



2026:AHC:17530

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 6830 of 2025

M/S Shiv Traders

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Pooja Talwar
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Ms. Pooja Talwar, learned counsel for the petitioner and Sri Ravi Shanker Pandey, learned Standing Counsel, who appears for State-respondents.

2. Since counter and rejoinder affidavits have been exchanged between the parties. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits thus with the consent of the parties, writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that it is a registered dealer and is having GSTIN No. 09BKBPP6273NIZH. The writ petitioner sold goods (Groundnut) to one M/s Durga Trading Company amounting Rs. 3,48,000/-. There was a charge of Rs. 17,400/- IGST at the rate of 5%, totaling to Rs. 3,65,400/-. The consignment was loaded on vehicle bearing no. UP 32 LN 2687 and it was to proceed to West Bengal from the State of Uttar Pradesh. The case of the writ petitioner is that goods along with the vehicle were intercepted by the second respondent, Assistant Commissioner Sector-1 (Mobile Squad) Bhognipur Ramabai Nagar, State Tax, Kanpur Nagar and in process, thereof the second respondent issued MOV-01 dated 28.10.2024, wherein it has been stated that the goods were intercepted at 3:16 hours on 27.10.2024 at Bhoganipur. That thereafter the second respondent conducted physical verification and it revealed that there was no difference in the quantity of the goods and all the goods were as per the invoice. It is also the case of the writ petitioner that without there being any deficiency in the goods, the respondent no. 2 illegally passed an order of detention under Section 129 (1) of UPGST Act, 2017 in form MOV-6, a show cause notice

was also issued at the same date on 28.10.2024 and an order came to be passed for releasing after paying the penalty under Section 129(3) of the UPGST Act, 2017 in MOV-09 creating a heavy demand on petitioner's firm. The said order was subject matter of challenge by way of an appeal before the respondent no. 3, Additional Commissioner, Grade-II (Appeal)-III, State Tax, Kanpur Nagar. However, on *ex-parte* manner, the appeal came to be rejected by the respondent no. 3, Additional Commissioner, Grade-II (Appeal)-III, State Tax, Kanpur Nagar on 10.09.2025.

4. Questioning the order dated 28.10.2024 of the second respondent, under Section 129(3) of the UPGST Act, 2017 and the appellate order dated 10.09.2025 passed by the respondent no. 3, Additional Commissioner, Grade-II (Appeal)-III, State Tax, Kanpur Nagar, the writ petitioner has been filed the present writ petition.

5. This Court entertained the writ petition on 04.10.2025 while passing the following orders:

"1. Contention of learned counsel for the petitioner is that a perusal of the order of appellate authority, relevant extract whereof at page Nos.30 and 31, would reveal that dates have been fixed for 02.01.2025, 01.05.2025, 10.07.2025, 02.08.2025, 14.08.2025, 22.08.2025 and 08.09.2025, but the writ petitioner did not appear despite service of notice. The order impugned does not recite as to what was the date of the notice and by which mode it was served.

2. Sri Shashi Kant Mishra, learned Standing Counsel seeks time to obtain instructions and file short affidavit bringing on record the aforesaid aspects.

3. Put up as fresh on 18.12.2025."

6. Post passing of the order, counter and rejoinder affidavits have been exchanged.

7. Learned counsel for the writ petitioner has submitted that the order of the original authority as well as the appellate order cannot be sustained even for a single moment. Elaborating the said submissions, it is contended that so far as the original order passed by the second respondent is concerned, the same, it is without jurisdiction, particularly, when there was no violation committed by the writ petitioner and it was not a case under Section 129(3) of the UPGST Act, 2017. Further submission is that though the writ petitioner preferred an appeal against the original authority, order dated 28.10.2024 but the same has been rejected on an *ex-parte* manner without

serving a notice apprising the writ petitioner who was the appellant, the date on which, hearing to be done. Submission is that in the appellate order, the dates have been fixed for hearing on 02.01.2025, 01.05.2025, 10.07.2025, 02.08.2025, 14.08.2025, 22.08.2025 and 08.09.2025 but the writ petitioner has not been served with the notice regarding fixation of the said date. It is also contended that in the counter affidavit, the respondents have come up with the stand that the dates were duly informed while lodging in the portal but the writ petitioner denied the same while coming up with the stand that he has not received the information regarding fixation of the dates. According to the petitioner, the case stands fully covered by a decision of the Division Bench of this Court in ***Writ Tax No. 2707 of 2025 (M/s Bambino Agro Industries Ltd v. State of U.P. and others)***, decided on 19.12.2025.

8. Learned Standing Counsel on the other hand submits that whatever might be resorting too the proceedings under Section 129(3) of the UPGST Act, 2017 is perfectly valid in accordance with law and an order came to be passed within the four corners of law as there were violations committed by the writ petitioner. He further submits that though the writ petitioner preferred an appeal against the order of the original authority dated 28.10.2024 but the appeal has been rejected by the third respondent on 10.09.2025 while holding that despite service of notice through online in the portal, the writ petitioner conveniently avoided participation in the appellate proceedings.

9. I have heard learned counsel for the parties and gone through the records carefully.

10. Apparently, the allegation of the writ petitioner is that the order passed by the original authority dated 28.10.2024 is ex-parte and more so the appeal also stands rejected without informing the writ petitioner about the date on which the writ petitioner is to appear before the authority.

11. A bare look to the counter affidavit filed by the respondents sworn by the State Tax Officer (Mobile Squad) Bhognipur, Kanpur Nagar, reveals that the dates wherein hearing was to be conducted notices were issued and a chart has been recapitulated in para-5 of the counter affidavit. The stand of the respondents is that the said information was loaded in the portal. However, the petitioner denied the same. According to him, the petitioner has not been served with the said notices and strength has been drawn from the judgement

of this Court in ***M/s Bambino Agro Industries Ltd***, wherein the following as averred:

"104 (viii) To the extent it is not admitted to the petitioners that they have received any email and to the extent that fact may remain disputable, no useful purpose may ever be served in entering into that enquiry by any Court or Tribunal or authority as it may involve deep forensic investigation of the 'computer resource' used by the addressee, before any conclusion may be drawn. It would amount to immense waste of productive time and money, both by the revenue authorities and the assesseees. Plainly, at present it may remain impractical and therefore, an undesirable course to be adopted. In any case, admittedly, the entire adjudication order has not even been attempted to be served through e-mail. Therefore, that order may never be described to have been 'communicated' to the petitioner, through e-mail, for the purpose of Section 107 of the State/Central Act."

12. At this juncture, Sri Ravi Shankar Pandey, learned Standing Counsel submits that whatever might be in order to sort out the controversy, a date be fixed by this Court on which date, the writ petitioner may appear and set-forth the stand.

13. To such a submission, learned counsel for the petitioner has no objection and she gracefully accepts the same.

14. Accordingly, the writ petition is being decided in the following manner:

(a). The order dated 10.09.2025 passed by the respondent no. 3, Additional Commissioner, Grade-II (Appeal)-III, State Tax, Kanpur Nagar rejecting the appeal is set aside.

(b). The matter stands remitted back to pass fresh order strictly in accordance with law.

15. For the said purpose, the writ petitioner shall approach the respondent no. 3 by 07.02.2026

16. On that date, the documents which the petitioner seeks to be furnished be accorded to the writ petitioner and the dates shall be fixed in the week commencing 16.02.2026 for hearing and order be passed within a period of six weeks thereafter.

17. Since the petitioner has represented through their counsel and learned Standing Counsel is represented the State thus it will be deemed that the

petitioner and the State has full knowledge of the order passed today.

18. Needless to point out that this Court has not adjudicated on the merits of the matter and the appellate authority shall decide the appeal in accordance with law.

19. The benefit of the orders passed today shall only be applicable in those contingencies when the petitioner sticks to the timeline and does not violate any terms of the order.

20. Accordingly, the writ petition stands **disposed of**.

January 27, 2026

Ashu

(Vikas Budhwar,J.)