

M/S Riya Traders v. State of U.P. and Another

WRIT TAX No. 28 of 2023 | Decision: 2023-01-17 | Allahabad High Court

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HIGH COURT OF JUDICATURE AT ALLAHABAD

ORDER

1. The grievance raised by the petitioner in the present petition is that for release of goods, an order has been passed against the petitioner in terms of Section 129(1)(b) of the U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act'). The order was passed against the driver of the vehicle. The goods were accompanied by invoice and e-Way Bill. The petitioner, who is consignor, is a registered dealer in the State, but was not afforded opportunity of hearing as the order was passed treating the driver of the vehicle as owner of the goods. In fact, the order could be passed in terms of Section 129(1)(a) of the Act, in case, the owner of the goods comes forward for payment of penalty leviable. He has also referred to the clarification issued by Central Board of Indirect Taxes and Customs (hereinafter referred to as 'Board') Chief Justice's Court Serial No. 11

WRIT TAX No. - 28 of 2023

Through :-

Mr. Aditya Pandey, Advocate

v/s

Through :-

Mr. Ankur Agrawal, Standing Counsel for respondents

CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE

HON'BLE J.J. MUNIR, JUDGE

M/s Riya TradersPetitioner

State of U.P. and anotherRespondents

vide Circular dated December 31, 2018, whereby it has been clarified that, in case, the invoice is accompanying the consignment of goods, either the consignor or the consignee should be deemed to be the owner. In the case in hand, the consignor is a registered dealer in the State. He further submitted that after detention of the goods, immediately survey was carried out at the business premises of the petitioner, but nothing

wrong was found as the stocks lying there were supported by proper documents/invoices, hence, the goods are required to be released on assessment of amount in terms of Section 129(1)(a) of the Act.

2. On the other hand, learned counsel for the respondents submitted that the petitioner having not come forward in response to notice issued for assessment of the amount, the penalty was to be levied in terms of Section 129(1)(b) of the Act. It is only, in case, the owner of the goods comes forward, the provisions of Section 129(1)(a) of the Act would be applicable.

3. After hearing learned counsel for the parties, in our opinion, the order, imposing penalty on the petitioner, passed under Section 129(1)(b) of the Act, deserves to be set aside. It is undisputed case of the parties that the goods were accompanied by invoice and e-Way Bill, wherein the name of the petitioner is mentioned as consignor. The fact, that the petitioner is a registered dealer, is also not in dispute as even survey of petitioner's business firm was carried out immediately after detention of the goods and the firm was found to be carrying on its business.

4. Once the documents clearly establish the name of the consignor, who is a registered dealer in the State, the proceedings should have been initiated against the owner of the firm instead of the driver, so as to enable him to respond to the notice. In any case, once from the facts on record, which have gone undisputed, the petitioner, who is consignor in the invoice and e-Way Bill, claims himself to be the owner of the goods, the provisions of Section 129(1)(b) of the Act could not be invoked for imposing penalty.

5. For the reasons mentioned above, the impugned order dated December 15, 2022 passed by the respondent no. 2, is set aside giving 2 WTAX No. 28 of 2023

him the liberty to pass fresh order in accordance with law, after affording opportunity of hearing to the petitioner.

6. The needful shall be done within a period of two weeks from the date of receipt of copy of the order.

7. The writ petition is, accordingly, allowed.

Allahabad 17.01.2023 Manish Himwan/Ved

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

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