

प्रेषक,

आयुक्त, राज्य कर,
उ0प्र0, लखनऊ।

सेवा में,

अपर आयुक्त, राज्य कर, गौतमबुद्धनगर जोन, नोएडा,
समस्त अपर आयुक्त ग्रेड-1, राज्य कर, उ0प्र0,
समस्त अपर आयुक्त ग्रेड-2, राज्य कर, उ0प्र0।(वाद अनुभाग)
महोदय,

लखनऊ:: दिनांक:: 24 जुलाई, 2025

कृपया मा0 उच्च न्यायालय, इलाहाबाद में दाखिल रिट टैक्स संख्या-715/2023 सर्वश्री अरोरा ऑटो सेन्टर बनाम उ0प्र0 व अन्य 02 के वाद में पारित निर्णय दिनांक 15.07.2025 (प्रति संलग्न) का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा व्यापारी की रिट याचिका को डिसमिस कर दिया गया है। प्रस्तुत वाद वस्तुतः माल एवं सेवा कर अधिनियम-2017 की धारा-129 (1) में निहित "Notwithstanding" खण्ड की विधिक प्रभाव तथा उसके उल्लंघन से सम्बन्धित है। वाद में यह तथ्य स्पष्ट रूप से स्थापित है कि व्यापारी द्वारा माल को जाँच हेतु रोके जाने के बाद अतिरिक्त व्यापार स्थल को जोड़ने का आवेदन इस उद्देश्य से दिया गया ताकि जी0एस0टी0 अधिनियम की धारा-129 के प्रावधानों से बचा जा सके।

मा0 न्यायालय ने यह स्पष्ट किया है कि यह एक विशिष्ट (Classic) मामला है, जहाँ माल को जाँच हेतु रोके जाने के पश्चात अतिरिक्त व्यापार स्थल को जोड़ने का प्रयास केवल दण्डात्मक प्रावधानों से बचने के लिए किया गया है। निर्णय में यह भी प्रतिपादित हुआ है कि जी0एस0टी0 अधिनियम की धारा-129 (1) में निहित "Notwithstanding" खण्ड के रूप में अन्य प्रावधानों पर अधिरोपित है तथा इसका अक्षरशः पालन किया जाना आवश्यक है।

पारित आदेश दिनांक 15.07.2025 के मुख्य अंश निम्नवत् हैं -

8. The short point for consideration before this Court is as to whether the provisions of Section 129 of the Act of 2017 has been contravened by petitioner firm or not? From perusal of Section 129 of the Act, it is clear that it starts with a non obstante clause meaning thereby that the provisions of Section 129 has to be complied in true letter and spirit and has overriding effect over other provisions.
9. It is an admitted case that the goods were detained by taxing authorities on 06.03.2020. The goods were coming from Gorakhpur and were to be unloaded at Ansari Road, Muzaffarnagar that is principal place of business of the firm. After the detention of goods and notices having been issued to petitioner, it appears that an application was moved for amending and adding additional place of business of the petitioner firm on the basis of an affidavit to have been signed between the proprietor of the firm and his wife on 29.02.2020.
10. The said execution of agreement of an affidavit is not a registered document. Moreover, the said application which was moved on the portal of the taxing authorities was allowed and in the registration certificate, an additional place of business at Purani Ghans Mandi, Muzaffarnagar was provided by order dated 18.03.2020 which is evident from page no. 32 and 33 of paper book.

11. It is not a case where the firm had already moved an application when the goods were in transit and the order of amendment of registration was passed subsequent to the detention of the goods. It is a case where after the detention of the goods, the application has been moved for adding the additional place of business so as to escape the wrath of the consequence of Section 129 of the Act of 2017 which has a strict rigor and starts with a non obstante clause.
12. Moreover, written argument filed before appellate authority reflects that application for additional place of business was not moved during the transit of goods and it was only after the goods were detained on 06.03.2020.
13. Reliance placed upon the various decisions of the co-ordinate Bench of this Court are distinguishable on the facts of the present case as in none of the cases, the application was moved after the goods were detained by taxing authorities. It is a classic case where application for adding additional place of business was moved after the goods were detained to avoid the penal consequence as provided under the Act of 2017.

अतः उक्त महत्वपूर्ण निर्णय को इस पत्र के साथ संलग्न कर इस आशय के साथ प्रेषित किया जा रहा है कि स्वयं से अवगत होते हुए अपने अधीनस्थ समस्त अधिकारियों को भी उक्त निर्णय से अवगत कराये तथा मा० उच्च न्यायालय द्वारा दिये गये उक्त निर्णय का संज्ञान लेते हुए कार्यवाही सुनिश्चित की जाये।

संलग्नक-उपरोक्तनुसार।

भवदीय,

(डा० नितिन बंसल)
आयुक्त, राज्य कर,
उ०प्र०, लखनऊ।

पृष्ठांकन पत्र संख्या व दिनांक उक्त।

प्रतिलिपि-निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

- 1- प्रमुख सचिव, राज्य कर विभाग, उ०प्र० शासन, लखनऊ।
- 2- अपर आयुक्त ग्रेड-1/2 (उ०न्या०कार्य), राज्य कर, प्रयागराज/लखनऊ।
- 3- संयुक्त आयुक्त (आई०टी०), राज्य कर, मुख्यालय, लखनऊ को इस निर्देश के साथ प्रेषित कि उक्त को विभागीय वेबसाइट पर समस्त अधिकारियों के सूचनार्थ प्रकाशित करने का कष्ट करें।

23/07/25
अपर आयुक्त (विधि), राज्य कर,
मुख्यालय, लखनऊ।

Chief Justice's Court

Case :- WRIT TAX No. - 2495 of 2025

Petitioner :- M/s Rungta Projects Limited

Respondent :- State of U.P. and 3 others

Counsel for Petitioner :- Ami Tandon

Counsel for Respondent :- C.S.C., Pramod Kumar Rai, Ankur Agarwal (S.C.)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This petition has been filed by the petitioner seeking direction in the nature of mandamus to the State of Uttar Pradesh to refund the amount of Rs. 36,17,074.69 being the amount of differential tax realised from the petitioner by Indian Oil Corporation Limited (IOCL) and deposited with the State of U.P. in respect of purchase of High Speed Diesel to which, it is claimed, the petitioner is entitled to purchase at the concessional rate. Further declaration has been sought that the action of the State of U.P. in not refunding the amount be declared as wholly illegal, arbitrary and contrary to the principles of welfare State.
2. A perusal of the record of the writ petition indicates that, at no stage, the petitioner and/or IOCL has approached the State of U.P. seeking refund of the amount on the grounds as raised in the petition.
3. In view of the fact that no demand worth the name so far has been raised by the petitioner, seeking issuance of writ in the nature of mandamus, and a declaration that the action of the State of U.P. in not refunding the amount is illegal, cannot be countenanced.
4. In view thereof, the petition filed by the petitioner is

disposed of. The petitioner may approach the respondent by way of an appropriate representation/notice for demand of justice and it would be required of the respondents to deal with the same in accordance with law, with expedition.

Order Date :- 23.5.2025

AHA/Sazia

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

Court No. - 34

Case :- WRIT TAX No. - 715 of 2023

Petitioner :- M/S Arora Auto Center

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

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for State.
2. The petitioner, before this Court, has challenged the penalty order dated 07.03.2020 passed by respondent no. 2 and order dated 29.09.2021 passed by respondent no. 3 in appeal.
3. Petitioner is a registered dealer. He had purchased 100 pieces of inverter and UPS battery which were being transported from Gorakhpur to Muzaffarnagar. The invoice and bilty showed that goods were to be unloaded at Ansari Road, Muzaffarnagar. The goods were intercepted on 06.03.2020 as it were being unloaded at a different place known as Purani Ghans Mandi, Muzaffarnagar. Proceedings under Section 129 of Goods and Service Tax Act, 2017 (*hereinafter called as "the Act of 2017"*) were initiated against petitioner and on the reply being filed, the officer concerned refused to accept the explanation afforded and passed the order of penalty which was carried in appeal which has been dismissed.
4. Learned counsel for the petitioner submits that the petitioner had taken the place at Purani Ghans Mandi, Muzaffarnagar from his wife and an agreement was executed between them which was

notarised on 29.02.2020. An application was moved before taxing authorities on 07.03.2020 for amending the registration certificate and adding Purani Ghans Mandi, Muzaffarnagar as also an additional place of business. The said application was allowed and registration certificate was amended by order dated 18.03.2020 which has been appended as annexure-5 to writ petition. According to him, Rule 19 of the Central Goods and Service Tax Rules, 2017 (*hereinafter called as "Rules of 2017"*) provides for the amendment of registration which includes the address of principal place of business or any additional place of business.

5. According to learned counsel for petitioner, the order of amendment shall take effect from the date of occurrence of the event warranting such amendment. According to him, as the affidavit was signed between proprietor of the firm and his wife on 29.02.2020, the occurrence of the event would be 29.02.2020 and the application for additional place of business was moved on 07.03.2020 which would come within the period as prescribed under the Rule. He further submits that as the amendment registration certificate was issued on 18.03.2020, it would relate back to the date of occurrence which is 29.02.2020. He has further submitted that there was no intention to evade tax and only the goods have been unloaded at a different place for which they were scheduled to arrive at. He has placed reliance upon the decision of co-ordinate Bench of this Court rendered in case of **M/s. Zhuzoor Infratech Private Ltd. vs. Additional Commissioner Grade and another**, 2025 UPTC (Vol. 119) 309 and **Kitchen Equipments Manufacturing Co. vs. Additional Commissioner Grade 2**, 2025 UPTC (Vol. 119) 476. Reliance has also been placed upon the decision of Madras High Court rendered in case of **M/s. Creamline Dairy Products Ltd. vs. State Tax Officer**, 2025

6. Learned Standing Counsel has opposed the writ petition and submitted that the application for amendment of registration was moved after the goods were detained on 06.03.2020. According to him, the entire story was set up by petitioner for the release of the goods which had contravened the provisions of Section 129 of the Act of 2017.

7. I have heard respective counsel for the parties and perused the material on record.

✓ 8. The short point for consideration before this Court is as to whether the provisions of Section 129 of the Act of 2017 has been contravened by petitioner firm or not? From perusal of Section 129 of the Act, it is clear that it starts with a non obstante clause meaning thereby that the provisions of Section 129 has to be complied in true letter and spirit and has overriding effect over other provisions.

✓ 9. It is an admitted case that the goods were detained by taxing authorities on 06.03.2020. The goods were coming from Gorakhpur and were to be unloaded at Ansari Road, Muzaffarnagar that is principal place of business of the firm. After the detention of goods and notices having been issued to petitioner, it appears that an application was moved for amending and adding additional place of business of the petitioner firm on the basis of an affidavit to have been signed between the proprietor of the firm and his wife on 29.02.2020.

✓ 10. The said execution of agreement of an affidavit is not a registered document. Moreover, the said application which was moved on the portal of the taxing authorities was allowed and in the registration certificate, an additional place of business at Purani

Ghans Mandi, Muzaffarnagar was provided by order dated 18.03.2020 which is evident from page no. 32 and 33 of paper-book.

✓ 11. It is not a case where the firm had already moved an application when the goods were in transit and the order of amendment of registration was passed subsequent to the detention of the goods. It is a case where after the detention of the goods, the application has been moved for adding the additional place of business so as to escape the wrath of the consequence of Section 129 of the Act of 2017 which has a strict rigor and starts with a *non obstante* clause.

✓ 12. Moreover, written argument filed before appellate authority reflects that application for additional place of business was not moved during the transit of goods and it was only after the goods were detained on 06.03.2020.

✓ 13. Reliance placed upon the various decisions of the co-ordinate Bench of this Court are distinguishable on the facts of the present case as in none of the cases, the application was moved after the goods were detained by taxing authorities. It is a classic case where application for adding additional place of business was moved after the goods were detained to avoid the penal consequence as provided under the Act of 2017.

14. Writ petition fails and is hereby dismissed.

Order Date :- 15.7.2025

V.S.Singh