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By Nidhi, Advocate



Judgment No.: 130
Dt.: 21-05-2024



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Judgment Deals With

Section/Rule	Section 129
Authority	Allahabad High Court
Case Name	Ms. Sangeeta Jain VS Union Of India
Dated	22 nd April, 2024

Brief Facts of the Case:

The petitioner is aggrieved by the order dated December 12, 2022 passed by the Additional Commissioner, Grade-2 (Appeal)-I, and the order dated March 13, 2021 passed by the Assistant Commissioner, Mobile Squad-I, Agra.

Contention of the Petitioner:

The only ground on the basis of which the penalty under Section 129(3) of the CGST Act, 2017 is that the dispatch address mentioned in the e-way bill. The goods in the truck matched with the invoice and the e-way bill and there is no other discrepancy.

Furthermore, the impugned orders do not, in any manner, indicate any intention to evade tax. In fact, the original authority has stated in his order that mens rea is not required for imposition of penalty.

Findings & Decision of the Court:

A perusal of the order imposing penalty indicates that the original authority has stated that mens rea is not required for imposition of penalty. This view is not correct in law and the conclusion reached thereafter is obviously illegal. This Court in *M/s Hindustan Herbal Cosmetics v. State of U.P. and Others* (Writ Tax No.1400 of 2019 decided on January 2, 2024) **held that mens rea to evade tax is essential for imposition of penalty.** The principle that emerges is that presence of mens rea for evasion of tax is a sine qua non for imposition of penalty. A typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty. Typically when the error is a minor error of the nature found in this particular case, imposition of penalty under Section 129 of the Act is without jurisdiction and illegal in law.

Thus, the orders impugned dated December 12, 2022 and March 16, 2021 were quashed and set aside.

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