Shri Sai Enterprises v. State Of U.P. And 3 Others

WRIT TAX No. 1364 of 2023 | Decision: 2023-12-01 | Allahabad High Court

Neutral Citation No. - 2023:AHC:227376-DB

Court No. - 3

Case :- WRIT TAX No. - 1364 of 2023

Petitioner :- Shri Sai Enterprises Respondent :- State Of U.P. And 3 Others Counsel for Petitioner :- Rahul Agarwal Counsel for Respondent :- C.S.C

Hon'ble Siddhartha Varma,J. Hon'ble Shekhar B. Saraf,J.

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the impugned detention order dated November 9, 2023 and the order dated November, 22, 2023 passed by the Assistant Commissioner, State Tax, Sector 6 (Mobile Squad-9), 9, Agra under section 129 (1) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as ''the Act'') with regard to the penalty imposed under section 129 (1) (b) of the Act.

2. Counsel on behalf of the petitioner has submitted that he is limiting the present challenge made in the writ petition to prayer (ii) and (iii). He has relied on a judgment passed by the Kerela High Court in the case of N.V.K. Mohammed Sulthan Rawther and Sons vs. Union of India, Writ Petition (C) No. 32324 of 2018 decided on 16.10.2018 to buttress his argument that the goods are not mis-declared and the invoice filed by the assessee is in order. Learned counsel further submits that since he is the owner of the goods, clause 6 of Circular No./GST-2018-19/1819078/36/ Commercial Tax dated 31 December, 2018 would apply to him.

3. A catena of judgments of co-ordinate Benches of this Court has also held the same, accordingly, we hold that the petitioner is to be treated as owner of the goods as the goods were detained along with proper e-invoice and e-way bill.

4. In view of the same, the release of the goods upon payment penalty is required to be made under section 129 (1) (a) of the Act. In the present case, the order passed by the Assistant Commissioner dated November 22, 2023 has quantified the penalty under section 129 (1) (b) of the Act and, accordingly, the same is bad in law.

5. We accordingly quash and set aside the impugned order dated November 22, 2023 and direct the Assistant Commissioner to once again carry out the computation in terms of section 129 (1) (a) of the Act within a period of seven days from date. As regards to the other issues as raised in the writ petition, the petitioner shall be at liberty to approach the appropriate authority.

6. With the above directions, the writ petition is disposed of.

Order Date :- 1.12.2023 Madhurima

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

2023-12-06T14:25:15+0530 High Court of Judicature at Allahabad