

Court No. - 3

Case :- WRIT TAX No. - 3026 of 2025

Petitioner :- S.S. Enterprises

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

Hon'ble Praveen Kumar Giri,J.

1. Heard learned counsel appearing on behalf of the parties.
2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has made the following prayers:-

"A. Issue a Writ, Order or Direction in the nature of Certiorari quashing order dated 24.06.2025 passed by Respondent No.2 Assistant Commissioner Commercial Tax Mobile Unit Khatauli, Muzaffarnagar - u/s 129(3) of UP GST Act 2017. (Annexure No.1)."

B. Issue writ order or directing the nature of mandamus directing Assistant Commissioner Commercial Tax Mobile Unit Khatauli, Muzaffarnagar to release goods and vehicle seized u/s 129(1)(a) of the act;"

3. Upon perusal of the impugned order, we find that penalty has been imposed under Section 129(1)(b) of the CGST Act treating the petitioner as not being the owner of the goods.
4. Learned counsel appearing on behalf of the petitioners relies upon a judgment of this Court in ***M/s Halder Enterprises v. State of U.P. and others*** reported in ***2024 (2) ADJ 660 (DB)***, wherein this Court has examined this issue and also examined the relevant circular that has been issued by the department with regard to penalty to be imposed under Section 129(1)(a) and 129(1)(b) of the CGST Act.
5. In the present factual matrix, the grounds for imposing penalty under Section 129(1)(b) of CGST Act as elucidated by the authority concerned is two fold:-

(a) The first ground is that the petitioner had replied by way of his registered email on the portal itself and none appeared in person before the authority concerned. This ground is tenuous in nature and the fact that the petitioner replied by way of the registered

email cannot be held against him. It is not the case of the respondent authority that the petitioner was summoned and thereafter the petitioner did not appear. When the petitioner has replied by way of the registered email through the portal, no adverse inference can be drawn against him.

(b) The second ground is that subsequent to the detention on June 11, 2025, a team was sent to the principal place of business of the petitioner and no activity was found at the particular place. Owing to this, the authority concerned suspended the GST registration of the petitioner on the ground that no business activities were carried out at the principal place of business of the petitioner. On this issue also, we are of the view that the absence of any activity at the principal place of business of the petitioner by itself cannot result in a presumption that the invoice that was issued to the petitioner was fake and that the petitioner is not the owner of the goods.

6. Since the petitioner's name is there in the invoice and the petitioner has approached the authorities concerned for release of the goods, we are of the view that Clause No.6 in Circular No.76/50/2018-GST dated December 31, 2018 shall apply to the petitioner and it would be deemed that the petitioner is the owner of the goods.

7. In light of the above findings, the impugned order dated June 24, 2025 is quashed and set aside with a direction upon the authority concerned to grant an opportunity of hearing to the petitioner and thereafter pass a reasoned order in accordance with law, keeping in mind the principle laid down in *M/s Halder Enterprises (supra)*, within a period of eight weeks from date.

8. The writ petition is disposed of.

Order Date :- 9.7.2025

DKS

(Praveen Kumar Giri,J.) (Shekhar B. Saraf, J.)