

Court No. - 4

Case :- MISC. BENCH No. - 34276 of 2019

Petitioner :- M/S Gaurav Agro Kendra Thru.Prop. Gaurav Naik

Respondent :- State Of U.P.Thru.Secy.Institutional Finance
Lucknow & Ors.

Counsel for Petitioner :- Yogesh Chandra Srivastava,Shubham
Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Munishwar Nath Bhandari,J.

Hon'ble Vikas Kunvar Srivastav,J.

By this writ petition, a challenge has been made to the order dated 15.02.2018 passed by respondent no. 2- Assistant Commissioner (In charge), Commercial Tax, Mobile Squad, Gonda as well as the order dated 17.06.2019 passed by the respondent no. 3-Additional Commissioner Grade-2 (Appeal), Commercial Tax, Gonda passed in the appeal preferred by the petitioner.

It is stated that the assessing authority passed the order dated 15.02.2018 not only for the assessment of G.S.T. but with the imposition of penalty. Challenge to aforesaid order was made by filing an appeal before the respondent no. 3. The main contention raised therein was that the notification to apply E-Way bill was not made known to the assessee. Mandate to apply mechanism of E-way bill was earlier circulated by the Government in the year 2017 but than it was kept in abeyance. The notification to apply E-way bill mechanism was revised subsequently but was not notified to the assessee. In absence of information of application of E-way bill mechanism, the petitioner made the transaction, as per the procedure then existing with required declaration. The document in that regard were not considered by the Assessing Authority as well as by

the Appellate Authority as compliance of E-way bill system was not made by the petitioner though it was not notified by the Government. The order for assessment and penalty was challenged in appeal for the aforesaid reasons.

The impugned orders have been challenged even in reference to the judgment of this Court dated 05.04.2018 also passed in Writ Tax No. 584 of 2018 (M/s Harley Foods Products Pvt. Ltd. vs. State of U.P.) . It is also in the light of subsequent judgment dated 19.11.2018 passed in Writ Tax No. 617 of 2018 (L.G. Electronics India Pvt. Ltd. Vs. State of U.P.). It was held that E-way bill procedure during 1.2.2018 to 31.03.2018 was not applicable.

In light of the aforesaid, the impugned orders cannot sustain. The appellate authority was expected to consider the issue in the light of the judgment in the case of M/s Harley Foods Products Pvt. Ltd. (supra). Ignorance of the judgment of a superior Court on the similar issue cannot be expected rather the appellate authority needs to be careful in future.

The impugned orders are accordingly set aside with remand of the case to the Assessing Authority to examine the matter afresh in light of the law propounded by this Court. It would be without applying E-way bill mechanism.

With the aforesaid, the writ petition is *disposed of*.

Order Date :- 11.12.2019

Ashish