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Neutral Citation No. - 2023:AHC:227182-DB

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Present:

THE HON'BLE JUSTICE SIDDHARTHA VARMA
THE HON'BLE JUSTICE SHEKHAR B. SARAF

WRIT TAX No. - 1297 of 2023

H/S HALDER ENTERPRISES

VS

STATE OF U.P. AND OTHERS

For the Petitioner	**:**	**Mr. Aditya Pandey, Adv.**
For the Respondents	**:**	**Mr. Ankur Agarwal, Adv.**

Last heard on : December 06, 2023
Judgement on : December 11, 2023

1. The present writ petition, filed under Article 226 of the Constitution of India, assails the actions of the respondents authorities with regard to detention of the goods and vehicle of the petitioner as well as subsequent orders passed under Section 129 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act").

2. At the outset, we may state that the counsel on behalf of the petitioner has submitted that he is restricting the prayers made in the writ petition to the proceeding initiated under Section 129 of the CGST Act.

3. The main issue in this writ petition is whether the goods may be released by the authorities under Section 129(1)(a) or 129(1)(b) of the CGST Act.

4. The main contention of the learned counsel for the petitioner is that the petitioner is the owner of the goods and, therefore, goods are to be released as per Section 129(1)(a) of CGST Act while the authorities have

made the calculation under Section 129(1)(b) of the CGST Act by an order dated October 19, 2023.

5. Before proceeding, one may record the brief facts of the case. The petitioner received an order for supply of Dried Arecanuts from M/s Komolika Trading Co., New Delhi. Subsequently, the goods were loaded on the vehicle and sent along with invoice and E-way bill. When the goods were on its way from Calcutta to New Delhi, the same were intercepted in the State of U.P. on October 3, 2023. The relevant facts are that upon physical verification being made, it was found that there was no discrepancy in relation to the consignment and the goods were as per the invoice and E-way bill. However, it appears that goods have been detained on October 11, 2023 on the ground that both the consignor and consignee were declared as non-existent. It is to be noted that on the date of interception that is October 3, 2023, the petitioner was having a registration under the CGST Act. The said registration was subsequently suspended on October 06, 2023 by the authorities at West Bengal with effect from September 18, 2023. Upon the detention being made, the petitioner being the owner of the goods came forward and sought for release of the goods under Section 129(1)(a) of the CGST Act. However, the authorities have determined the penalty to be paid as per Section 129(1)(b) of the CGST Act.

6. Counsel for the petitioner submits that as per the Circular No.76/50/2018-GST dated 31st December 2018, it has been clarified by the Central Board of Indirect Taxes and Customs, GST Policy Wing that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods. The relevant clause is provided below:

6.	Who will be considered as the 'owner of the goods' for the purposes of section 129(1) of the	It is clarified that if the invoice or any other specified document is accompanying the consignment of

	CGST Act?	goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

7. Counsel for the petitioner further relies upon two Coordinate Bench judgments to buttress his arguments that the penalty to be imposed when the owner comes up before the authority is to be calculated under Section 129(1)(a) and not under Section 129(1)(b) of the CGST Act.

8. Counsel for the respondent authorities has supported the actions of the authorities and stated that the actions taken by the authorities were correct in law, as the buyer and seller were not having CGST registration.

9. Upon perusal of the record and after hearing learned counsel for the petitioner, we would first like to place on record the judgment passed by Division Bench of this Court in ***M/s Sahil Traders v. State of U.P. and another***, 2023:/AHC:116953-DB (Coram: Hon'ble Saumitra Dayal Singh, J. and Hon'ble Rajendra Kumar-IV, J.), wherein it has been categorically held that Circular dated December 31, 2018 is applicable and when the tax invoice and the E-way bill are produced by the assessee, the goods shall be treated as belonging to the assessee, who comes before the authorities as the owner of the goods and produces the above documents. The Court further held in such cases that the security is required to be in terms of Section 129(1)(a) and not under Section 129(1)(b) of the CGST Act. The same principle has been followed by the Division Bench presided over by the then Chief Justice in ***M/s Sanjay Sales Agency v. State of U.P. and another,***

2023:AHC:193624-DB (Coram: Hon'ble Printinker Diwaker, CJ and Hon'ble Ashutosh Srivastava, J.).

10. One may look to the relevant section before dealing with the arguments placed by the parties. The relevant portion of Section 129 of the CGST Act is delineated below:

> "**129. Detention, seizure and release of goods and conveyances in transit.-** (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-
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> (a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
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> (b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;"

11. On a bare perusal of the judgments cited above and on first principles, it is patently clear that in the present case, goods were found with proper tax invoice and E-way bill belonging to the petitioner. Hence, Circular dated December 31, 2018 would apply and the petitioner would be deemed to be

the owner of the goods. Ergo, the goods would have to be released in terms of Section 129(1)(a) of the CGST Act.

12. In light of above, the order passed by the authorities dated October 19, 2023 is quashed and set aside. The authorities are directed to carry out the exercise in terms of Section 129(1)(a) of the CGST Act within a period of three weeks from today.

13. As the petitioner has not pressed for the other prayers in the writ petition, the same may be pursued by him before the appropriate forum.

14. With the aforesaid direction, the writ petition is allowed.

Order Date :- 11.12.2023
Kuldeep

(Shekhar B. Saraf,J.) (Siddhartha Varma,J.)

Digitally signed by :-
KULDEEP SINGH
High Court of Judicature at Allahabad