

Intent to evade payment of tax is mandatory for invoking the proceeding u/s 129(3) and 130: HC

Facts of the case - Shyam Sel and Power Ltd. v. State of U.P - [2023] (Allahabad)

The petitioner sold goods to a person registered in Uttar Pradesh and transported the same. The goods accompanied tax invoice, e-way bill, and consignment note. The goods were intercepted during transportation and on verification, it was found that the e-way bill had been cancelled by the purchasing dealer, whereupon, goods were seized and GST MOV-07 was prepared seeking the response from the petitioner.

In response, the petitioner submitted that all e-way bills were duly filled up and the petitioner was not aware about the cancellation of e-way bills by the purchasing dealer, and the goods sold were accompanying genuine documents. Dissatisfied by the response, an order was passed under section 129(3) of the CGST Act imposing a penalty and further appeal was also rejected.

Decision of the case :

- It is held by HC that, for invoking the proceeding under section 129(3) of the CGST Act, section 130 of the CGST Act was required to be read together, where the intent to evade payment of tax is mandatory but while issuing notice or while passing the order of detention, seizure or demand of penalty, tax, no such intent of the petitioner was observed in the present case.
- It is also held that once the dealer has intimated the attending and mediating circumstances under which e-way bill of the purchasing dealer was cancelled, it was a minor breach. Once the authorities have not observed that there was intent to evade payment of tax, proceedings under Section 129 of the CGST Act ought not to have been initiated, but it could be done under Section 122 of the CGST Act.