

Court No. - 39

Case :- WRIT TAX No. - 1519 of 2022

Petitioner :- M/S Shiv Scrap Sales

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Vipin Chandra Dixit,J.

Heard Sri Aditya Pandey learned counsel for the petitioner and Sri Ankur Agarwal learned counsel for the respondent revenue.

The petitioner herein claims to be a registered dealer under G.S.T Act and is engaged in the business of supplying mixed scrap to the dealers situated at different place.

It is sought to be submitted that the seized goods were sent in transit by the petitioner after generation of e-Way bill on 14.11.2022 at 9.43 p.m which was valid upto 17.11.2022. It is submitted that the valid tax invoice and e-Way bill appended at page-'44' and '45' of the paper book were carried in original by the driver when the goods were in transit and intercepted at Agra on 15.11.2022. It is sought to be submitted that no reason has been assigned for seizure of the goods and the reason assigned in the Form GST MOV-06 for seizure of the goods that the purchaser firm was not in existence and it was a fake sale and invoice, is absolutely false. It is sought to be argued that since the detention order is illegal, the authority has no jurisdiction to proceed under Section 129(3) of the C.G.S.T Act 2017.

It is further argued that the petitioner herein had submitted claim before the department/revenue by moving an application which is appended to the writ petition of him being the owner of the seized goods. However, notice under Section 129 of the C.G.S.T Act 2017 has still been issued in the name of the driver. The contention is that once the petitioner put forth his claim before the revenue of being owner of the seized goods, all proceedings under Section 129 are required to be conducted after giving due notice or opportunity to the petitioner herein.

Noticing the said submissions, we may record that the dispute pertaining to validity of the seizure order cannot be seen at this stage for the findings returned therein in FORM GST MOV-07 appended at page-'36' of the paper book that the invoice was for fake sale. Moreover, the remedy before the petitioner is to

approach the competent authority by moving a proper application giving details of his name about the ownership of the goods in question. The application which is appended as Annexure-'8' to the writ petition is undated and there is no proof of the receipt of the same in the office of the respondent no.2.

We, therefore, **dispose of** the present petition with the observation that the petitioner shall approach the competent officer putting forth his claim of being owner of the seized good by a moving proper application along with the copy of this order.

In case, such an application filed before the competent officer, he shall duly deal with the same and grant opportunity of hearing to the petitioner by giving a proper notice in accordance with the provision of sub Section (3) of Section 129 of the C.G.S.T Act, 2017.

It is made clear that we have not entered into the merits of the claim of the petitioner herein.

Order Date :- 7.12.2022

Harshita