Chief Justice's Court

Case :- WRIT TAX No. - 1147 of 2023

Petitioner :- M/S Sanjay Sales Agency
Respondent :- State of U.P. and Another
Counsel for Petitioner :- Shubham Agrawal
Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker,Chief Justice
Hon'ble Ashutosh Srivastava,J.

1. Heard Sri Shubham Agarwal, learned counsel for the petitioner, Sri Ankur Agarwal, learned counsel representing the Respondent No.2 and learned Standing Counsel, who has accepted notice on behalf of the State Respondent No.1.

2. The writ petition is aggrieved by the penalty order dated 08.09.2023 passed by the Assistant Commissioner Ghaziabad, Respondent No.2 in Form MOV-09 under Section 129(1)(b) of the Goods and Services Tax Act, 2017 whereby and whereunder penalty of Rs.37,59,792/- has been levied upon the petitioner by not treating the petitioner to be the owner of goods. Admittedly, the goods were duly accompanied by the tax invoice, e-way bill and bilty issued in the name of the petitioner as the consignor and the goods were in transit through the State of U.P. during its movement from Delhi to Haldwani and as such, there was no intention to evade tax. It is further contended that the petitioner is the owner of the goods and is ready and willing to deposit penalty under protest under Section 129(1) (a) to get the goods released considering the perishable nature of the goods and diminishing of its value substantially with the onset of monsoons. Strong reliance has been placed upon the decision of this Court in **Writ (Tax) No.178 of 2023 (M/s Sahil Traders Vs. State of U.P.)** decided on 25.05.2023 which applies squarely to the case at hand.

3. Sri Ankur Agarwal, learned counsel representing the revenue has vehemently opposed the writ petition by submitting that the petitioner has rightly been held not the owner of the goods and the penalty has rightly been imposed upon the petitioner under Section 129(1) (b). He, however, could not dispute the fact that intention to evade tax is a per-requisite for imposition of penalty under Section

129 of the Act. The E-way Bills being the documents of title to the goods were accompanying the goods hence, the conclusion of the revenue that the petitioner was not the owner of the goods is patently erroneous. Consequently, the penalty proceedings were liable to be initiated under Section 129(1)(a) and not 129(1)(b) as has been done in the present case.

4. In view of the above, expressing our full agreement with the view expressed by the Coordinate Bench of this Court in the case of **M/s Sahil Traders** *(Supra*) we set aside the impugned penalty order dated 08.09.2023 passed in Form MOV-09 under Section 129(1)(b) of the Goods and Services Tax Act, 2017. The writ petition is allowed. The Respondent No.2 is directed to pass fresh order treating the petitioner to be eligible to the benefit of Section 129(1)(a) of the Act.

5. Be that as it may, the writ petitioner shall be at liberty to avail any remedy available to it to assail the penalty order.

Order Date :- 9.10.2023
Brijesh Maurya

(Ashutosh Srivastava,J.) (Pritinker Diwaker,CJ.)