

Neutral Citation No. - 2025:AHC:143407

Reserved On:30.07.2025

Delivered On:21.08.2025

Court No. - 7

Case :- WRIT TAX No. - 3171 of 2025

Petitioner :- Shree Maa Trading Company And 2 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arjit Gupta,Naveen Chandra Gupta

Counsel for Respondent :- C.S.C., Anoop Trivedi, AAG, Ravi Shankar Pandey, ACSC

WITH

Case :- WRIT TAX No. - 3172 of 2025

Petitioner :- Shree Maa Trading Company And 2 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arjit Gupta,Naveen Chandra Gupta

Counsel for Respondent :- C.S.C., Anoop Trivedi, AAG, Ravi Shankar Pandey, ACSC

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Naveen Chandra Gupta, learned counsel for the petitioners and Shri Anoop Trivedi, learned Additional Advocate General, assisted by Shri Ravi Shankar Pandey, learned Additional Chief Standing Counsel for the State - respondents.
2. Since learned counsel for the parties submit that the issues involved in these writ petitions are similar, therefore, the same are being decided by the common order. With the consent of the parties, Writ Tax No. 3171 of 2025 is taken as a leading case for deciding the controversy involved in these writ petitions.

Writ Tax No. 3171 of 2025

3. The instant writ petition has been filed against the impugned order dated 08.06.2025 passed by the respondent no. 4 as well as the impugned appellate order dated 28.06.2025 passed by the respondent no. 3.

4. Learned counsel for the petitioner submits the goods in question were in transit from Delhi to Raipur along with tax invoice and GR, but the same were intercepted at Jhansi (UP) on 26.05.2025; whereby, proceedings under section 129 of the UPGST/CGST/IGST Act were initiated and MOV – 01 was issued on 27.05.2025. On 01.06.2025, MOV – 04 was issued. He further submits that thereafter, MOV – 06 was issued on 01.06.2025 and GST DRC – 01 was issued on 03.06.2025. He further submits that once the goods were detained on 26.05.2025 and the show cause notice has been issued after a week, i.e., 7 days, the entire proceedings are vitiated. He further submits that the authorities are duty-bound to follow the provisions of the GST Act. In support of his submissions, he has placed reliance on the judgement of the Madras High Court in *M/s D.K. Enterprises Vs. The Assistant Deputy Commissioner (ST) & Others* [(2022) 107 GSTR 331 (Mad)].
5. He next submits that due to inadvertent mistake of the truck driver, the document could not be produced at the time of detention as all the documents were accompanying the goods and therefore, the orders passed under section 129(1)(b) of the GST Act are bad and the same ought to have been passed under section 129(1)(a) of the GST Act as the petitioners being the owner of the goods.
6. He further submits that after passing of the penalty order, an application was moved under Rule 112 of the GST Rules, which ought to have been allowed.
7. He next submits that since the goods were moving from Delhi to Raipur, the State authorities are not competent to initiate the proceedings against the petitioners by way of seizure of the goods. Relying upon section 4 of the IGST Act, he submits that until and unless the Government, on the recommendation of the council, issues a notification, the action of the State authorities are bad.

He further submits that where the State authorities were authorized to discharge their duties of the IGST, a notification has been issued. He relies on the notification no. 11 of 2017 dated 23.01.2018 with regard to refund. He further submits that in absence of any such notification, the action is bad.

8. Per contra, learned Additional Advocate General submits that perusal of section 6 of the CGST Act, read with Rule 20 of the CGST Rules or section 4 of the IGST Act, it is abundant clear that no specific notification is required for authorizing the State authorities as suggested by the counsel for the petitioners. He further submits that the language of sections are clear. There is no need for any other interpretation of the same. He further submits that where the Central Government, on recommendation of the GST Council, issued a notification/circular with regard to refund, no benefit of the same can be granted to the petitioner as the said circular has been issued only to clarify the position that the refund of Central GST/IGST can also be given by the State authorities. In support of his submissions, he relies upon the judgement of the Madhya Pradesh High Court in ***Advantage India Logistics Private Limited Vs. the Union of India & Others*** [Writ Petition No. 16266/2018, decided on 23.08.2018] and the judgement of the High Court of Punjab & Haryana in ***M/s Bright Road Logistics Vs. State of Haryana & Others*** [2023:PHHC:103581-DB].
9. He further submits that the proceedings have rightly been initiated against the petitioners as the detention order was passed on 01.06.2025 and the show cause notice has been issued on 03.06.2025, i.e., within 7 days of the detention order. Therefore, the judgement relied upon by the learned counsel for the petitioners in ***M/s D.K. Enterprises*** (supra) is of no help to the petitioners.

10. He further submits that the application under section 112 of the CGST Act has rightly been rejected as no proper reason, as required under the Rules, was averred by the petitioner in its application. He further submits that there is no delay in passing the order as suggested by the counsel of the petitioner. The proceedings were rightly initiated within the time prescribed under the CGST Act and the petitioner is put to strict proof of the same.
11. He further submits that the findings of fact recorded in the impugned order have not been assailed by the petitioners in any of its paragraphs of the writ petition. He further submits that the findings of fact have been recorded against the petitioners alleging that the documents filed are bogus, forged and fictitious as neither the purchaser has shown its purchases in its return, nor the alleged seller has shown its purchases in its return. Once the seller itself has not shown its purchases in its return, the petitioners alleging to be the owner of the goods cannot be accepted. He further submits that once the finding of fact recorded against the petitioners have not been assailed in the impugned order, no interference is called for at this stage and the matter requires to be dismissed.
12. After hearing learned counsel for the parties, the Court has perused the records.
13. It is not in dispute that the goods were moving from Delhi to Raipur and the same were intercepted at Jhansi. When the goods were detained and seized, no specified documents under the GST Act were produced either before passing of the seizure order or the penalty order. Only in appeal, ground has been taken that the documents were there, but due to fault of the truck driver, the same could not be produced, but in support thereof, no material has been brought on record.

14. Learned counsel for the petitioner has emphasized that the proceedings initiated against the petitioner by the State authorities are bad as the transaction in question pertains to CGST/IGST and the State authorities are not competent to intercept, detain, seize and pass penalty order as no notification, authorizing the State authorities to act under section 129 of the GST Act was issued. The said submission has been vehemently opposed by the learned AAG.

15. For better appreciation, section 4 of the IGST Act, read with rule 20 of the CGST, is reproduced below:-

Section 4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.

Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

16. Bare perusal of the aforesaid sections, it is clear that there is no ambiguity in it. The provision provides that the Officer appointed under the State Goods & Service Tax is authorized to discharge their duties as Proper Officer for the purpose of IGST & CGST. Further, the notification will be required only if some exceptions and conditions are required to be carved out on the recommendation of the GST Council.

17. In view of the above, the contention of the petitioner that no notification was issued and in absence of any notification under section 4 of the IGST Act has no force, cannot be sustained.

18. The High Court of Madhya Pradesh, in ***Advantage India Logistics Private Limited*** (supra) has held as under:-

“13. On due consideration of the arguments of the learned counsel for the parties so also the provisions of Section 4 of the IGST Act, we are of the view that officers appointed under the MPGST Act are authorized to be proper officers for the purpose of IGST and, therefore, the contention of the petitioner that no notification was issued and in absence of any notification under Section 4 of the IGST Act has no force, we cannot accept the contention of the petitioner that the action of the respondent No.4 is wholly without jurisdiction.”

19. Similar view has been taken by the High Court of Punjab & Haryana in (supra) **M/s Bright Road Logistics**, the relevant part of which is quoted below:-

“20. Apart from the enabling provisions under the IGST Act, 2017, the Commissioner of State Tax, Haryana had issued the order dated 07.12.2017 (Annexure P-46) exercising the powers conferred under sub-section 1 of Section 5 read with clause 91 of section 2 of Haryana Goods and Services Tax Act, 2017 assigning the functions to be performed under the said Act by a Proper Officer. As per entry of Sr. No.51, 52 and 53 of the said order, the Asstt. Excise and Taxation Officer of State Tax has been assigned the functions to be performed under Section 129 (1) and (3); 129 (6); and Section 130 of the Haryana Goods and Services Tax Act, 2017. Section 129 and 130 of the said Act is having the similar provisions as under the said sections of IGST Act, 2017.

21. As such, in view of the enabling provisions of Sections 20 and Section 4 of the IGST Act; as well as the order dated 07.12.2017 (Annexure P-46) passed by the Excise & Taxation Commissioner, Haryana, assigning the functions to the Proper Officer under the Haryana Goods & Services

Tax Act, 2017, we are of the considered opinion that 15 of 29 Neutral Citation No:=2023:PHHC:103581-DB 2023:PHHC:103581-DB the Asstt. Excise and Taxation Officer of State Tax is competent and authorized to exercise the powers under Section 129 and 130 of the IGST Act, 2017.

22. As such the first point for determination is accordingly, answered that the Asstt. Excise & Taxation Officer of State Tax was authorized to Act as a Proper Officer and was having the authority to act under Section 129 and 130 of the IGST Act. The decision of the appellate authority in this regard requires no interference. Question No.2”

20. The State Government, vide circulars dated 01.07.2017 and 04.08.2020, authorized the Officer, who shall be discharging the duty under section 129 of the GST Act. Clause 7 of the said notifications is quoted below:

Circular dated 01.07.2017

क०स०	अधिकारी का पदनाम	उ०प्र० माल एवं सेवा कर अधिनियम २०१७ की धारा
7.	१. सचलदल में तैनात राज्य कर के उप आयुक्त २. सचलदल में तैनात राज्य कर के सहायक आयुक्त ३. सचलदल में तैनात राज्य कर अधिकारी	67(11), 68, 70, 126, 127, 129, 130

Circular dated 04.08.2020

क०स०	अधिकारी का पदनाम	उ०प्र० माल एवं सेवा कर अधिनियम २०१७ की धारा
7.	१. सचल दल इकाई में तैनात राज्य कर के उपायुक्त २. सचल दल इकाई में तैनात राज्य कर के सहायक आयुक्त	25(8), 54, 68, 70, 79, 126, 127, 129, 130

	३. सचल दल इकाई में तैनात राज्य कर अधिकारी	
--	---	--

21. Further, learned AAG has brought on record Circular No. 76/50/2018-GST dated 31.12.2018. The relevant clause 6 thereof is quoted herein-under:-

Sl. No.	Issue	Clarification
6.	Who will be considered as the "owner of the goods" for the purposes of section 129(1) of the CGST Act?.	It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

22. On perusal of the said clause, it is clear that if the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods. Once, at the time of detention or seizure, no specified documents were produced, then the proceedings have rightly been initiated against the petitioner in absence of specified documents under section 129(1)(b) of the GST Act for release of goods.
23. Learned counsel for the petitioner has placed reliance on the interim orders of this Court passed in Writ Tax No. 1288 of 2022 dated 14.10.2022, Writ Tax No. 1488/2022 dated 01.12.2022 and Writ Tax No. 331/2023 dated 24.03.2023 and the judgement of the Division Bench of this Court in **Sunaiba Industries Vs. State of U.P. & Others** [2018 NTN (68) 478].
24. But on perusal of the said orders, it is evident that the orders passed by the Division Bench/Single Judge as interim orders and

therefore, the same are not applicable to the facts of the case in view of the judgement of the Apex Court in **State of Assam Vs. :Barak Upatyaka D.U. Karmachari Sanstha** [AIR 2009 SUPREME COURT 2249]. The relevant paragraph no. 10 of the said judgement is quoted below:

“10. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The observations and directions in Kapil Hingorani (I) and (II) being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non- payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extra-ordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human right violations and seeking a mandamus requiring the state, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of Kapila Hingorani (I) and (II).”

25. Further, the record shows that the finding of fact recorded by the authorities in the impugned order has not been assailed by the petitioner. The finding of fact holding that the transaction are bogus and fictitious and therefore, the petitioner cannot be treated as owner at this stage.
26. Therefore, the judgement of the Division Bench of this Court **Sunaiba Industries** (supra) will be of no aid to the petitioner.

27. Further, as rightly pointed out by the learned AAG, no finding of fact has been challenged by the petitioner in any of the paragraphs of the writ petitions, which also goes against the petitioner.
28. Before the appellate authority, the petitioner, for the first time, came forward and tried to justify that the petitioners are the owner of the goods. The record reflects that on verification of portal, the transactions are not shown by the concerned parties. Once it has come on record that the transactions are not reflected on portal as required under the GST Act, on the basis of which, it has been determined and held that the transactions are bogus, no interference is called for by this Court.
29. In view of the aforesaid facts & circumstances of the case, no interference is called for by this Court in the impugned orders.
30. The writ petitions lacks merit and the same are hereby dismissed.

Order Date :-21/08/2025

Amit Mishra