

**Court No. - 3**

**Case :-** WRIT TAX No. - 1378 of 2022

**Petitioner :-** M/S. Gaurav Saurav Traders And Contractors

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Praveen Kumar

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

**Hon'ble Siddhartha Varma,J.**

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

This application under Article 226 of the Constitution of India has been filed by the petitioner aggrieved by the action of search and seizure carried out on the premises of the assessee on September 2, 2022.

Case of the petitioner is that the mandatory provision with regard to Section 67 (1) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the "U.P. GST Act") has not been complied with by the Joint Commissioner while granting the authorization for search and seizure.

Upon a perusal of the documents, we find that the authorization for search under the Form GST INS -01 was issued on 31.08.2022. However, the reasons for carrying out the search was provided to the Joint Commissioner subsequently which he has signed on September 1, 2022.

Under such circumstances, we are of the opinion that this is a clear case of putting the cart before the horse wherein the officer concerned has authorized the search and seizure without even looking into the reasons for the authorization of the same. Section 67(1) is being provided below for a clear understanding of the mandatory nature of the Section:-

**"67. Power of inspection, search and seizure.-(1).** *Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that:-*

*(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or*

*(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of State tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner of the operator of warehouse or godown or any other place."*

Upon a careful perusal of the Section quoted above, it is clear that it is only after reasons are provided to the Joint Commissioner that he can authorize in writing any search and seizure to be carried out.

In the present case, the said procedure had not been followed, and accordingly, the entire authorization is vitiated and liable to be quashed.

Under such circumstances, the entire search and seizure that has been carried out is based on an illegal authorization and is accordingly quashed and set aside. The Authorities are directed to release all goods and documents that they may have detained or confiscated within a period of 15 days from date.

In the light of the same, prayer nos. (i), (ii), (ii-a), (iii) and (iv) are allowed.

With these observations, the writ petition is allowed.

**Order Date :- 13.12.2023**

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