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Judgment No.: 064
Dt.: 06-02-2024



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Judgment Deals With

Section/Rule	Section 129
Authority	Allahabad High Court
Case Name	M/s. Shamhu Saran Agarwal And Company VS Additional Commissioner Grade-2 And 2 Others
Dated	31 st January, 2024

Brief Facts:

The petitioner was aggrieved by the penalty order dated 20.12.2020 passed by the Commercial Tax Officer, Mobile Squad and the order dated 17.09.2021 passed in appeal by the appellate authority. Vide the SCN dated 19.12.2020; the goods were detained on the ground of under valuation. In appeal, the appellate authority affirmed the penalty order on the ground that the goods were undervalued.

Contention of the Petitioner:

It is evident from the circular issued by the Commissioner, Commercial Tax, Uttar Pradesh dated 09.05.2018 that the goods are not to be detained on the ground of under valuation.

Findings & Decision of the Court:

In the present case, there is no dispute that the invoice, e-way bill and all other relevant documents were accompanied with the goods. There was no mismatch in the description of the goods with the documents. The only ground for detention of the goods was that valuation of goods as per the invoice was not correct.

This is not a valid ground for detaining the goods as the officer concerned was not competent to carry out such detention. In the event of under valuation, appropriate notice under Sections 73 or 74 of the UPGST Act, 2017 was required to be issued as per the procedure provided therein.

If the Court holds such a detention to be valid, it would be open to the authorities to carry out detention on their whims and fancies. The detention of the goods in such a scenario is not envisaged under the Act and the officers have not been vested with such a power to detain the goods and thereafter impose penalty under Section 129 of the Act. Specific provisions have been provided for detection of under valuation and the GST officials have to adhere to the same. Only after issuance of notice under Sections 73 or 74 of the Act, if the goods were found undervalued, penalty can be imposed.

Accordingly, imposition of penalty under Section 129 of the Act on the speculation that the goods were undervalued cannot be allowed. Thus, impugned orders dated 20.12.2020 and 17.09.2021 were set-aside.

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