

Court No. - 40

Case :- WRIT TAX No. - 1276 of 2024

Petitioner :- M/S S.M. Enterprises

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

Hon'ble Manjive Shukla,J.

1. The present writ petition, filed under Article 226 of the Constitution of India, assails the actions of the respondent 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") read with Section 20 of Integrated Goods and Services Tax Act, 2017.

2. At the outset, counsel appearing on behalf of the petitioner has restricted 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 read with IGST 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 read with IGST Act while the authorities have made the calculation under Section 129(1)(b) of the CGST Act read with IGST Act by an order dated July 29, 2024.

5. Counsel appearing on behalf of the petitioner has submitted that the present case is squarely covered by the judgment of this Court in **M/s Halder Enterprises v. State of U.P. and others** reported in **2024 (2) ADJ 660 (DB)**.

6. Counsel appearing on behalf of the petitioner has further relied on a judgement of this Court passed in **Writ Tax No.1464 of 2022 [S/S S.K. Trading Co And Another vs.**

Additional Commissioner Grade 2 (Appeal) And Another, decided on March 16, 2024 (Neutral Citation No. - 2023:AHC:66095)], wherein the Court has held that the enhancement of valuation cannot be done under Section 129(1)(a) of the Act and the penalty to be levied under Section 129(1)(a) of the Act would have to be on the basis of invoice/e-way bill.

7. 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.

8. On a bare perusal of the record and the judgment cited above, we find that the facts and issue in the present writ petition are quite similar to one in **M/s Halder Enterprises (supra)**. In light of the same, we see no reason why this Court should take a different view of the matter. Ergo, the goods would have to be released in terms of Section 129(1) (a) of the CGST Act read with IGST Act.

9. Accordingly, the order passed by the authorities dated July 29, 2024 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 read with IGST Act within a period of three weeks from today.

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

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

Order Date :- 12.9.2024

Dev/-

(Manjive Shukla,J.) (Shekhar B. Saraf,J.)