

Chief Justice's Court

Case :- WRIT TAX No. - 1790 of 2025

Petitioner :- M/s Aries Agro Limited

Respondent :- State Of Uttar Pradesh and 2 others

Counsel for Petitioner :- Rishi Raj Kapoor, Dushyant Kumar

Counsel for Respondent :- Ankur Agarwal, S.C.

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. This writ petition has been filed by the petitioner aggrieved of the action of the respondents, in not passing a penalty order pursuant to the proceedings under Section 129 of the GST Act, 2017 (for short 'the Act').

2. Submissions have been made that the vehicle in question was intercepted by the respondent-authority and the petitioner, with a view to take the delivery of the goods, paid the amount of penalty under protest, which is reflected from Form GST DRC-03 dated 14.09.2024, whereafter when no order was passed by the respondents, the petitioner moved application dated 03.10.2024 seeking issue of Form- GST MOV-09, however, the said application was rejected on 28.11.2024, *inter alia* observing that once the amount has been deposited by the respondent, there was no necessity to issue order in Form GST MOV-09.

3. Learned counsel for the petitioner made submissions that the action of the respondents in not passing order in Form GST MOV-09 is wholly unjustified inasmuch as the amount was deposited by the petitioner for the purpose of seeking release of goods 'under protest'. Once the amount has been paid under protest, the petitioner was entitled to an order so as to question its validity before the appropriate authority. Non-issuance of the order in

Form GST MOV-09 has deprived the petitioner of filing the appeal and, therefore, the respondents be directed to issue order in Form GST MOV-09.

4. Learned counsel for the respondents made submissions that the procedure prescribed, does not envisage passing of an order under Form GST MOV-09, once amount pursuant to the order has been deposited and goods have been released. However, it is not disputed that the authorities, once the amount has been deposited under protest, must pass an order.

5. Having considered the submissions made by counsel for the parties and perusal of the record, it is apparent that the amount was deposited by the petitioner under protest, as is reflected from Annexure-4 contained in the Form-GST DRC-03. Once the amount has been deposited under protest and even if the same was not deposited under protest, the authorities cannot shy away from passing order of penalty under Form GST MOV-09. Unless the penalty order is passed by the authorities, the parties are deprived of challenging the action of the respondents and therefore, they cannot be deprived of their right to file appeal.

6. Consequently, the petition is **allowed**. The order dated 28.11.2024 (Annexure-7) is quashed and set aside and the respondent No. 3 is directed to pass an order in Form GST MOV-09 within a period of three weeks from passing of the order. Whereafter, the petitioner would be free to take appropriate proceedings in accordance with law.

Order Date :- 30.4.2025

N.S.Rathour/RK

(Vikas Budhwar, J) (Arun Bhansali, CJ)