Court No. - 46
Case :- WRIT TAX No. - 1020 of 2023
Petitioner :- Western Carrier India Ltd
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Rahul Agarwal
Counsel for Respondent :- C.S.C.,A.S.G.I.,Gopal Verma Hon'ble Ashwani Kumar Mishra,J.
Hon'ble Syed Aftab Husain Rizvi,J.

Heard learned counsel for the petitioner, learned Standing Counsel representing State and Sri Gopal Verma learned counsel appearing for respondent nos. 4 & 5.

The petitioner is aggrieved by an order dated 14.08.2023 contained in annexure no.10 to the writ petition whereby the liability has been fixed upon it to pay penalty in terms of Section 129 (1) b of the C.G.S.T. Act, 2017. Further prayer made in the writ is to command the respondents to release the goods and the vehicle seized by respondents by accepting penalty in terms of section 129 (1)(a) of the GST Act.

In addition to other arguments advanced, learned counsel for the petitioner places reliance upon a circular issued by the Board on 31.12.2018 which provides that if the invoice or any other specified document is accompanying the consignment of goods then either the consigner or the consignee should be deemed to be the owner of the goods. Relying upon such circular, it is urged on behalf of the petitioner's that the petitioner is a carrier and the goods transported by it was accompanied by E-Way bill and invoice etc. The submission is that the authorities in such circumstances have erred in imposing penalty upon the petitioner inasmuch as by virtue of the aforesaid circular the petitioner was liable to be treated as the owner of the goods and consequently the provision of section 129(1)(a) alone could have been invoked.

Learned State counsel submits that in respect of the demand of tax, the petitioner has the remedy of filing an appeal U/s 107 of the Act. So far as the prayer for release the goods and vehicle is concerned, learned State counsel

does not dispute the petitioners assertion that the goods in transit were accompanied by requisite documents including E-Way bill and invoice etc. The applicability of the circular dated 31.12.2018 is otherwise not doubted.

The department itself has issued a circular dated 31.12.2018 containing clarification on various issues relating to the applicability of the provision, the department is expected to comply with it. The sixth issue is relevant in the circular for the present purposes and is extracted hereinafter.

Issues	Clarifications
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 consigner 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 case, the proper officer should determine who should be declared as the owner of the goods.

In view of the fact that the department does not dispute the petitioner's assertion that the goods in transit were carrying necessary documents in the form of E-Way bill and invoice etc, we are of the view that the department ought to have considered the petitioner's prayer for release of goods and vehicle upon compliance of the provisions contained U/s 129 (1) (a) of the Act. A direction accordingly is issued to the respondents to act in terms of the above circular and release the goods upon compliance of the condition stipulated U/s 129(1)(a). All other questions are left open to be examined in statutory appeal to be filed before the appropriate authority.

Accordingly, the writ petition stands disposed of.

Order Date :- 15.9.2023
C. MANI