

Court No. - 3

Case :- WRIT TAX No. - 955 of 2022

Petitioner :- M/S Asp Traders

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J. Hon'ble Jayant Banerji,J.

1. Heard Shri Rahul Agarwal, learned counsel for the petitioner and Shri Nimai Das, learned Additional Chief Standing Counsel along with Shri B.P. Singh Kachhawaha, learned Standing Counsel for the State-respondents.

2. This writ petition has been filed praying for the following relief:

"(a) issue a writ, order or direction in the nature of Mandamus directing the respondent no. 3 to make available the copy of the order passed under Section 129(3) in due compliance of Section 129(4) of the U.P. Goods and Services Tax Act pertaining to the seizure of goods covered by notice dated 21.01.2022 issued under Section 129(3) of the U.P. Goods and Services Tax Act in form GST MOV. 07 (Annexure-3 to the writ petition);

(b) issue a writ, order or direction in the nature of Mandamus directing the respondent no. 3 to pass consequential orders under Section 129(3) of the U.P. Goods and Services Tax Act after affording an opportunity of hearing to the petitioner;"

3. Briefly stated facts of the present case are that the petitioner is a consignor of certain goods. While the goods were being transported through vehicle no. UP 78 GN 7563 under invoice no. 15 dated 14.1.2022, valued at Rs. 51,72,930/- and e-Way bill no. 141424463403, it was intercepted by the respondent no. 3 on 17.1.2022 and the goods were detained. The statement of driver of the vehicle was recorded in form GST MOV-01 followed by physical inspection of the goods and issuance of form GST MOV-04 on 20.1.2022. Certain discrepancies were found by the respondent no. 3 which gave rise to issuance of detention order dated 20.1.2022 in form GST MOV-06, which was followed by a notice dated 21.1.2022 under Section 129(3) of the CGST, 2017 read with IGST Act, fixing date for 28.1.2022. In the meantime, although the petitioner

submitted a reply, but immediately thereafter, on his own, deposited the sum demanded in the notice under Section 129(3) amounting to Rs. 7,20,440/- in form **GST DRC-03**. Thereafter, the respondent no. 3 issued an order dated 27.1.2022 in GST MOV-05 and released the goods and vehicle.

4. Sub-section (3) and (5) of Section 129 of the CGST Act and sub-rule (3) of Rule 142 of the CGST Rules, 2017 are relevant for the purposes of the present case which are reproduced below:

"129(3) The proper officer detaining or seizing goods and conveyance shall **issue a notice** within seven days of such detention or seizure, specifying the penalty payable, and **thereafter, pass an order** within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded."

5. Sub-rule (3) of Rule 142 of the CGST Rules, 2017 reads as under:

"142(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of Section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of Section 74 within thirty days of the service of a notice under sub-rule (1), **or where the person concerned makes payment of the amount referred to in sub-section (1) of Section 129 within [seven days of the notice issued under subsection (3) of Section 129 but before the issuance of order under the said sub-section (3)], he shall intimate the proper officer of such payment in FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05 concluding the proceedings in respect of the said notice."**

6. Admittedly a notice under Section 129(3) of the CGST Act was issued by the respondent no. 3 to the petitioner. Pursuant thereto the petitioner deposited the amount on his own in form GST DRC-03 and intimated it to the respondent no. 3. Therefore, the respondent no. 3 has issued an order in form GST DRC-05. Thus, proceedings in respect of the aforesaid notice under Section 129(3) of the CGST Act stood concluded in terms of mandate of sub-section (5) of Section 129. Hence, relief sought by the petitioner cannot be granted since the matter is concluded as per legislative mandate.

7. Once the proceedings in respect of notice under Section 129(3) of the Act stood concluded in terms of Section 129(5) of the Act read with Rule 142(3) of the Rules, no

mandamus can be issued to the respondent no. 3 to pass an order under Section 129(3) of the CGST/UPGST/IGST Act.

8. The contention of the petitioner that a copy of the order under Section 129(3) of the CGST/UPGST/IGST, Act be provided to him, is wholly misconceived inasmuch as the proceedings stood concluded in terms of sub-section (5) of Section 129 read with Rule 142 (3) of the Rules and, therefore, no mandamus contrary to law can be issued in exercise of powers conferred under Article 226 of the Constitution of India.

9. For all the reasons aforestated, the writ petition is **dismissed**.

Order Date :- 18.7.2022

A. V. Singh