

**Court No. - 3**

Case :- WRIT TAX No. - 582 of 2022

**Petitioner :-** Premium Traders

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Praveen Kumar

**Counsel for Respondent :-** C.S.C.

**Hon'ble Surya Prakash Kesarwani,J.**

**Hon'ble Jayant Banerji,J.**

Heard Sri Praveen Kumar, learned counsel for the petitioner and Sri B.P. Singh Kachhawah, learned standing counsel for the respondents.

The petitioner is a trader of iron and steel. According to the petitioner he sold 10090 Kg TMT Bar valued at Rs.4,16,717/- to M/s. Umar Enterprises, Ghaziabad, through invoice No.747, dated 04.03.2022. It is the case of the petitioner that he and the buyer both are registered dealers. The aforesaid goods were not accompanied with e-Way Bill during transportation. Consequently, it was intercepted and an interception memo in FORM GST MOV 02 dated 04.03.2022 was issued. The detention order under Section 129(1) of the CGST/UPGST Act, 2017, dated 5.03.2022 was issued in the name of the driver in FORM GST MOV 06. The goods were detained on three grounds, **firstly**, it was not accompanied with e-Way Bill, **secondly**, under valuation and **thirdly**, GSTIN number is not mentioned on the invoice and, therefore, invoice is bogus. In the detention order, which was issued by the respondent no.3 in the name of the driver, namely, Schin Kumar; it was directed to produce particulars of purchases and sales and copy of periodical return. An undated notice under Section 129(3) of the CGST/UPGST Act, 2017 was issued in the name of the driver, namely Sachin Kumar, without fixing any date either for submitting reply or for personal hearing.

Since the notices were issued by the respondent no.3 by creating temporary ID in the name of Sachin Kumar and the password was not known to the petitioner, therefore, the petitioner submitted his reply dated 16.03.2022 before the respondent no.3. However, without considering the factual aspects of the matter and the reply, the respondent no.3 passed an order under Section 129(3)(1)(B) of the CGST/UPGST Act, 2017 reiterating the grounds mentioned in the notice, observing that no reply was submitted. Thus, the respondent no.3 at his own has treated the goods in question to be not belonging to the petitioner on the ground that GSTIN number is not mentioned on the invoice, whereas, in his reply the petitioner has explained that due to less ink in the cartridge GSTIN number was not clearly printed over the invoice and as and when the goods were intercepted, a clear copy of invoice on which GSTIN number was clearly printed, was provided to the respondent no.3.

Learned standing counsel has obtained instructions from the respondent no.3 and a copy thereof has been produced before us. In the said instructions, the respondent no.3 has merely reiterated his order passed under Section 129(1)(b)

of the Act.

It is admitted case of the respondents that the invoice accompanied with the goods in question was issued by the petitioner. Therefore, the respondent no.3 has committed a manifest error of law not to afford any opportunity of hearing to the petitioner despite persuasion made by the petitioner. Thus, the impugned order under Section 129(1)(b) of the CGST/UPGST Act, 2017 has been passed in breach of principles of natural justice. Consequently, the impugned order dated 14.03.2022, under Section 129 of CGST/UPGST Act, can not be sustained and is hereby quashed.

Matter is remitted back to the respondent no.3 to pass an order afresh in accordance with law after considering the reply of the petitioner dated 16.03.2022 filed pursuant to the notice under Section 129(3) of the CGST/UPGST Act. The order shall be passed by the respondent no.3 within two weeks from the date of submission of a certified copy of this order alongwith copy of reply, after affording reasonable opportunity of hearing to the petitioner.

It is made clear that we have not expressed any opinion on merits of the case of the petitioner.

Writ petition is **disposed** of.

**Order Date :-** 20.4.2022/vkg