

M/S Margo Brush India And 4 Others v. State of U.P. and Another

WRIT TAX No. 1580 of 2022 | Decision: 2023-01-16 | Allahabad High Court

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HIGH COURT OF JUDICATURE AT ALLAHABAD

ORDER

1. The order passed on GST MOV-06 dated September 29, 2022, vide which the goods in transit were seized by the authorities concerned, has been impugned in the present writ petition. Further show cause notice on GST MOV-07 and order passed thereon on GST MOV-09 dated October 7, 2022 are under challenge in the present petition.

2. Learned counsel for the petitioners submitted that the goods were accompanied by proper documents. The owners of the goods either are the consignors or the consignees. However, still without appreciating the contentions raised by the petitioners, vide impugned order, the driver of the vehicle was deemed to be the owner and penalty of ₹4,55,548/- has been levied in exercise of power under Section 129(1)(b) of U.P.

Chief Justice's Court Serial No. 20

WRIT TAX No. - 1580 of 2022

Through :-

Mr. Aditya Pandey and Mr. Akhil Agnihotri, Advocates

v/s

Through :-

Mr. Ankur Agarwal, Standing Counsel for respondents

CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE HON'BLE J.J. MUNIR, JUDGE

M/s Margo Brush India and othersPetitioners

State of U.P. and anotherRespondents

Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act').

3. The argument is that it is a case in which the goods in transit were accompanied by proper documents. When show cause notice was issued to the driver of the vehicle, the petitioners had filed their replies. In terms of the provisions of Section 129(1)(a) of the Act, in case, the owner of the goods comes forward, the penalty is to be levied upon him. The penalty can be levied under section 129(1)(b) of the Act, only if the owner of the goods does not come forward. In the case in hand, vide impugned

order the penalty has been levied under Section 129(1)(b) of the Act, which is not applicable. He has also referred to Circular dated December 31, 2018 issued by the Central Board of Indirect Taxes and Customs (hereinafter referred to as 'Board'), whereby a clarification has been issued as to who is to be treated as owner of the goods for the purpose of Section 129(1) of the Act. It provides that if the goods are accompanied with invoices then consignor should be deemed to be the owner. In the case in hand, the petitioner nos. 1 and 2 are the consignors, whereas petitioner nos. 3 to 5 are consignees, hence, in their presence and accepting the ownership of the goods, the impugned order should not have been passed under Section 129(1)(b) of the Act.

4. On the other hand, learned counsel for the respondents submitted that it is a case in which the goods were not matching with the invoices as certain goods were found either to be more or less than the quantity mentioned in the invoices. Hence, penalty has been appropriately levied on the petitioners.

5. After hearing learned counsel for the parties, in our opinion, the present writ petition deserves to be allowed and the order impugned dated October 7, 2022 deserves to be set aside for the reason that the consignors and consignees are present and accepting ownership of the seized goods. The consignors are registered dealers in the State of U.P.

6. In view of the aforesaid fact and also the clarification given by the Board vide its Circular dated 31, 2018, in our opinion, levy of penalty under Section 129(1)(b) of the Act was not called for and could not be justified as Section 129(1)(a) of the Act provides that where owner of the goods comes forward for payment of penalty, the amount has to be two hundred per cent of the tax payable, whereas, in the case in hand, the penalty has been levied to the tune of hundred per cent of the value of the goods.
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7. For the reasons mentioned above, the impugned order dated October 7, 2022 passed by respondent no. 2 is set aside. The writ petition is allowed. The matter is remitted back to the competent authority for passing fresh order within a period of two weeks from the date of receipt of copy of the order.

16.01.2023 Ved/Manish Himwan

Whether the order is speaking : Yes

Whether the order is reportable : Yes/No

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(J.J. Munir) Judge

(Rajesh Bindal) Chief Justice

2023-01-19T10:19:12+0530 High Court of Judicature at Allahabad