

Court No. - 2

Case :- WRIT TAX No. - 752 of 2025

Petitioner :- M/S Mlv Constructions Thru. Authorized Signatory

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of State Tax Govt. Of U.P. Lko. And Another

Counsel for Petitioner :- Manish Misra **Counsel**

for Respondent :- C.S.C.

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Brij Raj Singh, J.

1. Heard Sri Manish Misra, learned counsel for the petitioner aswell as Sri Rajesh Tiwari, learned Additional Chief Standing Counsel, who appears for the State-opposite parties and perused the record.

2. Short counter affidavit and instructions filed today in Court are taken on record.

3. This writ petition has been filed by petitioner with following main prayers:-

"I) issue a writ or direction or pass an order in the nature of Certiorari quashing the impugned Order in MOV-09 dated notice in DRC-01/Form GST MOV-07 dated 27.06.2025 and the impugned order issued in GST Form GST MOV-09 dated 03.07.2025 passed by the Office of Assistant Commissioner, State Tax, Jurisdiction Sector-3 (Mobile Squad-1), Lucknow Uttar Pradesh, the respondent no. 2, (Annexure No. 10 & 11 to the writ petition).

ii) issue a writ or direction or pass an order in the nature of Mandamus restraining the respondents from resorting to any coercive measure against the Petitioner pursuant to the impugned orders;"

3. Mr. Ramesh Kumar, Assistant Commissioner, State Goods and Services Tax Mobile Squad-I, Lucknow is present before this Court along with the instructions, which he has sent to the office of the Chief Standing Counsel. He has referred to his instructions dated 20.08.2025, which have been given to the office of the

Chief Standing Counsel explaining the contents of paragraph-19 of the instructions given earlier. He says in paragraph -5 of the instructions that he had presumed that driver or the transporter shall be contacted by the owner of the goods and the owner of the goods would thereafter come forward to claim the goods after paying the penalty. The instructions given in paragraph-5 dated 20.08.2025 are in clear contradiction to the instructions given to the office of the Chief Standing Counsel earlier, which have been noted by this Court in its order dated 19.08.2025, in which this Court observed as follows:-

“6. Shri Rajesh Tiwari, learned Additional Chief Standing Counsel has produced before this Court instructions sent by Shri Ramesh Kumar, Assistant Commissioner, State Tax, Mobile Squad-I, Lucknow, where in paragraph no.19 it has been stated that even after show cause notice was issued to the consignee and the consignor firm as owner of the goods, he did not come forward nor submitted any reply, therefore, ex parte order MOV-09 was issued to the driver.

7. The said instructions do not contain any enclosure of any such showcause notice issued either to the consignee or consignor/owner of the goods. Instructions are taken on record.

8. Shri Ramesh Kumar, Assistant Commissioner, State Tax, Mobile Squad-I, Lucknow is directed to appear in person before this Court on the next date to explain as to how he has come to the conclusion that even after show cause notice was issued, the owner of the goods did not come forward to claim the goods and therefore, he found it fit only to issue notice/Form MOV-09 to the driver/transporter of the vehicle seized on 21.06.2025.”

4. Since in the earlier instructions, it was clearly stated that show cause notice was issued to the owner of the goods and he did not respond, therefore, action was taken against the driver and the transporter and in the instructions that have been passed on us today, the explanation given is that there was a presumption that owner of the goods would come to know from the driver and the transporter of the seizure of such goods, it is apparent that there is clear violation of sub-section(3) of Section 129 of the Central Goods and Services Tax Act, 2017 (for

short “the Act”), which provides that the proper officer detaining or seizing goods or 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). Subsection (4) also says that no penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

5. It is evident that no service of notice was ensured under subsection (3) of Section 129 of the Act on the owner of the goods i.e. the petitioner, M/s MLV Constructions by the Assistant Commissioner. A misleading instruction was sent to the office of the Chief Sanding Counsel, which was forwarded to this Court during the course of earlier hearing. Since this Court was doubtful regarding service of notice on the owner of the goods as no enclosure was attached to the said instructions, the officer concerned was summoned today to produce before this Court copy of such show cause notice issued to the owner of the goods under sub-section(3) of Section 129 of the Act. The officer has appeared and he apparently does not know anything about the Act and perhaps even he has not read the provision under which he has taken the action. He says that he has been promoted on the basis of seniority only in January, 2025 on the post of Assistant Commissioner.

6. The Commissioner, State Goods and Services Act, Lucknow is directed to ensure that Mr. Ramesh Kumar, Assistant Commissioner is sent for training for three months and is well

versed with the provisions of the Act before he is made incharge of any unit seizing the goods.

7. Since the impugned orders have been passed in clear violation of the provisions of Section 129(3) of the Act, the same are liable to be set aside.

8. Writ petition is accordingly **allowed** and the impugned Order in MOV-09 dated notice in DRC-01/Form GST MOV-07 dated 27.06.2025 and the impugned order issued in GST Form GST MOV-09 dated 03.07.2025 passed by opposite party no.2 are hereby set aside. Opposite parties are directed to issue a show cause notice as per the provisions of Section 129(3) of the Act with a week from today. The show cause notice shall be sent through Registered Post and also on SMS and e-mail of the assessee/consigner/consignee. The petitioner, who is the consigner/consignee, shall reply to such notice within time as given under the Act. After such reply is submitted, it shall be considered and a reasoned and speaking order shall be passed. If there is any requirement for penalty to be imposed, then personal hearing shall be given to the petitioner/consigner/consignee.

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(Brij Raj Singh, J.) (Sangeeta Chandra, J.)

Order Date :- 21.8.2025

Rao/-