

**Court No. - 1**

**Case :-** WRIT TAX No. - 789 of 2023

**Petitioner :-** M/S S.K.Traders

**Respondent :-** Additional Commissioner Grade-2 And Another

**Counsel for Petitioner :-** Aditya Pandey,Bipin Kumar Pandey

**Counsel for Respondent :-** C.S.C.

**Hon'ble Shekhar B. Saraf,J.**

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order dated April 6, 2023 passed by the respondent No.2/Assistant Commissioner, State Tax, Mobile Squad, Unit, Fatehpur and the order dated May 16, 2023 passed by the respondent No.1/Additional Commissioner, Grade-2, (Appeal), Judicial Division-Third, State Tax, Prayagraj.

2. I have heard Mr. Aditya Pandey, counsel appearing on behalf of the petitioner, learned Additional Chief Standing Counsel appearing on behalf of the respondents and perused the materials on record.

3. A perusal of the record shows that the ground for imposing penalty in the present case is that the goods were under valuation. This Court in the case of **M/s Shambhu Saran Agarwal and Company v. Additional Commissioner, Grade-2 and others** (Writ Tax No.33 of 2022 decided on January 31, 2024) has categorically held as under:

*"6. In the present case, there is no dispute that the invoice, e-way bill and all other relevant documents were accompanied with the goods. Furthermore, there was no mismatch in the description of the goods with the documents. The only ground for detention of the goods was that the valuation of the goods as per the invoice was not correct. In my view, this is not a valid ground for detaining the goods as the officer concerned was not competent to carry out such detention.*

*7. In the event of under valuation, appropriate notice under Sections 73 or 74 of the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act") is required to be issued as per the procedure provided therein. If the Court holds such a detention to be valid, it would be open to the authorities to carry out detention on their whims and fancies. The detention of the goods in such a scenario is not envisaged under the Act and the officers have not been vested with such a power to detain the goods and thereafter impose penalty under Section 129 of the Act. Specific provisions have been*

*provided for detection of under valuation and the GST officials have to adhere to the same. It is to be noted that only after issuance of notice under Sections 73 or 74 of the Act, if the goods are found under valued, penalty can be imposed.*

*8. Accordingly, imposition of penalty under Section 129 of the Act on the speculation that the goods are under valued cannot be allowed."*

4. In the above case, this Court had referred to a judgment of Kerala High Court in **Hindustan Coca Cola Private Limited v. Assistant State Tax Officer reported in 2020 NTN (73)-58** to hold that imposition of penalty under Section 129 of the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act") on the ground that the goods are under valued cannot be allowed. In such cases, it is for the officer intercepting the goods to detain them for the purpose of preparing the relevant papers for effective transmission to the judicial assessing officers and nothing beyond the same.

5. In light of the above, impugned orders April 6, 2023 and May 16, 2023 are quashed and set aside. Consequential reliefs to follow. In the event any deposit has been made by the petitioner to the authorities, the same shall be returned to the petitioner within four weeks from date.

6. The writ petition is, accordingly, allowed.

**Order Date :- 23.4.2024**

Kuldeep

(Shekhar B. Saraf,J.)