

Ashok Kumar Bhatia Vs State Of UP-HC

GST - Petitioners are truck owners and challenge the individual notices issued to them u/s 130 of the UPGST Act on the ground that they are only vehicle owners and are not doing any business in respect of sale and purchase of the goods.

Held:

++ Though the petitioner has taken the plea that he is not doing any "business" as contemplated in Section 2 sub section (17) and is not a "supplier" as defined in Section 2 sub section (105) and is not a "registered person" as defined in Section 2 sub section (94) of the Act, 2017 or that he is not a "taxable person" as defined in Section 2 sub section (107) of the Act, 2017 but so far as the provisions of Section 122 relating to penalty for certain offences are concerned he would fall within the definition of 'any person' who "in any way concerns himself" in transporting, removing, ... and he would be liable for payment of penalty to the extent of Rs.25,000/-, if he is found guilty of the offence.

++ If 'any person' transports any goods or stores any goods while they are "in transit" in contravention of the provisions of the Act or Rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure shall be released on conditions as laid down in sub clauses (a), (b) and (c) of Sub Section (1) of Section 129 of Act, 2017.

++ For the application of Sections 129 and 130 of the Act, 2017 it is immaterial that the person proceeded against is not a registered person or a supplier or a taxable person or is not doing any business as provided in any of the sub sections of Section 2 of the Act, 2017. It is enough that he is a 'transporter' of goods and that the goods are being transported and have been seized in transit and if the charge is made out against the transporter, the respondents can proceed to seize such goods including the conveyance.

++ In the present case, a show cause notice has been issued to the petitioner on 17.12.2018 and it is always open for the petitioner to file a reply to the same.

++ The contention of the petitioner that he is not doing any business in respect of sale or purchase of the goods or is not concerned with the goods as he is a mere transporter and is only providing vehicles for transporting and, therefore, the impugned notice is bad, is without any substance and is rejected.

++ Petitioner has submitted that under section 129 of the Act, on payment of penalty of Rs.25,000/- the conveyance is liable to be released. Since the vehicle along with goods have been seized and an F.I.R. has also been lodged in this regard, it is always open for the petitioner to apply to the trial court for release of the conveyance and beyond this, no further observations are required.

- Petition dismissed: ALLAHABAD HIGH COURT