M/S Maa Kamakhya Trader v. State Of U.P. And 2 Others

WRIT TAX No. 1183 of 2023 | Decision: 2023-10-16 | Allahabad High Court

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Neutral Citation No. - 2023:AHC:199768-DB

Chief Justice's Court

Case :- WRIT TAX No. - 1183 of 2023

Petitioner :- M/S Maa Kamakhya Trader Respondent :- State Of U.P. And 2 Others Counsel for Petitioner :- Aditya Pandey Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker,Chief Justice Hon'ble Ashutosh Srivastava,J.

Heard Sri Anurag Khanna assisted by Sri Aditya Pandey, learned counsel for the petitioner and Sri Nimai Das along with Sri Ankur Agarwal, learned Standing Counsel representing the State-respondents.

This writ petition has been filed praying for the following reliefs:

"(a) Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the impugned proceedings initiated under Section 129 of the CGST, Act read with Section 20 of the IGST, Act.

(b) Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the detention order dated 27.9.2023 in form GST MOV- 06 (Annexure- 4 to the writ petition).

(c) Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the notice dated 03.10.2023 in form GST MOV-07 (Annexure- 5 to the writ petition).

(d) Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the order dated 4.10.2023 in form GST MOV-09 passed by the respondent no.2 (Annexure-6 to the writ petition)."

On 18.9.2023, Vehicle No. HR-56 C-0496 was intercepted and the petitioner was asked to submit relevant documents in relation to the product being carried in the said vehicle. Later, it was found that processed 'White Red Betel' was being transported, whereas the E-waybills and E-invoices was shown of 'Dried Areca Nuts' and value of both the seized articles were different. As a result whereof, the petitioner was subjected to notice and then an order in Form GST MOV-09 was passed.

Counsel for the State-respondents fairly submits that the notice in Form GST MOV-07, under Section 129(3) of the State Goods and

Service Tax Act, 2017 may be treated as notice and accordingly penalty may be imposed.

Counsel for the petitioner submits that once the notice itself may be quashed, goods may not be treated undervalued and the authority is neither the Assessing Authority nor the Adjudicating Authority to impose tax and, therefore, the order impugned is bad in the eyes of law and same may be quashed.

Considering the submissions advanced by the parties, the impugned order dated 4.10.2023 is, hereby, quashed. The matter is remitted to respondent no.2 to pass orders afresh under Section 129(1)(a) of the State Goods and Service Tax Act, 2017 within a period of one week from the date of receipt of certified copy of this order, after affording due opportunity of hearing to the petitioner.

With the aforesaid observation, the writ petition is disposed of.

Order Date :- 16.10.2023 CS/-

(Ashutosh Srivastava, J.) (Pritinker Diwaker, C.J.)

2023-10-17T10:42:29+0530 High Court of Judicature at Allahabad