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

WRIT TAX No. 1521 of 2023 | Decision: 2024-01-17 | Allahabad High Court

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Neutral Citation No. - 2024:AHC:8359-DB

Court No. - 39

Case :- WRIT TAX No. - 1521 of 2023

Petitioner :- M/S Vaibhav Traders Respondent :- State of U.P. and Another Counsel for Petitioner :- Shubham Agrawal Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J. Hon'ble Manjive Shukla,J.

1. Having heard learned counsel for the parties and from perusal of record, it transpires that the petitioner is the seller of the goods. The transaction disclosed to the revenue authorities was one of sale made by the petitioner (a registered dealer in the State of Assam) to a dealer in New Delhi. The goods were intercepted during transit through the State of Uttar Pradesh. Show cause notice was issued to the petitioner in its capacity as the seller. Penalty order has also been passed against the petitioner in its capacity as the seller. The case of the revenue is that the petitioner did not respond to the show cause notice and therefore, the penalty has been rightly imposed. At the same time, upon query made, learned counsel for the revenue fairly states, no person other than the petitioner has claimed the goods.

2. Undoubtedly, under Section 129 of UPGST Act, 2017, different rates of penalties are prescribed depending upon the status of the person viz-a-viz, the goods that may have been seized. Again, undoubtedly the owner of the goods may not be visited with penalty exceeding 200 percent of the tax leviable on the offending goods.

3. The circular issued by the Commissioner dated 31.12.2018 is also to the same effect. The provisions of law and the circular have been considered in earlier decisions of the Court in H/S Halder Enterprises Vs. State of U.P. and others, Writ Tax No.1297 of 2023 (Neutral Citation No.2023:AHC:227182-DB), decided on 11.12.2023.

4. No other issue is involved in the present writ petition.

5. Learned counsel for the petitioner last submits that the goods may be made over to the petitioner subject to its complying

Section 129 (1)(a) of CGST Act, 2017 with liberty to appeal against the penalty order.

6. In view of the discussion made above, the writ petition succeeds and is allowed at this stage itself to the extent, petitioner is permitted to obtain release of goods against furnishing security equal to 200 percent of the tax imposable on the goods. It is otherwise left open to the petitioner to file appropriate appeal against the penalty order dated 19.12.2023.

Order Date :- 17.1.2024 Salim

(Manjive Shukla, J.) (S.D. Singh, J.)

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