

**Court No. - 40**

**Case :-** WRIT TAX No. - 1731 of 2024

**Petitioner :-** M/S Jai Shree Traders

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

**Counsel for Petitioner :-** Ragini Gupta,Rohan Gupta

**Counsel for Respondent :-** C.S.C.

**Hon'ble Shekhar B. Saraf,J.**

**Hon'ble Vipin Chandra Dixit,J.**

1. Heard Sri Sameer Gupta, learned counsel appearing on behalf of the petitioner and Sri Ankur Agarwal, learned Standing Counsel appearing on behalf of the respondents.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner prays for the following reliefs :-

*"A- Issue a writ, order or direction in the nature of the certiorari quashing the order dated 22.9.2024 Form GST MOV-09 (Annexure no.1) passed by Respondent no.3.*

*B- Issue a writ, order of direction in the nature of certiorari quashing the order dated 22.9.2024 in From GST DRC-07 (Annexure no.2) passed by respondent no.3.*

*C- Issue a writ, order of direction in the nature of the certiorari quashing the Circular No.278/GST/2017-18/File No.118/State Tax, dated 01.07.2017 (Annexure No.3) issued by the Respondent No.2 to the extent of delegation of power to pass the order under Section 129(3) of the UPGST Act.*

*D- Issue any other writ, order or direction, which this Hon'ble Court may deem fit in the facts and circumstances of the case;*

*E- Award costs of the petition to the petitioner."*

3. Learned counsel appearing on behalf of the petitioner submits

that the order passed under Section 129 of the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as 'the Act') has been passed by the Proper Officer and not by the Adjudicating Authority, and accordingly, he submits that no appeal lies against the said order under Section 107 of the Act, wherein appeals can lie only against the orders passed by the Adjudicating Authority. He further submits that power to delegate adjudication is not available to the Commissioner as he himself is not an Adjudicating Authority.

4. Upon hearing counsel on behalf of the parties, it appears that the matter requires consideration and the affidavits are required to be exchanged in the present case.

5. Accordingly, let counter affidavit be filed within four weeks; rejoinder affidavit, if any, within three weeks thereafter.

6. It is to be noted that orders have already been passed under Section 129 (1)(A) and 129 (3) of the Act. The petitioner is willing to deposit security in accordance with law for release of his goods.

7. Accordingly, respondent authorities shall release the goods to the petitioner upon his furnishing bank guarantee as per Rule 140(1) of the Uttar Pradesh Goods and Service Tax Rules, 2017. The goods should be released within a week from date on furnishing of bank guarantee by the petitioner as aforesaid.

5. List this matter on January 6, 2025.

**Order Date :- 17.10.2024**

Dev/-

**(Vipin Chandra Dixit,J.)      (Shekhar B. Saraf,J.)**