was generated wrongly in the name of petitioner on account of some clerical or typographical error, therefore, in the light of order passed by the co-ordinate bench, the impugned orders dated 24/06/2019 (Annexure P/3) and 31/10/2019 (Annexure P/5) are quashed. It is further directed that respondents will be at liberty to consider the case of petitioner for imposition of a minor penalty while treating the mistake in question to be a clerical mistake as per circular dated 14/09/2018 bearing

no.CBEC/20/16/03/2017-GST issued by Ministry of Finance, Government of India.

10. Consequently, the writ petition stands **allowed** to the extent indicated hereinabove. No order as to costs.

**(SHEEL NAGU)
JUDGE**

**(MANINDER S. BHATTI)
JUDGE**

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