

GST : Where Competent Authority had seized goods of assessee under transport and vehicle of transporter on ground that they were not accompanied by tax invoice and E-way bill and thereafter passed an order under section 129(3) and ordered release of goods and vehicle on depositing applicable tax and penalty equal to said amount, since transporter had not been assigned any role in entire transaction, Competent Authority was directed to release vehicle to transporter without any condition

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[2019] 105 taxmann.com 76 (Allahabad)

HIGH COURT OF ALLAHABAD

Mkc Traders

v.

State of U.P.*

PANKAJ MITHAL AND PANKAJ BHATIA, JJ.

WRIT TAX NO. 1486 OF 2018

NOVEMBER 26, 2018

Section 68, read with section 129, of the Central Goods and Services Tax Act, 2017 and rules 138 and 140 of the Central Goods and Services Tax Rules, 2017/ Section 68, read with section 129, of the Uttar Pradesh Goods and Services Tax Act, 2017 - Search, seizure, etc. - Goods in movement, inspection of - Competent Authority had seized goods of assessee under transport and vehicle of transporter on ground that they were not accompanied by tax invoice and E-way bill - Thereafter he passed an order under section 129(3) and ordered release of goods and vehicle on depositing applicable tax and penalty equal to said amount - Assessee and transporter filed a joint writ petition seeking relief in this regard - Whether since seized goods had been ordered to be released subject to certain conditions, it was not a case where there was any miscarriage of justice warranting interference by Court - Held, yes - Whether since transporter had not been assigned any role in entire transaction, Competent Authority was to be directed to release vehicle forthwith to transporter without any condition - Held, yes [Paras 5 and 9] [Partly in favour of assessee]

(NR)

FACTS

- The Competent Authority had seized the goods of the assessee under transport and the vehicle of the transporter on the ground that they were not accompanied by the tax invoice and the E-Way Bill.
- Thereafter the Competent Authority passed an order under section 129(3) and directed the release of the goods and the vehicle on depositing the applicable tax and penalty equal to the said amount.
- The assessee and the transporter filed a joint writ petition before the High Court.
- They submitted that the market value of the goods had wrongly been mentioned in the order passed under section 129(3) and as such the amount of tax and penalty

required to be deposited was too exorbitant. They also submitted that as there was no allegation against transporter, at least his vehicle be directed to be released without any condition.

HELD

- The Court in exercise of extraordinary jurisdiction is unable to determine the market value of the seized goods. [Para 4]
- Since the seized goods have been ordered to be released subject to certain conditions, it is not a case where there is any miscarriage of justice warranting interference by the Court. [Para 5]
- A perusal of the seizure order and the order passed under section 129(3) for the release of the goods reveal that the transporter has not been assigned any role in the entire transaction which had led to the seizure of the goods except that it is alleged that the driver had left behind the documents by mistake. [Para 8]
- In view of the above, the Competent Authority was to be directed to release the vehicle forthwith to the transporter without any condition if the owner of the goods fails to turn upto comply with the conditions of release. [Para 9]

Shubham Agrawal *for the Petitioner.*

ORDER

1. The goods (Supari) of the petitioners in transit were seized along with vehicle as they were not accompanied by the tax invoice and the E-Way Bill. The said documents were produced by the petitioners after the issuance of the show cause notice and it was said that the driver has mistakenly left behind the said documents.
2. The aforesaid seized goods and the vehicle have been directed to be released under Section 129(3) of the U.P.G.S.T. Act, 2017 (hereinafter referred to as the Act) on the petitioners depositing the applicable tax and penalty equal to the said amount.
3. The submission of learned counsel for the petitioners is that the market value of the goods have wrongly been mentioned in the order passed under Section 129(3) of the Act and as such the amount of tax and penalty required to be deposited is too exorbitant.
4. This court in exercise of extraordinary jurisdiction is unable to determine the market value of the seized goods. Even the authority below in directing for the release of the goods has not finally adjudicated about the market value of the seized goods. It is only a summary assessment of the market value for the limited purpose of releasing the goods.
5. Since the seized goods have been ordered to be released subject to certain conditions it is not a case where there is any miscarriage of justice warranting interference by this court.
6. In such a situation, we do not feel that it is a fit case for us to interfere with the conditions impugned for the purposes of releasing of the goods.
7. Sri Shubham Agarwal, learned counsel for the petitioners at this stage submits that the transporter and the owner of the truck have both joined in filing the writ petition and that as there is no allegation against transporter at least, his vehicle be directed to be released without any condition.
8. A perusal of the seizure order and the order passed under Section 129(3) of the Act for the release of the goods reveal that the transporter has not been assigned any role in the entire transaction which had

led to the seizure of the goods except that it is alleged that the driver had left behind the documents by mistake.

9. In view of above, since the detention of the vehicle of the transporter is likely to cause irreparable loss and injury to him as his business of transport would be affected, we direct for the release of the vehicle forthwith to the petitioner No.2 without any condition if the owner of the goods fails to turn upto comply with the conditions of release.

10. Accordingly, the Writ Petition is disposed of. Any observation made in the order of above would not come in way of the petitioner in the regular proceedings either regarding assessment or adjudication of the penalty.

s.k. jain

*Partly in favour of assessee.