



2025:AHC:226033-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 7844 of 2025

M/S Lymer Enterprises

.....Petitioner(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Petitioner(s) : Pranjal Shukla
Counsel for Respondent(s) : C.S.C.

Court No. - 3

HON'BLE SAUMITRA DAYAL SINGH, J.

HON'BLE INDRAJEET SHUKLA, J.

1. Heard Shri Parth Goswami, holding brief of learned counsel for the petitioner and Shri Ankur Agarwal, learned Standing Counsel for the State.

2. Present writ petition has been filed with the following relief:

"i) issue a writ or direction or pass an order in the nature of Certiorari quashing the impugned Order in MOV-09 dated 20.11.2025 and the impugned order issued in GST Form GST MOV-09 dated 26.11.2025 passed by the Office of Assistant Commissioner, State Tax, Jurisdiction Sector-3 (Mobile Squad-2), Gautam Buddha Nagar Uttar Pradesh, the respondent no.2, (Annexure No.11 & 9 to the writ petition);

ii) Issue a writ or direction or pass an order in the nature of Mandamus directing the respondents to forthwith release of vehicle having registration No. UP81ET-1802, along with goods, of the petitioner."

3. At the outset, learned Standing Counsel has raised preliminary objection as to the maintainability of the writ petition in face of statutory remedy of appeal available to the petitioner. Further, it has been stressed, the petitioner did not respond to the show cause notice dated 20.11.2025. At present, there is no material with the authorities as may lead to any doubt that the supplier does not exist. Thus, relying on order dated 15.12.2025 in **M/S Caviar Trading Company vs State of U.P. & Anr., 2025:AHC:224641-DB**, it has been pointed out, in similar circumstances, interference claimed under Article 226 of the Constitution of India may

be declined.

4. The above objection has been met by learned counsel for the petitioner on the strength of order dated 12.12.2025 in **M/S Mz Momin Products vs State of Uttar Pradesh & Anr, 2025:AHC:223731-DB**, wherein it has been observed as below:

"1. Heard Sri Pranjal Shukla, learned counsel for the petitioner and Sri Ankur Agarwal, learned counsel for the revenue.

2. Present petition has been filed for the following relief:

"i) issue a writ or direction or pass an order in the nature of Certiorari quashing the impugned Order in MOV-09 dated notice in DRC-01/Form GST MOV-07 dated 20.11.2025 and the impugned order issued in GST Form GST MOV-09 dated 26.11.2025 passed by the Office of Assistant Commissioner, State Tax, Jurisdiction Sector-3 (Mobile Squad-2), Gautam Buddha Nagar Uttar Pradesh, the respondent no.2, (Annexure No. 11 & 9 to the writ petition."

3. Submission is, undeniably, goods were found accompanying with the tax invoice clearly disclosing full particulars of the owner of the goods, a registered dealer.

*4. Thus, whatever infringement may have been alleged for reason of e-way bill not accompanying the goods, it may have resulted in penalty in terms of Section 129(1)(a) of the U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act'), only. However, the Adjudicating Authority has erroneously computed the penalty in terms of Section 129(1)(b) of the Act. On that issue, reliance has been placed on **Helder Enterprises Vs. State of U.P.**; (2023) 13 Centax 144 (All). That petition was allowed on the following terms:*

"12. In light of the above, the order passed by the authorities dated October 19, 2023 is quashed and set aside. The authorities are directed to carry out the exercise in terms of Section 129(1)(a) of the CGST Act within a period of three weeks from today."

5. For reason of similar facts and there have been no other dispute, no useful purpose would be served in keeping the present petition pending or calling for counter affidavit at this stage, let the writ petition be decided with the consent of the parties at the fresh stage.

6. Accordingly, the impugned order dated 26.11.2025 is set aside with the direction upon the authorities to determine the quantum of penalty in accordance with Section 129(1)(a)

of the Act within a period of three weeks from today.

7. Subject to the petitioner depositing the penalty amount in terms of Section 129(1)(a) of the Act on the value of the goods as mentioned in the tax invoice, the goods may be released forthwith.

8. If any other dispute survives arising from order imposing penalty, the petitioner may avail its statutory remedies in accordance with law.

9. With the aforesaid observation, present petition stands disposed of. Pending application/s, if any, stand disposed of."

5. In brief, learned counsel for the petitioner has stressed, rule of consistency be applied. In similar circumstances, in **M/S Mz Momin Products (supra)**, the writ court/same bench had passed the order whereby the goods had been allowed to be released against payment of lesser security in terms of Section 129(1)(a) of the U.P.G.S.T. Act, 2017. In absence of any difference of facts, we may not have taken another view in **M/S Caviar Trading Company (supra)** which was disposed of yesterday, by the following order:

"1. Heard learned counsel for the petitioner and the learned Standing Counsel for the State.

2. Submission is, the petitioner has taken supply from a registered person. The petitioner itself is a registered person. Therefore, any doubt that may have arisen on the physical verification of the goods by the UPGST authorities, may only have led to demand of security in terms of Section 129(1)(a) of the UPGST Act, 2017 (hereinafter referred to as the 'Act'). However, excessive security has been demanded under Section 129(1)(b) of the Act.

3. On the other hand learned Standing Counsel objects that the petitioner failed to file any reply in response to the show cause notice wherein it was clearly alleged that the supplier does not exist. In that context further objection has been raised as to maintainability of the writ petition. It has been submitted that the petitioner may avail his statutory remedy of appeal.

4. Having heard learned counsel for parties and having perused the record, to the extent fact dispute exists (in the present case) as to purchase of goods from inside the State of

Uttar Pradesh to be transported to Delhi and the petitioner did not furnish any reply to the show cause notice, we are not inclined to offer interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

5. To the extent limitation to file appeal survives, we dispose of the writ petition leaving it open to the petitioner to file statutory appeal. If such an appeal is filed, same may be dealt with and decided on its own merits without being influenced by any observation made in this order."

6. On query as to why - if there was exact parity of facts in **M/S Caviar Trading Company (supra)** and **M/S Mz Momin Products (supra)**, such fact was not brought to the knowledge of the Court, yesterday, learned counsel for the petitioner states, he erred yesterday. Since learned Standing Counsel did not inform the correct position emerging from the earlier order in **M/S Mz Momin Products (supra)**, the order passed in the case of **M/S Caviar Trading Company (supra)** may remain an order in conflict with the earlier pronouncement of the Court.

7. Having heard learned counsel for the parties and having perused the record, we find no merit in the submissions being advanced by the learned counsel for the petitioner. While it is for the learned counsel to advance such submissions as may emerge on the facts and pleadings of the case and as they may be instructed, at the same time, the Court may not create latitude in favour of the counsel that they had erred in pointing out correct facts in the earlier case.

8. That general premise apart, in the present facts, we do not find any conflict in the two orders passed by us, in **M/S Mz Momin Products (supra)** and **M/S Caviar Trading Company (supra)**. At present, neither order lays down any law as may cause binding effect. Both orders had been passed on the facts as were presented. In **M/S Mz Momin Products (supra)**, only this much was contended on behalf of the petitioner that the goods were traceable to the *bonafide* dealer and that higher penalty and therefore security may not be demanded in accordance with Section 129(1)(b) of the aforesaid Act. Those facts asserted and prayer made were not disputed effectively. In fact, as is indicated in the order itself, the said order was passed with the consent of the State.

9. On the other hand, in **M/S Caviar Trading Company (supra)**, specific objection was raised by the State. At present, there is no material to accept that the goods are traceable to a *bonafide* dealer. To the extent the petitioner had failed to furnish the reply to the show cause notice resulting in the seizure order, it was objected - in such facts, the petitioner may be relegated to the forum of alternative remedy. Accordingly, on objection raised by the State, we relegated the petitioner **M/S Caviar Trading Company (supra)** to the forum of alternative remedy.

10. Thus, in **M/S Mz Momin Products (supra)**, discretion was exercised by the writ Court in the facts as were admitted to the State. Conversely, the discretion came to be declined in **M/S Caviar Trading Company (supra)** on the facts being disputed by the State. Merely because both cases arose from comparable transactions (as claimed by the petitioner) may make no difference. In exercise of judicial discretion, that too in the extra-ordinary jurisdiction under Article 226 of the Constitution of India, a small difference of facts is enough to discourage the writ Court from exercising its discretion. Therefore, merely because two transporters may have been treated differently in the individual/distinct facts brought before us may not give rise to any ground of conflict between two orders.

11. Coming to the present facts, it has been asserted, there is no basis for the revenue authorities to doubt the tax invoices that were found accompanying the goods. At present, no survey has been conducted by the revenue authorities to doubt the existence of the supplier or the recipient. Therefore, the whole exercise is premature. To the extent the show cause notice was issued in the name of the driver of the vehicle, the petitioner supplier cannot be prejudiced.

12. In face of preliminary objection raised all submissions being advanced by the petitioner are such as may be considered in the appeal proceedings. Those involve fact issues. Even as to the service of notice, the averments would have to be made and statements would have to be recorded if the notice issued was not communicated. Facts are in dispute. We are disinclined to go into the fact disputes in face of unrebutted case that no reply had been filed in response to the show cause notice either by the petitioner or the driver.

13. Accordingly, interference claimed under Article 226 of the Constitution of India is declined.

14. Writ petition is accordingly **dismissed** leaving it open to the petitioner to pursue its statutory remedy of appeal.

(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)

December 16, 2025

Prakhar

