

Court No. - 39

Case :- WRIT TAX No. - 1524 of 2023

Petitioner :- Akbar Ali Transport Services

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Utkarsh Tripathi, Ashutosh Kumar
Tripathi

Counsel for Respondent :- CSC

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Manjive Shukla, J.

1. Heard Sri Utkarsh Tripathi, learned counsel for the petitioner and Sri Ankur Agrawal, learned Standing Counsel for the State.

2. It transpires that the petitioner is aggrieved by the seizure of his vehicle TATA LPT 407 bearing Registration No. DLILAA-9970. The proceedings have arisen under Section 129 of the U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as the 'GST Act') primarily against the goods found loaded on the above truck that was intercepted on 22.11.2023 and consequently show cause notice on MOV-07 was issued to the dealer. In any case, no show cause notice was issued to the petitioner to show cause why the truck in question may not be seized. Thus, it has been submitted that the seizure of the truck arising out of the order dated 5.12.2023 passed on MOV-09 being the penalty order is wholly ex-parte against the petitioner.

3. By virtue of the statutory law, the petitioner may not be entitled to release of the truck unless he deposits Rs. One lakh as provided under proviso-1 of Section 129 (6) of the Act. In such facts, it appears that the petitioner is entitled to one opportunity of hearing before the authority to furnish his explanation and to establish the fact that there was no connivance of the petitioner or no active role played by the petitioner in the illegality that are attributed to the dealer viz-a-viz the goods being transported on the truck in question. At present, the penalty order does not appear to bring out any conduct of the petitioner as may indicate or establish collusion between the petitioner and the importing dealer M/s Royal India Enterprises.

4. Truck being the valuable property and a capital asset of the transporter which is utilised to generate revenue/ income, we

perceive valuable civil right of the petitioner having being adversely affected exparte. In so far as no opportunity of hearing has been granted to the petitioner before the truck has been seized and since amount of Rs. One lakh has otherwise become due for release of the vehicle, we dispose of the writ petition with the following directions:-

(i) The petitioner may treat the penalty order as the show cause notice and furnish reply to the Respondent No. 2 only for the purpose of obtaining release of the truck.

(ii) Subject to such reply/ application being filed by the petitioner, appropriate reasoned order may be passed by the said respondent after affording due opportunity of hearing to the petitioner.

(iii) If the claim of the petitioner for release of the truck is rejected, due reason for the same may be given. At that stage petitioner may have a right of appeal.

(iv) Such exercise may be completed within a period of one week from the date of compliance made by the petitioner.

(v) Last, It is made clear that the release of the truck, if granted would have no bearing on the seizure of the goods and in the penalty proceedings arising there from against the dealer/ M/s Royal India Enterprises.

Order Date :- 9.1.2024

n.u.

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

