POSTAL REGN. NO. MP/IDC/412/2021-2023

35th YEAR OF PUBLICATION

Tax Law Decisions

A UNIQUE AND BEST MONTHLY MAGAZINE ON GST, VALUE ADDED TAX AND ALLIED LAWS IN TWO VOLUMES PER YEAR

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Volume 66 Part - 2 February 2021

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नकली गमले में नकली फूल सजे हैं।

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जिन पर घास भी नहीं होती।
दिमाग में षड्यंत्र भरे पड़े हैं।
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टी.वी. चैनल की बहस में, आडंबर के उत्सव में
सिमटा चुपचाप बैठा हूं। मुझे वहीं पड़ा रहने दो।

प्रस्तुति - राघवेंद्र दुबे
से.नि. अपर आयुक्त वाणिज्यिक कर एवं
से.नि. लेखापाल सदस्य, म.प्र. वाणिज्यिक कर अपील बोर्ड

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(16) Practical Issues and Approach Towards E-Way Bill and its Remedies

Ameet Dave
Tax Consultant

We have learned about provisions of section 68 Rule 138 and penalty sections 129 / 130 in many seminars and webinars, since 2018 form inception of section 129/130, many cases are before interception officers and rest after settlement are in appeal. It is necessary to understand scope and jurisdiction of Tax and penalty u/s 129/130 of the GST Act. First We will take, how to handle / encounter interception process and further after finalization of demand how to approach in appeal. This subject is based on practical part and needs to be understand with provisions of the law. Here I am sharing few situations where penalties are imposed and then the High Court of few States have quashed the tax and penalty imposed u/s 129/130 of the Act.

Precautions and procedures are to be adopted while dealing interception of vehicle and goods u/s 129/130 of the GST act:

1. The professional should always observe, time of interception and time of issuing notice in the subject matter. If there is large gap or notice is issued ignoring the time limit given in circular No. 41 dated 13-4-2018, then objection should be raised immediately.
2. Time of interception and time of detention is very important. Because during that time, E-way bill can be generated and submitted or part B can be rectified before detention.
3. The notices should necessarily be replied with all relevant evidences and documents.
4. It should always be observed that, notice should contain specific deficiency, if specific deficiency is/are not found in the notice, vehicle and goods can not be detained further.
5. Having specific deficiency in MOV 02, the officer while issuing order after detaining vehicle can not penalize supplier on any other deficiency which was not mentioned earlier in the notice.

6. After having specific deficiency in the notice, the professional should try to see circular 64 dated 14-10-2018, under which few deficiencies are defined as not very serious mistakes and are not liable for tax and penalty.

Disclaimer : Here I am sharing few situations, where penalty have been imposed and further after proper arguments it has been quashed. The situations are well supported by case laws decided by the Hon. High courts and Appellate Authorities of respective states. I have provided synopsis of the cases, but it is humbly suggested to read complete judgment before making any opinion.

Que. 1 : Whether classification, valuation & quantity issues can be challenged u/s 129 of the GST Act ?

Ans.: According to the provisions under GST for levy of penalty, the valuation and classification can be dealt by jurisdictional adjudicating officer and not by the officer appointed u/s 68 to intercept and inspect goods and documents with regard to violation in E-way bill provisions. The following case laws are relied for the subject mentioned above.

Classification, valuation, quantity of goods in transit.

Classification and under valuation can not be decided by detaining officer.

[1] Asharaf Ali K.H. Vs. Asst. State Tax Officer & Others (2021) 66 TLD 73 (Ker)

Violation of provisions of Sec. 129 of GST Act - the goods and the vehicle are detained on account of alleged mis-classification of goods - the Kerala High Court held that the mis-classification of goods can not warrant detention of goods u/s 129 of GST Act. If the department feels that there is mis-classification of goods, then it is for them to forward a copy of the report to the assessing officer of petitioner, who can consider the said report at the time of finalising assessment of petitioner. But, detention of goods is not justified for the said reason.

Final Outcome- Petition allowed.

Relevant Provision -Sec. 129 of GST Act, 2017.

[2] Sameer Mat Industries Vs. State of Kerala (2021) 66 TLD 74 (Ker)

The court held that issue of mis-classification and under - valuation has to be gone in to by the respective assessing officers and not by the detaining officer. In such circumstances, the court was not inclined to permit further detention of goods, and ordered for release of the same on execution of a simple bond. The detaining officer shall inform assessing officer who would be entitled to take appropriate proceedings at the time of asst. The assessing officer of the petitioners would also be intimated about this.

❑

For valuation/HSN Section 129 can not be applied.

[3] Alfa Group Vs. STO (2021) 66 TLD 75 (Ker)

The challenge in this petition is to order of detention by which the goods belonging to petitioner were detained on the ground that the value quoted in the invoice was low as compared to MRP of the goods. There is further averment that HSN Code of the goods were mentioned wrongly. It is submitted by the counsel for the petitioner that the detention of goods u/s 129 or 130 is not justified on these grounds.

On consideration of facts and circumstances of the case, the Kerala High court found that the none of these reasons justify detention of goods. ***There is no provision under GST Act which mandated that the goods shall not be sold below MRP.*** Further, there is nothing in the detention order which shows that the due to wrong HSN Code of the goods there was any difference in rate of Tax. The scheme of GST Act is such as to facilitate free movement of goods, after self assessment by the assessee. ***Therefore the respondent can not resort to an arbitrary and statutorily unwarranted detention of goods. Such action on the part of the department's officers can erode public confidence in the system of tax administration in our country and, as a consequence, the country's economy itself.*** Under such circumstances, the High court quashed impugned detention order and directed the respondents to forthwith release goods belonging to petitioner on the petitioner producing copy of this judgment.

❑

Under valuation can not be reason to detain vehicle with goods.

[4] KP Sugandh Ltd. Vs. State of Chhattisgarh & Others (2020) 64 TLD 411 (CG)

In spite of in charge of the vehicle producing necessary invoice and E-way bill for the goods being transported, the respondent authorities seized the vehicle and goods on the ground of Under valuation of goods compared to their MRP. Though the details in the invoice as well as in the E-way bill matched the products found in the vehicle at the time of inspection except valuation of the goods. ***The CG High court held that Under valuation of goods in the invoice can not be the ground of detention of goods and vehicle u/s 129 of GST Act.*** Though the state authorities can initiate appropriate proceedings against the manufacturer sells his products to its customers or dealer at a price lower than MRP, it can not be ground for detention and seizure of the goods and the vehicle u/s 129 of GST Act.

[5] Asianet Digital Network P. Ltd. Vs. ASTO (2021) 66 TLD 76 (Ker)

The value mismatch in delivery challans and E-way bill. The petitioner issued two DC one was carrying value for 200 set top boxes and another having 600 set top with NIL value. The petitioner has disclosed full value of 800 set top boxes in E-way bill.

The Kerala HC held that the Department insisting for payment of tax and penalty for all set top boxes can not be sustained. The petitioner has correctly shown quantity and value of 200 boxes and value of only 600 Set top boxes is not shown correctly in another delivery challan. Therefore subject to further adjudication of issue before STO, the petitioner can provide Bank Guarantee and personal bond u/s 129(1)(a) for only 600 boxes.

❑

For quantity/non payment of tax can not be detained.

[6] Insha Trading Company Vs. State of Gujarat & Others (2021) 66 TLD 77 (Guj)

Violation of provisions of Sec. 129 of GST Act - the petitioner supplied brass electrical parts from Jamnagar (Guj) to Delhi. The driver of the vehicle was duly carrying invoice, E-way Bill and lorry receipt. The vehicle

is intercepted by third respondent on 14-1-2019. The driver produced the documents relating to goods. However, the vehicle is detained on the ground that genuineness of goods (its quantity, etc.) and the documents produced requires further verification. The third respondent issued an order dt. 14-1-2019 in MOV-01 recording the statement of driver, and an order in MOV-02 for physical verification of vehicle, goods and the documents, and on the same date by order passed u/s 129(1) of GST Act, the vehicle and goods are detained for verification, on the ground that on perusal of details in bilty, the goods *prima facie* are disproportionate. Then, by order dt. 29-1-2019, passed in MOV-09, the petitioner is called upon to pay tax and penalty as computed therein. Thereafter, a notice in MOV-10 is issued, and by impugned order dt. 8-4-2019 passed u/s 130 the goods and conveyance are ordered to be confiscated.

The Gujarat High Court observed that the reasons for issuing notice u/s 130 for confiscation of goods and vehicle are that upon preliminary online verification of dealer, 42 E-way Bills have been generated by him in Dec., 18, ***wherein IGST of Rs. 3,64,30,800/- has been shown, and it appears that dealers have not paid the same, or the purchases are not genuine. The High Court held that if that be so, then nothing prevents the respondents from taking appropriate action against petitioner under relevant provisions of GST Act***. However, ***when the vehicle in question was carrying the goods which were duly accompanied by proper documents, and when no discrepancy is found in connection therewith, then there is no reason for third respondent to confiscate the goods and vehicle. The impugned order of confiscation passed u/s 130 can not be sustained.***

Final Outcome- Petition allowed.

❑

Que. 2 : What if Part B is not filled and goods contained in the vehicle are goods sent for quality approval on Delivery challan?

Ans.: Since goods carried in the vehicle are not taxable supply (has no tax impact), should not be detained.

Goods moved for quality appraisal. (not for sale)

[7] Age Industries P. Ltd. Vs. Asst. State Tax Officer (2021) 66 TLD 78 (Ker)

The court held that, ***there is no taxable supply when goods are transported on delivery challan so long as the authenticity of the delivery challan is not doubted, and therefore, such goods can not be detained merely for infraction of rule 138(2).***

❑

Goods moved for repair (not for sale)

[8] Neva Plantation (P.) Ltd. Vs. ACSTE, February 12, 2020 (2020) 65 TLD 154 (AA-GST-HP) Appellate Authority - GST, Himachal Pradesh

GST : Where assessee, engaged in supplying of tax free goods, sent machine used for production of said products for repair without issuing proper e-way bill and, thus, adjudicating authority directed assessee to deposit payment of tax and penalty, ***in view of facts that machine was not sent for sale but only for repair, instant appeal was to be accepted and adjudicating authority to be directed to refund amount of penalty.***

Que. 3: Whether Part B is required to be filled from consignor's place to the place of Transporter ?

Ans.: No, it is not required within same district having distance up to 50 Km.. But if district is changed, it is suggested to fill Part B. (you can fill the number of vehicle in which goods are approaching to transporter).

Notification No. 12/2018 CGST dt. 7-3-2018

Part B is not required to be filled from consignor's place to transporters place within 50 kms.

[9] VSL Alloys (India) P. Ltd. Vs. State of UP & Others (2018) 60 TLD 124 (All)

The High court held that, according to notification 12/2018 dated 7-3-2018 (amended rule 138 of CGST Act), ***when goods are moving from consignor's place to the transporters place within 50 Kms. Part B is***

not required to be filled. Penalty was quashed and truck with goods released.

It is also held that - as all documents were accompanied the goods and details were mentioned, then merely non - mentioning of vehicle No. in Part B can not be the ground for seizure of goods.

Same held in following cases :-

[10] Rivigo Services Ltd. Vs. State of UP (2018) 60 TLD 190 (All)

The above judgment followed in the following case

[11] S.B.G.C. Logistics Vs. State of UP (2018) 60 TLD 187 (All)

Que. 4: Can E-way be produced or rectified before detention of vehicle and goods ?

Ans. : Yes, it can be done. Because there is a difference in *"Interception" and "Detention"*. The proper officer intercept vehicle finds a mistake or violation of provision in E-way bill and having satisfied with the violation used to Detain vehicle (Takes a possession of vehicle and goods). Therefore, if supplier can provide E-way bill or update Part B before order of detention, penalty can not be levied in accordance with the cases cited here under;

E-way bill produced prior to the seizure / detention penalty can not be invoked

[12] Bhumika Enterprises Vs. State of UP (2018) 60 TLD 129 (All)

It is specifically mentioned in the order that, if E-way bill is generated before detention or seizure, the seizure can not be conducted. In other words if seizure can not be done in such circumstances then Tax penalty also can not be proposed or imposed. Further in;

[13] Ashok Enterprises Vs. State of UP and 3 Others Order Dated 9-5-2018

E-way bill generated much before detention or seizure of goods. Tax & penalty was quashed by the Hon. High Court.

[14] Modern Traders Vs. State of UP 2018 -TIOL-48-HC-ALL-GST

The High court held that - as E-way bill was produced on the same day of interception of goods along with documents indicating payment of IGST ***but before seizure order is passed, no jurisdiction for passing orders of seizure of goods / vehicle and tax demand / penalty - order quashed, respondent directed to immediately release goods and vehicle.***

[15] Ram Charitra Ram Harihar Prasad Vs. State of Bihar August 6, 2019 (2021) 66 TLD 79 (Patna)

GST : Where Competent Authority having found that E-way Bill had expired, initiated proceedings for detention of goods and vehicle, since assessee had generated a fresh E-way Bill before order of detention was passed under section 129 and Competent Authority had recorded in proceedings that ***E-way Bill had been generated, proceedings ought to have been brought to a close.***

[16] Om Dutt Vs. ACSTE-Cum-Proper Officer February 14, 2020 (2021) 66 TLD 80 (AA-GST-HP) Appellate Authority - GST, Himachal Pradesh

GST : Where in course of transportation, due to break down of goods carrying vehicle, goods were transshipped to another vehicle, however, E-way bill of consignment which was produced before proper officer at time of checking pertained to previous vehicle and, therefore, an order was passed under section 129(3) levying penalty equal to one hundred per cent of tax payable on goods, in view of fact that assessee had subsequently updated E-way bill and number of second vehicle was updated in part-B of E-way bill and, moreover, ***there was no evidence on record to prove that assessee changed vehicle to evade tax,*** impugned order was to be set aside and, ***assessee was to be directed to pay a penalty of Rs. Ten Thousand only for procedure lapse committed by it.***

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Part B filled prior to detention order in MOV 06:

[17] 2020-VIL-26-GSTAA

Before Addl. Commissioner of State Tax (Appeals)-Cum-Appellate Authority, Haryana, Panchkula

Appeal No. GSTA/0046/2018-2019

Date: 21-11-2019

M/s. The Nalagarh Truck Operators Union

Vs.

AETO (Enf.), Panchkula

For the Appellant : Sh. Chetan Jain, Advocate

For the State : Sh. Ajay Saini Excise & Taxation Officer,

Sh. Poonam, Respondent ETO

ORDER

GST - Interception, Detention, E-way bill – appeal against imposition of penalty on the ground that the goods in question were being transported ***without filling up the part-B of the E-way Bill*** – issue of order of detention in FORM GST MOV-06 – HELD - ***the Proper Officer has not followed the procedure laid down by the Government vide circular no. 41/15/2018-GST dated 13-4-2018*** as the Proper Officer not issued detention memo in FORM MOV-06 when the conveyance was intercepted - the ***appellant has generated the Part-B of E-way bill prior to issuance of detention memo i.e. MOV-06 - once E-way bill was generated after interception of the goods, but before seizure order is passed, then the goods cannot be seized and penalty cannot be levied*** - The documents produced at the time of checking of the goods under dispute ***do not indicate that any attempt was made to evade tax, hence, no mala fides intention are proved or established - the impugned order imposing tax and penalty under Section 129(3) of the CGST Act is set aside - penalty of Rs.5000/- is imposed under section 125 of the CGST Act for not mentioning the proper details in the E-way Bill*** - The impugned order is set aside and appeal is accepted.

That Reliance is place on the recent Judgment of ***M/s Modern Traders Vs. State of UP and ors, Writ Tax No.763 of 2018, Order dated 9-5-2018 - 2018-VIL-623-ALH*** (Annexed herewith an Annexure A-6) wherein the Hon'ble Allahabad High Court following its own order in the case of ***Axpress Logistics India Pvt. Ltd. Vs. Union of India and 3 others reported in 2018-VIL-593-ALH,*** held that once E-way bill was generated after interception of the goods, but before seizure order is passed, then the goods cannot be seized i.e. ***Once the E-way bill is produced and other documents clearly indicates that the goods are belongs to the registered dealer and the IGST has been charged there remains no justification in detaining and seizing the goods and asking the penalty.***

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Part B updated

[18] Integrated Constructive Solutions Vs. ACST&E-cum-Proper Officer (2021) 66 TLD 81 (GST Appellate Authority, Himachal Pradesh)

E-way Bill – Shifting to Goods by other vehicle due to breakdown penalty despite vehicle Number not updating is unsustainable.

It appears that there is no dispute regarding quantity of goods and further all concerns documents were placed before the proper officer. It is a fact that the E-way Bill for the material in question was generated at 05:52 pm on 1-11-2018 and further updated on 5-11-2018 at 06:38 pm in which all relevant detail were entered. Due to break down of material carrying vehicle the material were transshipped to another vehicle. The E-waybill of the consignment which was produced before the proper officer pertains to the previous vehicle. The only mistake the E-way Bill part-B was that the number of the vehicle in which the material was transshipped had not been entered at the time of inspection of the vehicle. The appellant updated the E-way Bill and the number of the second vehicle was updated in the part-B of the E-way Bill at 11:52 am dated 6-11-2018. Despite the updation of the part-B of EWB the learned Respondent detained the vehicle and imposed tax/ penalty to the tune of Rs. 16,28,23,728. The appellant has declared the consignment on 1-11-2018 at 05:52 p.m. and further updated on 5-11-2018

at 06:38 pm. which makes it clear that there was no intention to evade tax. The learned Respondent also failed to prove that the appellant changed the vehicle to evade tax. In my opinion the proper officer has acted in haste and levied tax/penalty without giving proper opportunity of being heard as mentioned in section 129(4) reads as under - "***No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned on opportunity of being heard."The learned respondent has imposed penalty in a mechanical manner and has ignored the corrected and updated E-way Bill as produced by the appellant within two hours of the detaining of the vehicle. Therefore, the tax/penalty under section 129(3) of the CGST/HPGST Act, 2017 imposed is unsustainable.***

Note : The judgment speaks about downloading of E-way bill prior to the detention, in other word if some mistake happens in Part B of E-way bill which is already downloaded prior to the detention but if corrected before the seizure / detention should also be entertained and no penalty in such case be proposed or imposed.

Que. 5 : Whether penalty can be imposed for mismatch in distance?

Ans.: No, it can not be, in accordance with the following judgments mentioned here under, it has been treated as typographical error and more over penalty cannot be levied in the light of circular 64 issued on 14-9-2018.

Distance Mismatch

[19] Sabitha Riyaz Vs. Union of India Dated 31-10-2018 (2021) 66 TLD 82 (Ker)

The circular mentioned here above has been considered by the Hon. High Court of Kerala in the case of ***Sabitha Riyaz Vs. Union of India (2021) 66 TLD 82 (Ker)*** **31-10-2018**, the court have specifically considered the mistake in registering distance in Kms and also have admitted that, it is typographical error and further directed concerned officer to consider **Circular No. 64/38/2018-GST dated 14-9-2018** issued by GST Commissioner and have decided to release goods without tax and penalty.

Followed in following judgments :

[20] Daily Express Vs. Asst. STO (2021) 66 TLD 83(1) (Ker)

Held that since the issue involved in instant case was squarely covered in favour of petitioner by a judgement of Kerala High Court rendered in case of ***Sabitha Riyaz Vs. Union of India (2021) 66 TLD 82 (Ker)*** Where in the competent Authority was directed to consider assessee's request for release of detained goods in terms of **Circular *No. 64/38/2018-GST dated 14-9-2018,*** writ petition to be disposed by applying ratio of said Judgment.

[21] Godrej Consumer Products Ltd. Dist. Solan (HP) Vs. ACST & E-cum proper officer, Circle Baddi-II (2021) 66 TLD 85 (AA-GST-HP) Appellate Authority - GST, Himachal Pradesh

GST : Where due to a typographic error while generating E-way bill, petitioner mentioned approx distance between Puducherry to Himachal Pradesh as 20 Kilometers instead of 2000 Kilometers, as a result of which, a validity of one day had been calculated by E-way bill portal instead of twenty days and on expiry of E-way bill on very next day and ***interception of consignment before reaching destination, no violation of Rule 138 could be alleged to levy penalty.***

❑

Distance mismatch/E-way bill expired due to less distance shown

[22] Godrej Consumer Products Ltd. Dist. Solan (HP) Vs. ACST & E-cum proper officer, Circle Baddi-II (2021) 66 TLD 85 (AA-GST-HP) Appellate Authority - GST, Himachal Pradesh

The petitioner by mistake has entered distance 20 Km instead of 2000 Km. the E-way bill got expired in one day, ***it is a typographical error***. The court has appreciated the mistake and by following ***circular 64 dated 14/9/2018***, relief has been granted and further penalty ***u/s 125 Rs. 500/- + 500/- = 1000/- has been imposed according to directions of circular dated 14-9-2018.***

The court has followed case of **Sabitha Riyaz Vs. Union of India (2021) 66 TLD 82 (Ker)** in the case.

❑

Que. 6: Can difference in destination or wrong destination be penalized?

Ans.: The High court in this case has decided, that this a "Human error" which can be seen with naked eyes, can not be detained or penalty can not be imposed.

Human error which can be seen with naked eye :

[23] Rai Prexim India P. Ltd. Vs. State of Kerala & Others (2021) 66 TLD 86 (Ker)

The high court in this case directs to see errors which can be seen by naked eyes can not be penalized. The petitioner due to mistake has entered wrong destination in E-way bill but all other entries including value of the goods entered correctly. The petitioner further has by another E-way bill has corrected the destination but by human error value was entered short. The court directs that If IGST has been paid, only by taking bond goods may be released, and if IGST not paid goods may be released on Bond and Bank Guarantee.

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Destination issue : opted for different route to reach destination

[24] Kannangayathu Metals Vs. Assistant State Tax Officer November 8, 2019 (2021) 66 TLD 87(1) (Ker)

Section 129 of the Central Goods and Services Tax Act, 2017 read with rule 138 of the Central Goods and Services Tax Rules, 2017 / Section 129 of the Kerala State Goods and Services Tax Act, 2017 read with rule 138 of the Kerala Goods and Services Tax Rules, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority had detained goods of assessee under transport and also vehicle at a place Vazhayila on ground that e-Way Bill in respect of consignment showed that it was to cover a transportation from Pazhoor-Peppathi to Vettoor road-Kaniyapuram, whereas Vazhayila was not on that route - Assessee filed writ petition contending that there was no mandate under section 129 for detaining goods that were covered by a valid E-Way Bill ***merely because driver of vehicle took an alternate route to reach same destination - Whether there could be a mechanical***

detention of a consignment solely because driver of vehicle had opted for a different route other than what was normally taken by other transporters of goods covered by similar e-Way Bills - Held, no - Whether since in instant case there was no attempt at transportation contrary to e-Way Bill, Competent Authority was to be directed to forthwith release goods and conveyance to assessee - Held, yes [Para 3] [In favour of assessee]

❑

Presumption and assumption is/are not allowed in law and more over wrong destination also does not fall under penalty u/s 129:

[25] Commercial Steel Company Vs. ACTO (2021) 66 TLD 87(2) (Tel)

The consignment was going from Vidyanagar (Kar) with all requisite documents to Balanagar (Near Hyderabad) through vehicle No. KA 35 C 0141. The vehicle is detained at Jeedimatla alleging "***Wrong destination"*** and directing payment of 18% tax and penalty equal to tax to totaling Rs. 416447/- by estimating value at Rs. 1114579/- as against actual value of Rs. 352920/-. The amount of tax and penalty paid by the petitioner, because on the said date there was a marriage ceremony in his family. Thereafter, petition is filed against the action of the respondents.

The Telegana HC held that admittedly the reason for such detention "***Wrong destination***", but ***under GST Act, there is no such ground to detain vehicle***. It is stated that Tax and penalty were levied because it was presumed that there was possibility of local sales at Jeedimatla. ***The HC held that a mere possibility can not clothe the 1st respondent to take impugned action. There is no material placed on record by 1st respondent to show that any attempt was made by petitioner to sell the goods in local Market.*** Thus the impugned action of respondent is collecting amount of Rs. 416447/- from petitioner towards tax and penalty under threat of detention of vehicle for an absurd reason (***wrong destination***), when the vehicle in question carried all the proper documents evidencing that it was an inter state sales transaction, is clearly arbitrary and violative of article 14, 265 and 300A of the constitution.

The 1st respondent is directed to refund the amount deposited by petitioner with interest @ 6% p.a. from 13-12-19 till the date of payment within three weeks.

❑

Mismatch in Destination Address is not a Serious Mistake (Technical Error)

[26] M.R. Traders, Kottayam Vs. Asst. State Tax Officer (INT), SGST Deptt. & Others (2021) 66 TLD 88

Shri Alexander Thomas, J.W.P. (C) No. : 2713 of 2020

31st January, 2020

Violation of provisions of Sec. 129 of GST Act - the petitioner is engaged in business of Timber and Timber products and is having office at Erattupetta (Kottayam) and branch at Kizhissery (Malappuram). The petitioner purchased Timber Logs from Karnataka. In E-way bill, address was of Kottayam office, while goods were being unloaded at Kizhissery. On that ground 1st respondent issued Notice u/s 129(3) of GST Act for seizure of consignment and for imposing extra tax and penalty for release of goods and vehicle. The petitioner submitted that they had recently started Kizhissery branch and the goods were meant for said branch only. But, details of new branch was shown as 'processing' in GST site. However, while generating E-way bill petitioner was under assumption that Kizhissery address would automatically appear on E-way bill, but the system picked-up address of Erattupetta office, because address of new branch at Kizhissery was not updated in GST site.

Considering the submissions of the parties, the Kerala High Court directed to release the vehicle and the goods on furnishing of bank guarantee for the amount shown in notice. Thereafter, 1st respondent will take up the matter for finalization of adjudication proceedings, and shall take into consideration the vital contention urged by petitioner that the so called error in E-way bill, etc. is only a **clerical mistake and is not a serious mistake which should justify detention and penalty proceedings.**

Final Outcome- Writ petitions stand disposed of.

Relevant Provision -Section 129 of GST Act, 2017.

Que. 7 : Whether oficer is suppose to see "Intend to evade tax" while imposing penalty ?

Ans.: Yes, it must be seen. The following High court judgments are endorsing the theory of "Intend to evade tax". Although it has been debated in the beginning that section does not contain such, but in my fair opinion "Intend to evade tax" is the basic ingredient to levy penalty, without proving such penalty can not be imposed or recovered. The following judgments are an example that, High courts has taken cognizance of "Intention to evade tax". Hence following orders should be used to quash penalty, if all other requisite documents and E-way bills are accompanied with vehicle/Goods.

Intend to evade tax under GST :

[27] Satyendra Goods Transport (2018) 61 TLD 30 (All)

In this case, the Hon. High court held that "the assertion that IGST had already paid, has also not been denied by the opposite parties nor that both the consignor and consignee are registered dealers. Moreover, the requisite details have been mentioned in invoice etc., the same would be verified at the point of destination. The Hon High court had held that **there was no intention to evade tax**". Accordingly, the Hon High court quashed the order of levying penalty.

[28] Ramdev Trading Co. (2021) 66 TLD 89 (All)

The Hon. Allahabad High Court in the instant case observed that at the stage of seizure detaining authority has not formed any opinion as to **intention to evade tax**. The only allegation made in the seizure order is non availability of declaration and mis-description of goods. There is no allegation as to intention to evade tax. While in the penalty order, it is recorded that the petetioner had intention to evade tax. Under these circumstances, The Hon, High court had held that the observation made in the penalty order is only an afterthought, The same cannot be relied upon to justify the imposition of penalty.

[29] R.K. Motors (2019) 63 TLD 22 (Mad)

In this case, the Hon. Madras High court had held that "it is also not in dispute that the goods are covered by appropriate documents. The tax

payable was paid by supplier. Even if by mistake a wrong instruction had been given to the driver of the vehicle, still it would not really matter. The only question that the respondent ought to have posed **whether there is any attempt to evasion.**

Under these circumstances, The Hon. High court has held that when the writ petitioner is registered dealer, when the tax in respect of the goods have already been remitted and when transportation of goods is duly covered by proper documentation, then respondent ought to have take sympathetic view of the laps committed by the driver of the vehicle. **The detention order and the penalty order suffer from vice of gross unreasonableness and dis-opportunity. When power id conferred on a statutory authority, it should be exercised on wheelers. They cannot be sold without proper registration.** Therefore, the writ petitioner could not have evaded his statutory obligations in any manner." Under these circumstances, The Hon. High court allowed petition and quashed the penalty order.

❑

Break down of vehicle and intend to evade tax :

[30] Om Dutt Vs. ACSTE-cum-proper officer February 14, 2020 (2021) 66 TLD 80 (AA-GST-HP) Appellate Authority - GST, Himachal Pradesh

GST : Where in course of transportation, due to break down of goods carrying vehicle, goods were transshipped to another vehicle, however, E-way bill of consignment which was produced before proper officer at time of checking pertained to previous vehicle and, therefore, an order was passed under section 129(3) levying penalty equal to one hundred per cent of tax payable on goods, in view of fact that assessee had subsequently updated E-way bill and number of second vehicle was updated in part-B of E-way bill and, moreover, ***there was no evidence on record to prove that assessee changed vehicle to evade tax,*** impugned order was to be set aside and, ***assessee was to be directed to pay a penalty of Rs. Ten Thousand only for procedure lapse committed by it.***

❑

E-way bill expired / intend to evade tax is must:

[31] Bhushan Power & Steel Ltd. Vs. ACST & E (proper officer) circle mall road February 11, 2020 (2021) 66 TLD 90 (AA-GST-HP) Appellate Authority - GST, Himachal Pradesh

GST : Where Assistant Commissioner raised additional amount of tax and imposed penalty on ground that e-way bill issued to assessee for movement of goods had expired, in view of fact that Rule 138(10) mentions that validity of e-way bill may be extended within 8 hours from time of its expiry, but, in instant case vehicle was practically apprehended in almost 08 to 09 hours of expiry of e-way bill, prima facie it appeared that assessee had not been given reasonable opportunity to update Part-A of e-way bill and, moreover, ***it also apparent that Part-B of*** *e-way bill* ***was duly filled which put to rest any doubt about intention of assessee to evade tax, impugned order passed by authority below was to be set aside.***

Que. 8 : If the tax has been paid at the time of Import, goods not accompanied by E-way bill. Is it violation of provision for the purpose to levy penalty ?

Ans.: As decided by the Hon. HC of Gujarat, if tax has been remitted at the time of Import, then not having E-way bill is not a violation of provision to apply penalty under GST.

Tax has been paid at the time of import :

[32] Synergy Fertichem (P.) Ltd. Vs. State of Gujarat February 19, 2020 (2021) 66 TLD 91 (Guj)

GST : Where Competent Authority detained goods of assessee in transit and vehicle on ground that goods were not accompanied by *E-way Bill*, said authority was to be directed to release goods forthwith as tax had already been paid on goods at time of import.

Que. 9 : whether confiscation can be done without establishing evasion or considering objections placed on record?

Ans.: The respondent must consider / incorporate objections raised in the submission and after due verification and establishment of Evasion can proceed for confiscation. Simply on presumptions and

ignoring procedure such confiscation may be quashed.

Genuineness of the Documents & Illegal Confiscation U/s 130

[33] Shree Enterprises Vs. CTO, Shivmogga (2021) 66 TLD 92(1) (Kar)

The respondent intercepted vehicle carrying 230 bags of Arecanut sold to petitioner, by charging GST, despite submission of invoice and E-way bill, the respondent suspected genuineness of the said documents, and after issuing penalty notice passed a confiscation order without considering objection filed by the petitioner and without passing any penalty order.

The Karnataka High court held in that, it is not in dispute that objections were filed by the petitioner to the notice issued to him U/S 129(1)(b) of GST Act. Therefore it is incumbent upon the respondent to consider the said objections and pass a speaking order, but the respondent proceeded to pass order of confiscation of goods and vehicle. ***It is not mere wrong mention of provisions of law in passing the impugned order by the prescribed procedure is disturbed***. without providing any opportunity, to directly pass confiscation order can not be construed as any mistake, defect or omission within the ambit of section 160 of GST Act. It is fundamental flow which goes to the root of the matter and the said lacuna can not be cured by referring to sec. 160.

Considering the totality of the circumstances of the case, the high court quashed the impugned order of confiscation and restored the notice issued by respondent u/s 129(1)(b). The respondent shall consider the objections/ reply filed by the petitioner and pass appropriate order in accordance with the law after quantifying the tax and penalty. The goods and the vehicle shall be released to petitioner on payment of said penalty.

❑

Lack of jurisdiction for confiscation :

[34] C. Mohmed Tahir Vs. DC (ST) (2020) 36 GSTJ 123 (Tel)

The respondent issued notice of confiscation u/s 68(3) of the Act. The court found no jurisdiction to issue such notice on the basis of classification of goods. ***The court directed questioned whether matter falls under***

sec. 129 or 130? Whether circular No. 41 issued on 13-4-2018 is applicable ? Whether tax and penalty can be imposed besides confiscation ? Should be examined at the first instance by the respondent.

In view of above, High court considered it appropriate to permit the petitioner to file reply to the notice within one week, and direct the first respondent to pass order thereupon at the earliest.

Que. 10 : Can Bank Guarantee can be encashed before prescribed time of appeal or date of adjudication ?

Ans.: No it can not be, the provision permits aggrieved person to raise his objections through appeal therefore in simple logic according to the following judgment by the HC it can not be.

Bank guarantee can not be encashed before appeal period of 3 months.

[35] Naushad Allakkat (Prop. of M/s. High Line Traders, Malappuram) Vs. STO WC, Manjeri (2021) 66 TLD 92(2) (Ker)

The seized goods got released by the petitioner on submission of Bank Guarantee. However, the petitioner apprehends that before an appeal filed against the impugned order of penalty within prescribed time of three months, the respondent may invoke Bank Guarantee. Therefore this petition has been filed.

The Kerala High court held that, in terms of sec. 107 of GST Act., read with its rule 108 for filing of appeal the petitioner has three months time. Therefore, it would be inequitable for the respondent to invoke bank guarantee before the limitation period of three months prescribed for filing of appeal. ***The High court directed that respondent will not invoke bank guarantee till the limitation period of filing appeal expires.***

❑

Not to encash bank guarantee from detention to final adjudication (14 days).

[36] VE Commercial Vehcles Ltd. Vs. Union of India (2021) 66 TLD 118 (Ker)

Direction to the department to not to encash bank Guarantee furnished by appellant, if ultimately adjudication goes against them and if penalty is imposed in such proceedings, until the expiry of 14 days from the date of service of order on such adjudication.

Appellant sought for an interim relief in writ petition to direct respondents not to encash Bank Guarantee furnished by petitioner at the time of release of the intercepted goods. The writ petition was preferred against order of Single Judge which was passed by observing that, appellant can work out their remedies under law against any order which may be passed and will be entitled to obtain orders from the appropriate forum. The learned Judge further observed that, putting any restrainment on encashment of bank Guarantee may result in deviating the conditions under which the release was already ordered.

Held: It was noticed by Hon'ble Court that writ petition was filed at a stage after release of the goods on the appellant furnishing the bank Guarantee with respect to the security deposit demanded. As observed by learned Single Judge, release of goods was effected on the basis of bank Guarantee furnished, in compliance with the requirement under Section 129 of the CGST Act. The interim relief sought for in the writ petition is to restrain encashment of the Bank Guarantee. If it is granted, it will amount to an order in anticipation that adjudication will culminate in imposition of penalty. If such an anticipatory restrainment is put on the respondents, as observed by learned Single Judge, that will be in a manner defeating the interest of respondents who ordered release of goods by securing probable amount which may be due after adjudication, in accordance with the provisions contained in Section 129 of the Act. Therefore, Court did not find not find any illegality, error or impropriety in the judgment of the learned Single Judge. Hon'ble Court directed that interest of justice on equitable basis can be achieved by issuing a direction to respondents not to encash bank Guarantee furnished by appellant, if ultimately adjudication goes against them and if penalty is imposed in such proceedings, until the expiry of 14 days from the date of service of order on such adjudication.

Que. 11 : Is it necessary for the officer to mention specific deficiency in the notice ? Whether procedure for issuing notice is required to be followed strictly ?

Ans.: Yes, it is. Because without having established and specific deficiency penalty u/s 129 cannot be imposed. The following HC case is quite relevant and clear about the subject matter.

Mistake in vehicle No./specific contravention was not disclosed in the notice. (Procedure is not followed)

[37] G. Murugan Vs. Govt. of India (2021) 66 TLD 93 (Mad)

The vehicle was intercepted by officer of Commercial Dept., who recorded a statement of the driver in form MOV 01 in col 10 thereof, it is admitted by the driver that there is a mistake in vehicle number. Thereafter Form MOV 02 was issued ordering physical verification / inspection of the conveyance, goods and documents. The order issued in MOV 06 revealed that none of the relevant fields have been ticked and almost all fields have been left blank. It was thus entirely unclear as to what statutory provisions or rules was contravened by the petitioner, The Govt counsel also enable to enlighten the court about the contraventions.

The Madras High court held that ***detention of the conveyance and goods is extreme step which seriously prejudice an assessee. Therefore it is incumbent upon the statutory authority to mention the contravention in the field provided in the impugned order for such purpose***. This has not been done. Though sec 107 of GST Act provides for appeal or revision that may be filed by any person aggrieved by any decision order passed by an adjudicating officer, but, the court was not inclined, in the circumstances of the present case to relegate the petitioner to statutory remedy of appeal. Thus the order of detention is quashed, and the vehicle is ordered to released forthwith on receipt of a copy of this order.

Que. 12 : Whether on the basis of assumption and not having established reason, can vehicle and goods can be detained on Bill to Ship to Model ?

Ans.: No, notice can not be issued and further penalty can not be imposed based on assumption or presumption. The consignor has rebut the objections raised in the notice further respondent could not establish his presumption of evasion of tax. Such penalty can not be sustained.

In another case HC has directed to follow principle of Natural Justice and not to apply presumption in penalty proceedings.

Bill to ship to transactions :

[38] M/s. Polycab India Ltd. Vs. State of Kerala (2021) 66 TLD 94 (Ker)

Sale was from vendor in Gujrat to purchaser in Uttarakhand, and delivery was to be effected in Trivendrum (Ker). The E-way bill clearly covered the transaction from Guj to Trivendrum, and the invoice was on ***Bill to Ship to model.*** Nevertheless, the goods were detained on the ground that there was a possibility of evasion of payment of IGST in Ker. and further that the consignee of the goods in Ker. was indicated as an unregistered dealer at the time of detention of the goods. It is the submission of counsel for the petitioner that the reasons shown in the notice and detention order can not justify detention of goods u/s 129 of GST Act, ***as the said reasons are wholly extraneous to the requirements of the said section. The E-way bill clearly covered the transaction from Guj. to Trivendrum, and the invoice on "Bill to Ship to" Model.*** **As** regard registration details of consignee, it was stated that at the time of detention, ***it was assumed that the consignee was an unregistered dealer, immediately thereafter, the details of registration the consignee was made available to the respondent.***

The Kerala High court held that, there was no jurisdiction for detention of the goods in terms of section 129. ***This is more so because the reasons stated in the detention order are wholly irrelevant for the purpose of section 129.*** The High court directed the respondent to release the goods and vehicle and the respondent, thereafter, respondent may forward the files to the adjudicating authority for adjudication u/s 130.

❑

Que. 13 : Sometimes officers detain vehicle saying or rather under presumption existence of dealer being questioned and based on presumption penalty is imposed. Whether such practice is allowed in GST ?

Ans.: No, on the basis of assumption or presumption officer can not declare non existence of any supplier or buyer, specially when all the relevant evidence are produced before the officer. It is against the principle of Natural justice to impose penalty on presumption. The following HC has quashed penalty for not applying principle of Natural justice and proceeded on presumption.

Non Existent Dealer (Presumption) : Natural Justice

[39] Bright Road Logistics Vs. Commercial Tax Officer (Enforcement-9), South Zone, Bangalore (Kar) (2021) 66 TLD 95 (Kar)

The goods were transported from Tamil Nadu to New Delhi. The driver of the vehicle furnished lorry receipt, E-way bill, and tax invoice. The respondent after examining the same arrived at the conclusion that the said goods are not originated from Tamil Nadu, and hence a show cause notice is issued u/s 129(1)(b) of GST Act. ***On the premises that the consignor is non existent***. The provisional reply was filed to the said show cause notice., and further opportunity of hearing was sought. However, the respondent passed impugned order u/s 129(1)(b), holding that the petitioner has no "***Locus standi***" to dispute or raise issue on behalf of the consignor / consignee or person incharge of the vehicle. Hence this petition.

The Kerala High court held that the impugned order can not be held to be justifiable. Having issued show cause notice, ***the respondent can not take decision that petitioner has no Locus standi*** to file objection or to put forth dispute on behalf of the consignor/ consignee or owner of the vehicle. ***The impugned order is against the principles of Natural Justice.*** The impugned order is quashed, proceedings are restored to file of the respondent with a direction to provide reasonable opportunity of hearing to the petitioner and decide the matter accordance with law.

❑

Presumption and assumption is are not allowed in law and more over wrong destination also does not fall under penalty u/s 129:

[40] Commercial Steel Company Vs. ACTO (Tel) (2021) 66 TLD 87(2) (Tel)

The consignment was going from Vidyanagar (Kar) with all requisite documents to Balanagar (Near Hyderabad) through vehicle No. KA 35 C 0141. The vehicle is detained at Jeedimatla alleging "Wrong destination" and directing payment of 18% tax and penalty equal to tax totalling Rs. 416447/- by estimating value at Rs. 1114579/- as against actual value of Rs. 352920/-. The amount of tax and penalty paid by the petitioner, because on the said date there was a marriage ceremony in his family. Thereafter, petition is filed against the action of the respondents.

The Telegana HC held that admittedly the reason for such detention "***Wrong destination***", but ***under GST Act, there is no such ground to detain vehicle***. It is stated that Tax and penalty were levied because ***it was presumed*** that there was possibility of local sales at Jeedimatla. ***The HC held that a mere possibility can not clothe the 1st respondent to take impugned action. There is no material placed on record by 1st respondent to show that any attempt was made by petitioner to sell the goods in local Market.*** Thus the impugned action of respondent is collecting amount of Rs. 416447/- from petitioner towards tax and penalty under threat of detention of vehicle for an absurd reason (**wrong destination**), when the vehicle in question carried all the proper documents evidencing that it was an inter state sales transaction, is clearly arbitrary and violative of article 14,265 and 300A of the constitution.

The 1st respondent is directed to refund the amount deposited by petitioner with interest @ 6% p.a. from 13-12-2019 till the date of payment within three weeks.

Que. 14 : Whether additional deficiency can be raised at the time of penalty ?

Can notice be issued with general deficiency?

Whether Circulars issued by GST Council or CBIC be followed strictly?

Whether mismatch of goods with REG 06 be issue to proceed with penalty?

Ans.: The above question contains 4 questions. The HC has covered all 4 points in single order. More over it is directive order and also conveyed and under stood that, no additional deficiency can be raised, objection raised are if general and has no justification will not stand for penalty. Circulars are binding in nature for proper officer. It is further to understand that what is covered under the scope of section 129 to proceed for penalty. HC has answered all the questions in single order.

(a) Objections raised in section 129(1) should be justified.

(b) No additional objection is allowed to raise at the time of penalty at court.

(c) Circular 64 dated 14-9-2018 to be considered.

(d) Mismatch in goods mentioned in reg 06 has no reason to detain.

[41] F.S. Enterprises Vs. State of Gujarat (2021) 66 TLD 96 (Guj)

The driver of the vehicle has produced bill, E-way bill and bilty with reference to Goods carried in vehicle. The bilty was found without computerized number and no contact number was found on the same. ***According to MOV 01 no discrepancy was found in E-way bill and invoice as prescribed in Rule 138 A,*** the conveyance with goods should have been released in accordance with the instructions in 2(b) of ***circular 64 dated 14-9-2018. The order is passed contrary to the instructions of circular issued by CBIC.***

Subsequently, the respondent came with affidavit in reply that, items found in the vehicles are not matching with the goods mentioned in REG 06, more over contention of the driver that goods are transported from Sihore to Aurangabad. The High court following the judgement of Hon'ble Supreme Court of India ***Mohinder Singh Gill Vs. Chief election Comm. AIR 1978 SC 851***, ***It is not permissible to justify impugned order on the ground which are not reflected in the order made u/s 129(1).*** Even otherwise the High court did not find the said additional grounds valid for detention of the goods and the vehicle.

Que. 15 : Whether an officer of a transit state can detain vehicle for any violation of the provision under GST ?

Ans.: The HC has clearly said that the officer from transit state (where goods are not delivered) should endorsed it to destination state. The action can not be taken by officer of transit state. More over HC found that procedures are not followed seriously. They are dealt very casually, issue of Evasion of tax looks to be after thought, it should have been at the very beginning. More over mis description of goods is also not a jurisdiction of penalty.

[42] Ramdev Trading Company & Another Vs. State of U.P. & Others Bharati Sapru & Saumitra Dayal Singh, JJ. Writ Tax No. 779 of 2017 30th October, 2017 (2021) 66 TLD 89 (All) in the high court of Allahabad

Penalty u/s 122 of U.P. GST Act - the vehicle carrying goods from Rajasthan to Assam and passing through U.P. was intercepted at Gorakhpur (UP) and penalty is imposed for want of transit declaration and mis-description of goods - writ petition filed against the levy of penalty – the Allahabad High Court observed that at the stage of seizure ***the detaining authority had not applied his mind, nor formed any opinion as to intention to evade tax.*** The only allegation made in the seizure order is about non-availability of transit declaration and mis-description of goods. There is no allegation as to intention to evade tax. Even in penalty notice there is no such allegation. While, in the penalty order, it is recorded that the petitioner had intention to evade tax by unloading the goods in the State of U.P. The petitioner was not found to have unloaded the goods in U.P. nor such allegation was made against petitioner at any prior stage nor he was called upon to furnish any reply in this regard nor there is any evidence in this regard. The observation in penalty order is only an afterthought, and the same can not be relied upon to justify levy of penalty. In absence of any allegation about evasion of tax at the stage of detention or even at the stage of issue of notice, it is difficult to sustain the penalty.

Regarding mis-description of goods, in view of the established fact that the goods (whatsoever their correct description be) had originated from outside the State and were being transported outside the State, using the State

of U.P. as a transit State, and the goods appear to have been seized near the exit point in State of U.P. the proper officer should have made an endorsement to that effect and should have allowed the goods to pass through the State of U.P.

Writ Petition - writ petition filed against levy of penalty u/s 122 of U.P. GST Act. Revenue took preliminary objection of alternate remedy. On behalf of petitioner it is contended that seizure and penalty orders are wholly without jurisdiction and therefore, the bar of alternate remedy may not apply. It is also submitted that no appellate authority has yet been constituted under U.P. GST Act. On behalf of Revenue it is submitted that a new Rule 109A has been notified on 24-11-2017. The Allahabad High Court held that when the goods were seized on 3-11-2017 and when the penalty was imposed on 8-11-2017 the appellate authority was not notified. Therefore, the bar of alternate remedy of appeal is not enforced in the facts of the case.

Final Outcome- Petition allowed.

Relevant Provision - U.P. GST Act, 2017.

Decision Referred/Discussed -

Murliwala Agrotech Ltd. Vs. CTT, U.P. (2005) NTN (28) 198.

S.G. Express Vs. CTT, U.P. (2011) 37 VST 35 (All).

Que. 16 : Whether Circulars are binding in nature ?

To whom notice should be served ?

Should officer follow, Principle of natural justice, *Mens rea*, Opportunity of being heard, Rebuttable presumption, Burden of proof while concluding to impose penalty under GST ?

Ans.: These are very basic procedures to be adopted by proper officer before concluding to levy penalty in any case. The basic thing, the proper officers are not serving notice / orders to the aggrieved party, instead, they deliver it to anybody and discharge their duty. The HC in this case has elaborated all the necessary procedures to be adopted. The HC further is giving stress to follow guideline/ Circulars and basic principles set by Hon. Courts of India. We know that these are usually ignored by the proper officer, but courts are very vigilant and

observant, The court has directed on each issue being questioned above. Hence forth orders of Hon. Supreme Court, HC are binding on local Appellate officers. Therefore any order ignored by such ingredients can not said to be good order. We therefore keeping in mind all the lapses in the procedure found in the order should raise in appeal and to the subsequent courts. I may fair opinion justice definitely will be done to such submission.

Circulars are of binding nature of the officers.

Notice should be served to aggrieved person.

Principle of natural justice, mens rea, opportunity of being heard. Rebuttable presumption & burden of proof to be decided by the proper officer.

[43] Bansal Earthmovers (P.) Ltd. Vs. Assistant Commissioner of State Goods and Service Tax (2021) 66 TLD 97 (Cal)

Circular No 41/15/2018 Dated 13 April 2018 and Form MOV-07 is in consonance with Section 129 since they are not complying with mandatory provision of giving notice to person who is owner of goods and upon whom imposition of penalty is to be made.

Facts: Vehicle had left premises of petitioner at 4.15 p.m. and waybill was generated at 5.10 p.m. In the meantime, vehicle had been intercepted at Phool Bari and because of lack of waybill vehicle was detained by relevant authorities. It is to be noted that statement (Form GST MOV – 01) of driver of vehicle was recorded at 5.00 p.m. on March 23, 2019 and vehicle was inspected on same day at 5.00 p.m. (Form GST MOV – 02). Subsequently, an order of detention under Section 129(1) of the WBGST Act, 2017 read with CGST Act, 2017 was passed on March 25, 2019 on the ground that no e-waybill was tendered for goods that were in movement.

Contention of the Petitioner: Following were the contention of Petitioner:

a) That the goods were not detained by the proper officer.

b) ***The E-way bill had been generated prior to the date, that is, March 25, 2019, when the order for detention was passed.***

c) The fact that the petitioner did not possess the E-way bill at the time of interception was not entirely its fault but also as a result of the malfunctioning of the server of the respondent department.

e) As all other documents such as the invoice, challan and insurance policy were with the goods, there was no question of any ***mens rea*** for evading tax- It was contended that since documents such as invoice, challan and insurance policy were with goods and therefore, there was ***no mens rea*** what so ever for evasion of tax. (*Dilip N. Shroff* Vs. *Jt. CIT* [2007] 161 Taxman 218 [Coram: S.B. Sinha and P.K. Balasubramanyan, JJ.] *; Ferring Pharmaceuticals (P.) Ltd.* Vs. *Asstt. CTO* [2006] 147 STC 252 (Cal.) [Coram: Asok Kumar Ganguly and Maharaj Sinha, JJ.] and *Zarghamuddin Ansari (Anwar)* Vs. *Commercial Tax Officer* [2001] 38 STA 129 (Cal.) (DB)

f) The penalty that has been imposed was done so in contravention of clause (3) and clause (4) of section 129 of the WBGST Act, 2017, that is, proper notice of the imposition of penalty was not provided to the petitioner- It was submitted that notice of hearing of the penalty to be imposed has to be given to the petitioner and not to the driver of the vehicle who was not the employee of the petitioner. He further submitted that compliance of the principles of natural justice is inbuilt in section 129 of the WBGST Act, 2017 and is a sine qua non for any imposition of penalty.

Observation-

Notice has to be served on the person aggrieved- Section 129(4) specifically states that no tax, interest or penalty shall be determined under Section 129(3) without giving person concerned an opportunity of being heard.

Hon'ble Court clearly held that notice for imposition of penalty requires to be served upon the person on whom the penalty is to be imposed. Furthermore, an opportunity of hearing has to be granted. In the event, such hearing is not granted, the same would definitely amount to ***violation of principles of natural justice.*** Audi alteram partem – no person should be judged without a fair hearing – is the minimum necessity that is required to be followed as per the above provision.

Hon'ble Court was of the view that when respondent authorities had in their possession documents such as invoice and challan that showed as to who was the owner of the goods, it was incumbent upon them to serve a copy of the notice upon the owner of the goods. Service simplicities on the driver of the conveyance who was not even an employee of the owner of the goods ***cannot be construed to be good service under sub-sections (3) and (4) of section 129.***

Issuance of Circular cannot override provisions of Law- With reference to the argument advanced by Mr. Ghosh with regard to the Circular and the FORM GST MOV-07 wherein the service of the imposition of notice is required to be made upon either the driver or the person-in-charge, Hon'ble Court was of the view that neither Circular nor Form is in consonance with Section 129. It is trite law that the Circular issued by the Central Board of Indirect Tax and Customs is only binding upon the authorities and not upon assessee. Therefore, ***Circular and Form are not complying with mandatory provision of giving notice to the person who is the owner of the goods and upon whom the imposition of penalty is to be made. Referred Case- A.S. Motors (P.) Ltd. Vs. Union of India [2013] 10 SCC 114.***

Held: Hon'ble Court held that in present case, there was more than a technical infringement of statutory provision as no hearing whatsoever was granted to the petitioner. Having not been granted an opportunity of hearing, petitioner was unable to put his case before the concerned authority. Surprisingly, notice in ***FORM GST MOV-07 was served upon the driver*** but ***order passed in FORM GST MOV-09 was served upon the driver and the petitioner-company***. The authorities did not consider it necessary to put on notice the person upon whom the penalty was being imposed. As pointed out earlier, sub-section (3) and (4) of section 129 of the ***WBGST Act, 2017 specifically requires order of penalty to be passed after proper service and opportunity of hearing to be given upon the person on whom such penalty is to be imposed. Ergo, the requirement under section 129 (3) and section 129(4) has clearly not been complied with.***

Since there has been a ***clear violation of principles of natural justice***, and therefore, ***the impugned order was quashed and set aside*** and proper officer was directed to issue a fresh notice upon petitioner, and

thereafter, grant an opportunity of hearing and pass a reasoned order. It was further made clear that as matter has been remitted to concerned officer for a reasoned decision, Hon'ble Court did not go into aspect of *mens rea*. The arguments with relation to ***requirement of mens rea under section 129 of the WBGST Act, 2017 and the burden of proof and/ or rebuttal of the presumption of guilt were left open to be decided by concerned officer.***

❑

[44] GST: Service of notice on truck driver or fixation of copy of order on truck is none of the methods prescribed u/s 169 of the CGST Act, says (2021) 66 TLD 109 (All) Allahabad High Court [read order] December 9, 2020 12:45 pm by : Taxscan team

The Allahabad High Court while setting aside the orders passed by the authority held that service of notice on truck driver or fixation of copy of the order on truck is none of the methods prescribed under section 169 of the CGST Act. The petitioner, Ranchi Carrying Corporation stated that none of the notices as are required to be served under Section 129 of the GST Act have been served upon the petitioner, as such the proceedings initiated and concluded against the petitioner are ex-parte proceedings. It was submitted that on the basis of instructions, the order was served on the driver of the truck in question and secondly the order MOV-06 and MOV-07 was also served on the driver of the truck and with regard to the order MOV-09, the same was neither served on the driver nor on the owner and was served through a fixation on the truck in question. The Counsel for the petitioner argues that Section 169 of the GST Act provides for the manner of service of notice in certain circumstances which was not complied with by the authority. The single-judge bench of Justice Pankaj Bhatia held that at no point in time, the petitioner was granted an opportunity of submitting his reply, and the grounds taken by the petitioner before the Appellate Authority were not considered recording them to be an afterthought. Thus, on a plain reading, a failure of natural justice has been occasioned to the petitioner. Therefore the court set aside both the orders with a liberty to the respondents to conclude proceedings against the petitioner, in accordance with the law.

❑

Matter remanded back to Appellate Authority as principle of natural justice not followed

[45] Swastik Traders Vs. State of U.P. (2021) 66 TLD 113 (All)

Facts:- The Assistant Commissioner, State Tax, Mobile Squad Unit, Faizabad not BEING satisfied with explanation made by petitioner and goods as well as vehicle were seized under Section 129 (1) of the UPGST Act vide Seizure Memo No.14 dated 19-12-2017 merely on the ground that Tax Invoice discloses the sale of Aluminium Section only whereas Aluminium Section and Aluminium Composite Sheets were found in the vehicle in question. Apart from seizing the goods and vehicle, Mobile Squad Officer issued a show cause notice being No.014 dated 19-12-2017 under Section 129 (3) of UPGST Act proposing to levy demand tax @ 18% on the total valuation of goods of Rs. 6,66,665/- i.e. amounting to Rs. 1,20,000/- and equivalent amount of penalty of Rs. 1,20,000/- (cumulatively Rs. 2,40,000/-) which was deposited by the petitioner by the Demand Draft. The petitioner was not satisfied with the levy of demand of tax and penalty to the tune of Rs. 2,40,000/- as the relevant documents were duly produced at the time of interception of the vehicle by the Mobile Squad Officer. As such, the petitioner preferred First Appeal before the Additional Commissioner, Grade-II (Appeals) Ist, Commercial Tax, Ayodhya. By order dated 12-3-2019 served on 18-4-2019, the appeal was dismissed and the order dated 19-12-2017 passed under Section 129 (3) of the UPGST Act was upheld.

Held: It was observed by the Hon'ble Court that from perusal of record, position which emerges was that judgment and order dated 12-3-2019 had been passed without hearing to petitioner, as **such, same was in violation of principles of natural justice**. The writ petition was allowed and impugned order dated 12.03.2019 passed by opposite party was set aside. The matter was remanded back to Appellate Authority.

Que.17 : Can appellate officer ignore judgment of superior courts on identical issues ?

Ans.: No it can not be, The orders of superior courts are binding in nature, especially of the same jurisdiction. It is always humble duty of the Appellate officer to follow orders from Jurisdictional HC. The HC

in below mentioned case has passed remarks on such ignorance.

Note : The below mentioned case belongs to period prior to applicability of E-way bill i.e before 1-4-2018, hence the same can not be applied after E-way bill notified and made applicable from 1-4-2018. The reference drawn out of the case is, Appellate officer can not ignore decisions and directions of jurisdictional HC.

Judgement of jurisdictional high court needs to be followed by appellate authority

Procedure of E-way bill was not known to the appellant.

[46] Gaurav Agro Kendra Vs. State of U.P. (2021) 66 TLD 98 (All)

Facts- Assessing authority passed the order dated 15-2-2018 not only for assessment of G.S.T. but with imposition of penalty. The main contention raised by petitioner was that notification to apply E-Way bill was not made known to the assessee. Mandate to apply mechanism of E-way bill was earlier circulated by the Government in the year 2017 but than it was kept in abeyance. The notification to apply E-way bill mechanism was revised subsequently but was not notified to the assessee. In absence of information of application of E-way bill mechanism, the petitioner made the transaction, as per the procedure then existing with required declaration. The document in that regard were not considered by the Assessing Authority as well as by the Appellate Authority as compliance of E-way bill system was not made by the petitioner though it was not notified by the Government. The order for assessment and penalty was challenged in appeal for the aforesaid reasons.

Held: Impugned orders have been challenged even in reference to the judgment dated 5-4-2018 passed in Harley Foods Products (P.) Ltd. Vs. State of U.P. [2018] 99 taxmann.com 24. It is also in light of subsequent judgment dated 19-11-2018 passed in Writ Tax No. 617 of 2018 (L.G. Electronics India (P.) Ltd. Vs. State of U.P.), it was held that E-way bill procedure during 1-2-2018 to 31-3-2018 was not applicable. In light of the aforesaid, the impugned orders cannot sustain. ***The appellate authority was expected to consider the issue in the light of the judgment in the case of Harley Foods Products (P.) Ltd. (supra). Ignorance of the***

judgment of a superior Court on the similar issue cannot be expected rather the appellate authority needs to be careful in future.

The impugned orders were accordingly set aside with remand to Assessing Authority to examine matter afresh in light of law propounded. It would be without applying E-way bill mechanism.

Que. 18 : Mistake in part B, can penalty be imposed on such mistake?

Ans.: As it has been mentioned and answered in one of the above questions, if Part B has been uploaded or corrected before detention, penalty can not be imposed. In another situation, if in Part B vehicle number is mistaken in one or two digits / characters, this sort of mistake would not be penalized in light of the Circular No. 64/38/2018-GST dated 14-9-2018. Only penalty Rs. 500/- under section 125 can be imposed under CGST Act.

Que. 19 : Whether spelling mistake, error in PIN code, Error in address, error in document number, Error in HSN Code and error in vehicle number will attract penalty u/s 129 of the Act?

Ans.: With restrictions and conditions CBIC has issued circular No. 64/38/2018-GST dated 14-9-2018 after circular 41 dated 13-4-2018, 49 dated 21-6-2018 as removal of difficulties. The circular suggest to avoid penalty u/s 129 and further suggest to levy penalty u/s 125 with restrictions and conditions defined in the circular.

Que. 20 : Whether more than one invoice can be uploaded in single E-way bill ?

Ans.: No, each E-way bill should carry single consignment with single invoice. But if by mistake E-way bill contains more than one invoice, It should not be penalized u/s 129 as because it covers all requirements of section 68. The following judgment of Ker. HC has seen the matter very sympathetically and further order to release goods on executing Bond only. So no penalty was imposed.

Note : The following order is in favor of supplier, but one should not make a practice of it.

[47] Stove Kraft Pvt. Ltd., Kochi Vs. Asst. State Tax Officer & Other W.P. (C) No. : 3957 of 2019 11th February, 2019 (2021) 66 TLD 99

Non-compliance of E-way Bill provisions - Section 129 of GST Act, 2017 - the goods and vehicle detained on the ground that in the E-way bill the petitioner had shown three invoices, while separate E-way bills were to be generated for each invoice. The Kerala High Court held that though there may be practical difficulty for the Department in tracking the invoices, when multiple invoices are mentioned in one single E-way bill. But, it is not a case where E-way bill does not mention all the invoices. In these circumstances, the Court directed that the goods along with the vehicle shall be released to the petitioner on executing a simple bond.

Final Outcome- Petition disposed of.

Relevant Provision -Sec. 129 of GST Act, 2017.

JUDGMENT

Petitioner is a dealer. The goods and vehicle have been detained; in the E-way bill generated, petitioner has shown three invoices. Noting that separate E-way bill will have to be generated to each of the invoices, goods have been detained. It is to be noted that, it is not a case where E-way bill does not mention all the invoices. There may be practical difficulty for the Department in tracking the invoices, when multiple number of invoices are mentioned in the E-way bill generated. Anyhow, I am of the view that goods and vehicle shall be released to the petitioner on executing a bond. Though the learned Government Pleader submits that the petitioner's case will be considered by the respondent by tomorrow. Taking note of the nature of the issue, I am of the view that the goods along with vehicle shall be released to the petitioner on executing simple bond.

The writ petition is disposed of.

Que. 21 : How single invoice with multi consignment/ vehicle can be transported ?

Ans.: "Goods and Service tax E-way bill system" has enabled facility of "**Multi vehicle**" on portal from **11-6-2018** to over come

issued faced by consignor and transporter to issue multi E-way bills for single invoice. The system has explained the utility of "Multi vehicle" under E-way bill provisions. The system has explained how to use the utility provided on portal "Step by step".

Que. 22 : Whether goods and vehicle can be detained for the reason, consignee is unregistered ?

Ans.: The respondent can not detain vehicle and also further can not impose penalty u/s 129 under the Act. The reason shown "Consignee unregistered" is not sufficient to be proceed with penalty u/s 129 of the Act. The HC Kerala has specifically quashed the reason shown in the notice to charge penalty.

[48] GST: Goods can't be detained merely on the basis that Consignee mentioned as Unregistered Person in E-Way Bill, says Kerala HC September 7, 2020 6:08 pm| By : Mariya Paliwala

The Kerala High Court held that goods can not be detained merely on the basis that the consignee was mentioned as an Unregistered Person in E-Way Bill. The petitioner, ABCO Traders has approached the Court aggrieved by the order of detention that was issued to it detaining a consignment of lubricant oil that was being transported at its instance. The objection of the respondent authority was that the consignee was shown as an unregistered person in the e-way bill that accompanied the transportation of the goods. It was also pointed out that the petitioner had collected CGST and SGST in the delivery challan that was used for the stock transfer of the goods thereby giving rise to suspicion with regard to the nature of the transaction itself. ***The issue raised in this case was whether detention of goods merely because the consignee is mentioned as an unregistered person in the e-way bill is justified in law***. The single judge bench of Justice A.K.Jayasankaran Nambiar stated that, ***the reasons shown for detaining the consignment are not sufficient to attract the provisions of Section 129 of the GST Act. "The detention in the instant case cannot, therefore, be seen as justified***. I therefore allow the writ petition by directing the 1st respondent to immediately release the goods and the vehicle covered by a detention notice," the court said.

Que. 23 : Is it necessary to mention Tax amount separately in E-way Bill ?

Ans. : Not mentioning tax amount in e-way bill by transporter is not in contravention of GST law as no separate field in form is provided. The following judgment of Hon. HC is also in favour of registered person.

[49] M.S. Steel and Pipes Vs. Assistant State Tax Officer - (2020) 65 TLD 339 (Ker)

The department had detained the goods in transit of the petitioner who is a transporter on the grounds of existence of discrepancy in the e-way bill accompanied during transportation of the goods. As per the department, there was no mention of the tax amounts separately in the e-way bill that accompanied the goods. Further, the department was of the view that the e-way bill is a document akin to a tax invoice, in relation to an assessment to tax, and if the same do not contain the details regarding the tax amount, then the transportation done shall be viewed in contravention of the provisions of Act and Rules for the purposes of detention.

The petitioner submitted that there is no requirement under the Central Goods and Services Tax Act ('CGST Act') and Central Goods and Services Tax Rules ('CGST Rules') to mention the tax amount separately in the e-way bill FORM GST EWB-01 by the transporter.

The Hon'ble High Court in this regard observed that detention under Section 129 of the CGST Act can be exercised only where a transportation of goods is done in contravention of the provisions of the Act and Rules and not merely because a document relevant for assessment does not contain details of tax payment.

A person transporting goods is obliged to carry only the documents enumerated in Rule 138(A) of GST Rules, during the course of transportation which are the invoice or bill of supply or delivery challan and the copy of e-way bill in physical form or e-way bill Number in electronic form. The above stated rule clearly indicates that the e-way bill has to be in FORM GST EWB-01. However, there is no field wherein the transporter is required to indicate the tax amount payable in respect of the goods transported. If

the statutorily prescribed form does not contain a field for entering the details of the tax payable in the e-way bill, then the non-mentioning of the tax amount cannot be treated to be done in contravention of the rules.

Since, in the present case, consignment was transported with valid invoice indicating tax amount and e-way bill, there was no contravention by the petitioner of any provision of the Act or Rule for the purpose of detention.

Therefore, detention of petitioner goods by the department was not justified.

Que. 24 : Whether single E-way bill can be generated by incorporating more than one invoice / transactions ?

Ans.: One E-way bill should always contain one invoice. For more than one invoice supplier should issue Eway bill for each invoice. This is being normal understanding and Act has not very strictly restricted supplier, but if as per the policy and planning of GSTN that, transaction accompanied by E-way bill directly would reflect in sales (GSTR 1), then they have a problem in recording each invoice, therefore it is suggested not to enter more than one invoice in E-way bill. Though it is not a contravention of the provisions of the Act, hence court has ordered to release truck and goods without imposing penalty but against execution of simple Bond.

[50] Stove Kraft Pvt. Ltd., Kochi Vs. Asst. State Tax Officer & Other (2021) 66 TLD 99 (Ker)

Non-compliance of E-way Bill provisions - Section 129 of GST Act, 2017 - the goods and vehicle detained on the ground that in the E-way bill the petitioner had shown three invoices, while separate E-way bills were to be generated for each invoice. The Kerala High Court held that though there may be practical difficulty for the Department in tracking the invoices, when multiple invoices are mentioned in one single E-way bill. But, it is not a case where E-way bill does not mention all the invoices. In these circumstances, the Court directed that the goods along with the vehicle shall be released to the petitioner on executing a simple bond.

Final Outcome- Petition disposed of.

Relevant Provision -Sec. 129 of GST Act, 2017.

JUDGMENT

Petitioner is a dealer. The goods and vehicle have been detained; in the E-way bill generated, petitioner has shown three invoices. Noting that separate E-way bill will have to be generated to each of the invoices, goods have been detained. It is to be noted that, it is not a case where E-way bill does not mention all the invoices. There may be practical difficulty for the Department in tracking the invoices, when multiple number of invoices are mentioned in the E-way bill generated. Anyhow, I am of the view that goods and vehicle shall be released to the petitioner on executing a bond. Though the learned Government Pleader submits that the petitioner's case will be considered by the respondent by tomorrow. Taking note of the nature of the issue, I am of the view that the goods along with vehicle shall be released to the petitioner on executing simple bond.

The writ petition is disposed of.

Que. 25 : Whether goods and vehicle can be detained or confiscated on a ground that consignor has not filed respective returns ?

Ans.: No it can not be, since filing of returns or defaulter in returns are not the jurisdiction and scope of the section 129 or 130. Hence the same can not be exercised for detaining vehicle or confiscating goods. The following HC judgments are quite clear and transparent to understand scope of the section 129 /130 of the Act.

[51] Unitac Energy Solutions (I) Pvt. Ltd. Vs. Asst. State Tax Officer & Others (2021) 66 TLD 100 (Ker)

Violation of provisions of Sec. 129 of GST Act - the goods and the vehicle are detained on the ground that petitioner is a defaulter in filing GST returns for last 5 months. The Kerala High Court held that it is not a valid reason for detention of goods and the vehicle. Therefore, detention notice is quashed, and respondent is directed to release the consignment forthwith.

Final Outcome- Petition disposed of.

Relevant Provision -Section 129 of GST Act, 2017.

JUDGMENT

1. The petitioner is aggrieved by the alleged unlawful seizure and detention of a consignment of goods by the 1st respondent. Ext. P3 is the detention notice issued by the 1st respondent while detaining the said consignment of goods carried on the vehicle bearing Registration No. KL-22D-2424. The reason for detention is stated to be that the consignee, the petitioner herein, was a return defaulter for the last five months. It is the contention of the learned counsel for the petitioner that as per the provisions of Section 129 of the CGST Act, the reason shown in the detention notice can not be a ground for detaining a consignment of goods in the course of transit.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find force in the contention of the learned counsel for the petitioner that in terms of Section 129 of the CGST Act, the reason shown by the respondents in Ext. P3 detention notice is not one that can justify a detention. Accordingly, I quash Ext. P3 detention notice and direct the respondents to release the consignment covered by Ext. P3 notice to the petitioner forthwith on the petitioner producing a copy of this judgment before the respondents.

❑

[52] Relcon Foundations (P) Ltd. Vs. Asst. State Tax Officer & Others (2021) 66 TLD 101 (Ker)

Violation of provisions of Sec. 129 of GST Act - the vehicle carrying the goods is detained on the ground that GSTR-3B and GSTR-1 was not filed by petitioner. The counsel for the petitioner submitted that detention of the vehicle u/s 129 of GST Act is not justified on this ground.

The Kerala High Court held that there is force in the above contention. There is no justification for detaining the vehicle u/s 129 on the above ground. Similarly, the said ground can not form the basis for issuing notice proposing confiscation of goods, as the ingredients of offence covered by Sec. 130 are not satisfied. Therefore, the impugned notice and order are quashed, and 1st respondent is directed to forthwith release the goods and vehicle.

Final Outcome- Petition disposed of.

Relevant Provision -Sections 129 & 130 of GST Act, 2017.

JUDGMENT

1. Challenge in the writ petition is against Ext. P1 order and Ext. P4 notice proposing confiscation of the goods belonging to the petitioner that were detained while in transit. A perusal of Ext. P1 order would indicate that the detention of the vehicle carrying the goods was on the ground that the GSTR-3B returns had not been filed from June, 2018 and GSTR-1 had not been filed from March, 2019. It is submitted by the learned counsel for the petitioner that the said grounds can not be justified for detention of the vehicle under Section 129 of the KGST Act.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find force in the contention of the learned counsel for the petitioner that the reasons stated in Ext. P1 order can not be a justification for detaining the goods in terms of Section 129 of the KGST Act. Similarly, the said ground can not form the basis of Ext. P4 notice proposing confiscation of the goods detained inasmuch as the ingredients of the offence covered by Section 130 are not satisfied in the instant case. I, therefore, dispose the writ petition by quashing Exts. P1 and P4 and direct the 1st respondent to forthwith release the goods and the vehicle to the petitioner on the petitioner producing a copy of the judgment before the said respondent. I make it clear that nothing in this judgment will prevent the respondents from initiating any penal action against the petitioner, if warranted, by following the procedure under the GST Act.

Que. 26 : If driver catches or opt to reach destination from different route, can the officer detain vehicle and goods on such ground and reason ?

Ans.: The proper officer has no jurisdiction on option of route taken by the transporter. Unless transporter is found delivering goods other than consignee or if he is on route which is exactly opposite to the destination, then only by establishing the same officer can propose detention.

[53] Kannangayathu Metals Vs. Asst. State Tax Officer & Others (2021) 66 TLD 87(1) (Ker)

Violation of provisions of Sec. 129 of GST Act - the goods were being transported from Pazhoor-Peppathy (Ker) to Vettoor Road, Kaniyapuram (Ker). The vehicle is detained at Vazhayila on the ground that it was on a different route. The counsel for petitioner submitted that there is no mandate u/s 129 of GST Act for detaining goods merely because driver took an alternate route to reach the destination, if the goods are covered by valid E-way Bill.

The Kerala High Court agreeing with the above submission, held that there can not be a mechanical detention of a consignment solely because the driver has opted for a different route, other than what is normally taken by other transporters. No doubt, if the vehicle is detained at a place that is located on an entirely different route in a direction other than towards the destination shown in E-way bill, then a presumption can be drawn that there was an attempt for transportation of goods contrary to E-way Bill. In the instant case, there is no such indication. Therefore, the petition is allowed, and 1st respondent is directed to forthwith release the goods and vehicle.

Final Outcome- Petition allowed.

Que. 27 : When a penalty levied u/s 129(1)(a), then to whom notice and order be served ? Further when limitation period for filing appeal will start ?

Ans.: When penalty u/s 129(1)(a) (when consignor has come forward), order must be served to the owner of the goods who is aggrieved from the proceedings. More over from the date of service of order to the person who is aggrieved from the penalty order, the limitation of time for filing appeal will start. Simply serving an order to driver or a person who is not related to penalty will not constitute a proper service of notice or an order. The following HC orders are quite clear and strict about the procedure.

[54] Jindal Pipes Ltd. Vs. State of U.P. & Others (2020) 64 TLD 267 (All)

Appeal u/s 107(1) of GST Act - the order pertaining to levy of penalty

u/s 129(1)(a) of GST Act was served on driver of the vehicle on 21-8-2018. Appeal u/s 107(1) is filed against the said order by the petitioner-consignor on 6-3-2019, which is dismissed as time barred. The petitioner submitted that order dt. 21-8-2018 was served on driver of the vehicle and not on the 'person aggrieved' on whom the order ought to have been served, and therefore, the appeal filed on 6-3-2019 was well within limitation provided u/s 107.

The Allahabad High Court held that the order was served on the driver and, therefore, was definitely not served on the person aggrieved by the said order. The service of the order on the driver is no service at all. Therefore, the order dt. 20-8-2019 dismissing the appeal as time-barred is quashed. The appeal shall now be entertained as having been filed within limitation provided u/s 107.

Final Outcome- Petition allowed.

Relevant Provision -Section 107(1) & 129(1) of GST Act, 2017.

❑

[55] Patel Hardware Vs. Commissioner, State GST & Others (2021) 66 TLD 102 (All)

Appeal u/s 107(1) of GST Act - penalty order dt. 12-2-2018 was served on driver of the vehicle. The said order was communicated to the petitioner on 25-5-2018, and thereafter petitioner filed appeal against the said order, which is dismissed as time barred by treating that the period of limitation commenced from 12-2-2018. The counsel for the petitioner submitted that the statutory forum of second appeal did not exist as the Tribunal was yet to be constituted under the Act. That position is admitted by the State. Hence, the present writ petition is entertained on merits.

The Allahabad High Court observed that the language of Sec. 107(1) of GST Act provides for limitation of 3 months from the date of communication of the order, and Sec. 107(4) provides for condonation of delay up to one month and no more. Keeping in view the fact that the delay in filing the appeal may not be condoned beyond a period of one month, the phrase "communicated to such person" appearing in Sec. 107(1) commend a construction that would imply that the order be necessarily brought to the

knowledge of the person who is likely to be aggrieved. Unless such construction is offered, the right of appeal would itself be lost. Any delay of more than one month in such cases may not warrant such strict construction. The impugned penalty order was served on driver of the vehicle, while the penalty order is directed against the owner of the goods. Therefore, for that reason it is held that the penalty order is not communicated to the petitioner prior to 25-5-2018.

Final Outcome- Petition allowed.

Que. 28 : Can directions of High court be over looked and security/ bond can be asked at higher side by the respondent?

Ans.: The court has directed to recover security up to tax and penalty of the goods, but the officer (respondent) went beyond and asked for Bond and security much higher than the value of Tax and penalty. The court has shown its displeasure in asking such security and bond beyond the directions of High court, hence instructed department to follow directions of court strictly.

[56] R.K. International Vs. Union of India & Others (2021) 66 TLD 103 (All)

Violation of provisions of Sec. 129 of GST Act - in the petition filed to challenge seizure of goods and the vehicle, the High Court by interim order directed to release the goods subject to deposit of security or indemnity bond of the value of tax and penalty. However, seizing authority asked for security of Rs. 10,75,770/- and indemnity bond of same amount for release of goods.

The High Court held that interim order of Court is very clear. Therefore, the seizing authority can not demand security or indemnity bond of higher value. It is an act of harassment, which is highly depreciated, and a note of caution is sounded to the department to be careful in dealing with such matters and to follow directions of High Court in its true sense without intermeddling with them. The seizing authority is directed to accept security and indemnity bond of the value of tax and penalty, and to release goods and the vehicle forthwith.

Final Outcome- Petition allowed.

Que. 29 : Can by filing appeal by depositing 10% in accordance with section 107, goods and vehicle can be released?

Ans.: The appellant must furnish bank guarantee and bond of the value mentioned in penalty order first, then only vehicle and goods can be released. Simply by filing appeal and depositing 10% of the demand goods can not be released.

[57] Smeara Enterprises Vs. State Tax Officer & Another (2021) 66 TLD 104 (Ker)

Violation of provisions of Sec. 129 of GST Act - against the order imposing penalty u/s 129(3) of GST Act, a statutory appeal u/s 107 is filed by paying 10% of disputed amount. It is contended that as the appellant has resorted to statutory remedy of appeal by remitting 10% of disputed amount, the recovery of balance amount is stayed as per Sec. 107(7), and therefore, the goods are to be released. The learned Single Judge of High Court found that mere on filing of appeal goods can not be released without any security. The non-payment of amount of security would attract proceedings for confiscation of goods u/s 130.

On appeal, Division Bench of High Court held that Sec. 107(7) provides that where appellant has paid 10% of amount of tax in dispute, the recovery proceedings for balance amount shall be deemed to be stayed. However, merely because appellant has failed to furnish security, or to get the goods released, by paying amount of tax and penalty, the confiscation proceedings can not be proceeded, as he has filed an appeal by complying pre-requisite conditions. To this extent, the judgment of Single Judge is clarified.

But, as per provision of Sec. 129, the goods can be released only on complying provisions of Sec. 67(6), which is applicable by virtue of Sec. 129(2). The procedure for compliance of conditions stipulated u/s 67(6) is provided under Rule 140 of GST Rules. Therefore, unless security as contemplated u/s 129(2) read with Sec. 67(6) is furnished, or payment of entire amount of tax and penalty is paid, the goods are not liable to be released. Thus, the relief sought for release of the goods, pending disposal of appeal, is not entertained.

Relevant Provision -Section 67, 107, 129 & 130 of GST Act, 2017.

Que. 30 : Can without sharing documents and without providing opportunity of cross examination, can officer proceed for levy tax and penalty ?

Ans.: The officer concerned is bound to share documents and opportunity to reply and furnish evidences against documents used in levy of penalty. More over if required appellant should be given opportunity to cross examine the facts and material used in imposing penalty in the case. The respondent should share all necessary documents and facts with the appellant or else it would be treated contravention of principle of Natural justice.

[58] Thoppil Agencies Vs. Assistant Commissioner of Commercial Taxes (2020) 65 TLD 337 (Kar)

Issue : Several documents relied upon by in the impugned order E were neither brought to the notice of the petitioner nor was he permitted to cross-examine the witnesses with reference to the said documents.

Facts : In addition to making submissions with regard to the various contentions urged by the petitioner in the petition with reference to the documents and the impugned order, petitioner submitted that impugned order was violative of principles of natural justice. It was pointed out that perusal of show-cause notice will indicate that only certain documents have been referred and that the same has been duly replied to by the petitioner. However, without giving any personal hearing to the petitioner and without affording sufficient and reasonable opportunity to the petitioner, respondent proceeded to pass impugned order placing reliance upon several documents which were never brought to notice of petitioner prior to passing of impugned order.

Held- The High Court without going into the legal and factual aspects of the matter, was of the opinion that

1. Several documents and circumstances which were neither referred to nor enumerated in the show cause notice at Annexure-B4 have been relied upon by the respondent No. 1 in the impugned order.
2. It was also not in dispute that no opportunity of personal hearing was given to the petitioner before passing the impugned order.

3. The material on record also indicates that several documents relied upon by the respondent No. 1 in the impugned order at Annexure-E were neither brought to the notice of the petitioner nor was he permitted to cross-examine the witnesses with reference to the said documents.

4. Further, no opportunity to produce additional documents was given to the petitioner.

The High Court held that aforesaid facts and circumstances indicate that in the absence of sufficient and reasonable opportunity being granted in favour of the petitioner, the impugned order is clearly in contravention of principles of natural justice and that the same deserves to be set aside on this ground alone and the matter deserves to be remitted back to the respondent No. 1 to consider and dispose off the same afresh in accordance with law after providing sufficient and reasonable opportunity to the petitioner to put forth his contentions and documents and to hear the petitioner before passing suitable orders.

Que. 31 : Can an officer detain vehicle and goods for not having continuous serial number on invoice ?

Ans.: No the goods can not be detained on the ground having no continuous serial number on the invoices. This is not a reason to detain vehicle and goods u/s 129 of the Act. Still The only thing has to be taken care that consignor of the goods should have specific and pertinent reply to the question raised by the respondent. The issue if remains in doubt may be referred to jurisdictional officer for further verification.

[59] Devices Distributors Vs. Assistant State Tax Officer (2021) 66 TLD 105 (Ker)

Issue : Goods detained as the Invoices accompanying the goods were not of continuous serial number.

Facts : The objection of the respondent was essentially with regard to the invoices that accompanied the transportation of the goods. It was found that the tax invoices furnished, although carried serial numbers, they were not consecutive for the three invoices. In particular, it was noticed that while one invoice carried the serial number as 46000152. The other two invoices

carried the serial numbers 53000029 and 53000030. The detaining authority, therefore, suspected that the invoices carrying the serial numbers in between the two sets of invoices indicated above might have been used for transportation of other goods that were not brought to the notice of the Department.

Held : In the instant case, E-way bills did accompany the goods. The transportation was covered by tax invoices. The objection of the respondents is only that the invoices did not bear continuous numbers and hence they suspect that the invoices bearing serial numbers that fell between the numbers on the invoices produced at the time of transportation, could have been used for transportation of other goods that had not been brought to the notice of the Department.

The High Court held that entertainment of such a doubt by the authority cannot be a justification for detaining the goods in question, especially when they were admittedly accompanied by tax invoices as also E-way bills that clearly indicated the particulars that were required by Rule 46 of the GST Rules. It is also relevant to note that the doubt entertained by the respondents were, at any rate, in respect of goods that may have been transported under cover of the invoices that numerically fell between the numbers shown in the invoices that were carried along with the goods, and in that sense, pertained to goods other than those that were actually detained. The detention in the instant case cannot be justified under section 129 of the GST Act.

Que. 32 : Whether goods and vehicle can be detained for mismatch in destination / specially when transaction is from principal place to branch?

Ans.: When additional places of the consignee are registered in RC and due to an error principal place has been mentioned in place of branch or vise versa. No illegal transaction is carried out. No detention or penalty can be imposed. It is advisable therefore that, at the time of detention person from consignor side should appear and forward explanation in writing or verbal about mismatch in destination.

[60] Same Deutzfahr India Pvt. Ltd. Vs. State of Telangana & Others, 23rd September, 2020 (2021) 66 TLD 108 (Tel)

Violation of provisions of Sec. 129 of GST Act - petitioner dispatched four tractors to its Depot at Hyderabad and issued E-way bill for the same. The name of consignor and consignee is same. The address of consignee is shown as Hayathnagar. The 3rd respondent detained vehicle on the ground that there is mismatch between goods, documents and E-way bill, and that the goods were being transported to Bongulur Village, Ibrahimpatnam Mandal, Hyderabad, but as per E-way bill the destination is Hayathnagar (Telangana).

The Telangana HC held that the petitioner has additional place of business at Bongulur Village, Ibrahimpatnam Mandal, and goods were dispatched to that address from Corp. office at Ranipet (TN). Thus, it can not be said that petitioner was indulged in any illegal activity when tax invoice shows that supplier is petitioner's Corporate office at Ranipet (TN). There was no occasion for 3rd respondent to collect tax and penalty from petitioner on the ground that there is illegality in transport of goods, as it is merely a stock transfer and there is no element of sale in it. The tax and penalty collected from petitioner can not be allowed to be retained by respondents. The Petition is allowed, and respondents are directed to refund the amount collected from petitioner towards tax and penalty with interest @ 9% p.a.

Final Outcome- Petition allowed.

Accordingly, the Writ Petition is allowed; and respondents are directed to refund within four (04) weeks the sum of Rs. 6,70,448/- collected towards CGST and State GST and penalty from the petitioner with interest @ 9% p.a. from 5-3-2020 till date of payment to petitioner by the respondents. The 3rd respondent shall also pay costs of Rs. 1,500/- (Rupees One Thousand and Five Hundred only) to the petitioner.

Points to be considered in initial / appeal reply.

1. Not intended to evade.
2. *Mens rea.*
3. Cross verification of statements.
4. E-way bill uploaded on portal covers complete information (no evasion)
5. Valuation can not be done without strong evidences.
6. Opportunity must be given.

7. Technical or venial breach.
8. E-way bill must be submitted before detention.
9. False and forged documents.
10. Assumption or presumption will not decide penalty.

❑

(17) Relevant extract of Finance Bill No. 15 of 2021 relating to CGST Act, 2017 and IGST Act, 2017

Central Goods and Services Tax

99. Amendment of Section 7.

In the Central Goods and Services Tax Act, 2017 (12 of 2017.) (hereinafter referred as the Central Goods and Services Tax Act), in section 7, in sub-section (1), after clause (a), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2017, namely:—

"(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;".

100. Amendment of Section 16.

In section 16 of the Central Goods and Services Tax Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:—

"(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;".

101. Amendment of Section 35.

In section 35 of the Central Goods and Services Tax Act, sub-section

(5) shall be omitted.

102. Substitution of new section for Section 44.

For section 44 of the Central Goods and Services Tax Act, the following section shall be substituted, namely:—

"44. Annual return.

Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.".

103. Amendment of Section 50.

In section 50 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:—

"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in 78 accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.".

104. Amendment of Section 74.

In section 74 of the Central Goods and Services Tax Act, in Explanation 1, in clause (ii), for the words and figures "sections 122, 125, 129 and 130", the words and figures "sections 122 and 125" shall be substituted.

105. Amendment of Section 75.

In section 75 of the Central Goods and Services Tax Act, in sub-section (12), the following Explanation shall be inserted, namely:—

'Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.'.

106. Amendment of Section 83.

In section 83 of the Central Goods and Services Tax Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.".

107. Amendment of Section 107.

In section 107 of the Central Goods and Services Tax Act, in sub-section (6), the following proviso shall be inserted, namely:—

"Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.".

108. Amendment of Section 129.

In section 129 of the Central Goods and Services Tax Act, —

(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on

payment of an amount equal to two per cent. of the value of goods or twenty-five thousandrupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;";

(ii) sub-section (2) shall be omitted;

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).";

(iv) in sub-section (4), for the words "No tax, interest or penalty", the words "No penalty" shall be substituted;

(v) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.".

109. Amendment of Section 130.

In section 130 of the Central Goods and Services Tax Act,—

(a) in sub-section (1), for the words "Notwithstanding anything contained in this Act, if ", the word "Where" shall be substituted;

(b) in sub-section (2), in the second proviso, for the words, brackets and figures "amount of penalty leviable under sub-section (1) of section 129", the words "penalty equal to hundred per cent. of the tax payable on such goods" shall be substituted;

(c) sub-section (3) shall be omitted.

110. Substitution of new section for Section 151.

For section 151 of the Central Goods and Services Tax Act, the following section shall be substituted, namely: —

"151. Power to call for information.

The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.".

111. Amendment of Section 152.

In section 152 of the Central Goods and Services Tax Act,—

(a) in sub-section (1),—

(i) the words "of any individual return or part thereof" shall be omitted;

(ii) after the words "any proceedings under this Act", the words "without giving an opportunity of being heard to the person concerned" shall be inserted;

(b) sub-section (2) shall be omitted.

112. Amendment of Section 168.

In section 168 of the Central Goods and Services Tax Act, in sub-section (2),—

(i) for the words, brackets and figures "sub-section (1) of section 44", the word and figures "section 44" shall be substituted;

(ii) the words, brackets and figures "sub-section (1) of section 151," shall be omitted.

113. Amendment to Schedule II.

In Schedule II of the Central Goods and Services Tax Act, paragraph 7 shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017.

Integrated Goods and Services Tax

114. Amendment of Section 16.

In the Integrated Goods and Services Tax Act, 2017 (13 of 2017), in section 16, —

(a) in sub-section (1), in clause (b), after the words "supply of goods or services or both", the words "for authorized operations" shall be inserted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999.) for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.".

❑

(18) केन्द्रीय बजट एवं आयकर

सीए. गोविन्द अग्रवाल

केंद्रीय बजट में आयकर से सम्बंधित आम आयकरदाता को प्रभावित करने वाले कुछ मुख्य प्रावधान निम्नलिखित हैं :-

- वित्त मंत्री निर्मला सीतारमण ने बजट प्रस्तावों में प्रत्यक्ष और अप्रत्यक्ष करों में अनेकों संशोधन पेश किये गए हैं। सर्वाधिक संशोधन इन्कम टैक्स में प्रस्तावित हैं।
- बजट में आम लोगों को सबसे अधिक उम्मीद आयकर में मिलने वाली छूट से होती है। कोरोना संकट के दौरान आर्थिक संकट से जूझ रहे आम आदमी को बजट में कर अदायगी से कोई राहत नहीं मिली है। वित्त मंत्री ने आयकर स्लैब में किसी भी बदलाव का एलान नहीं किया है।
- कोरोना काल में जिस तरह से घरेलू मांग कम हुई है उसको प्रोत्साहित करने के लिए उम्मीद थी की वित्त मंत्री कोई कर राहत देंगी लेकिन बड़े बजटीय घाटे से जूझ रही अर्थ व्यवस्था के कारण वित्त मंत्री ने कोई जोखिम नहीं लिया, इसके बजाय उन्होंने आम करदाताओं को परेशानियों से राहत देने की कोशिश की है।
- **अचल सम्पत्तियों के क्रय विक्रय पर स्टाम्प ड्यूटी एवं व्यवहार मूल्य में अंतर**

  अचल सम्पत्तियों के क्रय विक्रय की दशा में स्टाम्प ड्यूटी के लिए निर्धारित मूल्य एवं व्यवहार मूल्य में दस प्रतिशत से अधिक अंतर होने पर स्टाम्प ड्यूटी मूल्यांकन के आधार पर क्रेता एवं विक्रेता को आयकर देना होता है। कुछ शर्तों के पूरा करने पर 30 जून 2021 तक ऐसे व्यवहारों के लिए अंतर की राशि को बीस प्रतिशत करने का प्रस्ताव है।
- **रहवासी मकान खरीदने पर छूट मिलने की समय सीमा एक साल और बढ़ाई गई**

  पहली बार अफोर्डेबल रहवासी मकान खरीदने वालों के लिए आयकर में रु. 1,50,000 की छूट का प्रावधान 31 मार्च 2021 को समाप्त हो रहा था। उसे एक वर्ष के लिए बढ़ाकर 31 मार्च 2022 करने का प्रस्ताव है। ऐसे मकान की कीमत रु. 45 लाख से अधिक नहीं होना चाहिए एवं ऐसे करदाता के पास पूर्व में कोई रहवासी मकान नहीं होना चाहिए।
- **पुराने केस पुनः खोलने की समय सीमा छः वर्षों से घटाकर तीन वर्ष**

  पुराने आयकर के केस को पुनः खोलने की समय सीमा सामान्य केस में छः वर्षों से घटाकर

तीन वर्ष करने का प्रस्ताव है। परन्तु रु. पचास लाख प्रतिवर्ष से अधिक का कर अपवंचन होने की दशा में समय सीमा में कोई परिवर्तन नहीं किया गया है। उक्त प्रस्ताव स्वागत योग्य है।

- **ऑडिट की सीमा पांच करोड़ से बढ़ाकर दस करोड़**

95% से अधिक प्राप्तियां एवं खर्च डिजिटल माध्यम से करने वाले करदाताओं के लिए इन्कम टैक्स ऑडिट की सीमा पांच करोड़ से बढ़ाकर दस करोड़ करने का प्रस्ताव है। उक्त प्रस्ताव से डिजिटल माध्यम से भुगतान करने को प्रोत्साहन मिलेगा।

- **द्वितीय अपील भी फेसलेस**

फेसलेस असेसमेंट एवं फेसलेस प्रथम अपील लागू करने के बाद अब द्वितीय अपील जो आयकर अपीलीय प्राधिकरण के पास होती है उसे भी फेसलेस करने का प्रस्ताव है। भविष्य ही बताएगा यह प्रस्ताव कितना उपयोगी होता है।

- **पी.एफ. भुगतान समय पर नहीं करने पर नियोक्ता को आयकर में छूट नहीं**

नियोक्ता द्वारा कर्मचारियों के पी.एफ. एवं अन्य लाभकारी योजनाओं के लिए की गई कटौतियों का सम्बंधित एक्ट के अन्तर्गत समय पर भुगतान नहीं करने पर नियोक्ता को आयकर में छूट नहीं मिलेगी।

- **कोविड सेस लागू नहीं, सरचार्ज में वृद्धि नहीं**

उच्च आयकरदाताओं के सरचार्ज में वृद्धि नहीं की जाना एवं कोविड सेस नहीं लगाया जाना, जिसकी सम्भावनाएं व्यक्त की जा रही थीं, जो उचित है।

- **पेंशनधारी आयकरदाताओं को आयकर रिटर्न भरने से छूट**

75 वर्ष से अधिक आयु के वरिष्ठ पेंशनधारी आयकरदाताओं को आयकर रिटर्न भरने से छूट निर्धारित शर्तों को पूर्ण करने पर प्रदान की गयी है। उनके करदायित्व की कटौति स्त्रोत पर आयकर के रूप में की जाएगी। उक्त प्रस्ताव से इस श्रेणी के आयकरदाताओं को राहत मिलेगी।

- **सालाना 2.5 लाख से ज्यादा पी.एफ. के ब्याज पर टैक्स**

बजट प्रस्ताव के अनुसार अगर कोई कर्मचारी सालभर में 2.5 लाख से ज्यादा पीएफ में योगदान करता है तो उससे अर्जित ब्याज पर टैक्स लगेगा। हर महीने दो लाख रुपये से कम आय वालों पर इसका प्रभाव नहीं पड़ेगा। उच्च आय वाले कर्मचारियों द्वारा अर्जित

आय के लिए टैक्स छूट को तर्कसंगत बनाने की दिशा में भविष्य निधि (पीएफ) में 2.5 लाख रुपए से अधिक के सालाना योगदान पर अर्जित ब्याज पर कर छूट को प्रतिबंधित करने का प्रस्ताव रखा गया है। यह नियम एक अप्रैल 2021 को या इसके बाद के योगदान के लिए लागू होगा। रु. 2.5 लाख तक के योगदान से अर्जित ब्याज पर कोई टैक्स नहीं लगेगा।

- अफोर्डेबल हाउसिंग स्कीम प्रोजेक्ट के मान्य होने की तिथि 31 मार्च 2021 से बढ़ाकर 31 मार्च 2022 कर दी गई है।
- रहवासी मकान के ब्याज की छूट के लिए ऋण 31 मार्च 2021 तक स्वीकृत होना आवश्यक था, इस समय सीमा को बढ़ाकर 31 मार्च 2022 कर दिया गया है।
- 50 लाख तक आमदनी वाले करदाताओं के लिए डिस्पुट रेसोलुशन सेंटर खोलने का ऐलान किया है।
- वित्तमंत्री ने एनआरआई को कर प्रावधानों के कारण आ रही दिक्कतों को दूर करने के लिए जल्द ही नए नियमों को नोटिफाई करने का भरोसा दिया है।
- व्यक्तिगत करदाताओं के बजाए वित्त मंत्री का ध्यान इस बार ज्यादा स्टार्टअप और उद्योगों पर ज्यादा रहा है। उन्होंने स्टार्टअप की कर राहत को एक साल और बढ़ा दिया है। अब उन्हें 31 मार्च 2022 तक कर नहीं देना होगा।
- एक करोड़ के बजाए पांच करोड़ रुपए की सालाना प्राप्तियां वाले चैरिटेबल ट्रस्ट जो स्कूल और अस्पताल चलाते हैं, उन्हें आय कर नहीं देना होगा।
- आयकर दाताओं को पहले से भरे हुए रिटर्न फॉर्म मिलेंगे। अब कैपिटल गेन और लिस्टेड कंपनियों के शेयर से प्राप्त आय, पोस्ट ऑफिस से प्राप्त आय और बैंक से प्राप्त आय भी फॉर्म में पहले से ही होंगी।
- कर दाताओं को देरी से इन्कम टैक्स रिटर्न एवं रिवाइज्ड इनकम टैक्स रिटर्न भरने की समय सीमा जो कर निर्धारण वर्ष समाप्त होने के दिन तक उपलब्ध थी, उसे तीन माह पूर्व कर दिया गया। अब 31 मार्च की समय सीमा को घटाकर 31 दिसंबर कर दिया गया है।

वर्तमान विषम आर्थिक परिस्थितियों में कुल मिलाकर आयकर से सम्बंधित सन्तुलित बजट पेश किया गया है।

❑

(19) Union Budget 2021 & Income Tax

CA. Govind Agrawal

The first union budget of the decade has been presented for the first time in paperless mode. It is presented in the background of 'COVID-19' pandemic. Present finance bill proposes 86 clauses to amend the direct taxation laws. Budget proposals will impact existing 70 sections , amendment to 4 provisions are to be applied retrospectively. Tax rates as applicable for A.Y. 21-22 shall continue to apply for AY 22-23 and subsequent years.

Major proposals made in the budget as regards Income Tax affecting common man are as under:-

1. Relief to Senior Citizens – Sec. 194P

As a relief to senior citizens, Section 194P has been inserted for taxpayers aged 75 years or more, having income only from pension and interest on deposits, it is proposed to exempt them from the requirement of filing of income tax if the full amount of tax payable has been deducted by the paying bank. However a declaration is required to be submitted, It is a welcome move.

2. The Income Tax Settlement Commission

The Hon'ble Finance Minister made a significant change to the well existing scheme of Settlement of Cases. The Finance Bill 2021 proposed the discontinuation of Income Tax Settlement Commission with immediate effect i.e. 1st February'2021. It is proposed to discontinue Income-tax Settlement Commission (ITSC) and to constitute Interim Board of settlement for pending cases.

The Income Tax Settlement Commission (ITSC) was a quasi-judicial body set up under the Income Tax Act. The objective of setting up of ITSC was to settle the tax liabilities in complicated cases, avoiding endless and prolonged litigation. The taxpayer could approach the ITSC during the pendency of assessment proceedings, subject to certain prescribed conditions. For making an application before the ITSC, the tax and interest on additional income disclosed before the ITSC has to be paid. The order passed by the ITSC is conclusive and no appeal to any authority can be made against the order.

3. Faceless Income Tax Appellate Tribunal (ITAT) – Sec. 255

In order to disposal of ITAT appeal with greater efficiency, transparency and accountability, it is proposed to the make the ITAT faceless and jurisdiction-less. It is proposed to insert new sub-sections in the section 255 of the Act so as to provide that the Central Government may notify a scheme and a National Faceless Income- tax Appellate Tribunal Centre shall be established, All the communication between the Tribunal and the appellant shall be made electronically. Wherever personal hearing is needed, it shall be done through video-conferencing.

If properly implemented this move can achieve following objectives :-

(a) Eliminate the interface between the ITAT and parties / counsel to the appeal in the course of proceeding

(b) Optimum utilization of the resources through economies of scale.

(c) Appellate system with dynamic jurisdiction.

However the desire to achieve these ambitions through technological integration in judicial processes will be tested by time.

4. Proposals regarding Affordable Housing

(a) Date of sanction of loan – Extended (Sec. 80EEA)

The first-time home buyers of residential house property not exceeding Rs. 45 lakh have been provided a deduction of up to Rs. 1,50,000 in respect of interest on housing loan sanctioned by a bank or housing finance company during the period 1st April 2019 to 31st March 2021 under Section 80EEA of the IT Act,

It is proposed to extend the date for sanction of loan from 31st March 2021 to 31st March 2022.

(b) Tax Holiday period – Extended

In continuation of the measures to boost affordable housing the period for obtaining the project approval has been extended by one year upto 31 March 2022. The other conditions for project eligibility such as construction to be completed within 5 years from the date of approval shall still continue.

(c) Notified affordable housing project

The existing provision of the section 80-IBA of the Act provides that profits and gains derived from the business of building affordable housing

project subject to certain conditions be allowed 100% deduction. One of the conditions is that the project is approved by the competent authority after the 1st day of June 2016 but on or before the 31st day of March 2021. To help migrant labourers and to promote affordable rental, it is proposed to:

i. Allow deduction under section 80-IBA of the Act also to such housing projects notified by the Central Government.

ii. Extend the outer time limit i.e. 31st March 2021 for getting these projects approved be extended to 31st March 2022.

These welcome measures would help in ensuring 'housing for all' and also boost the demand for affordable housing.

5. Tax Audit limit U/s 44AB

In order to incentivize non-cash transactions and to promote digital economy it was provided in the last budget that the threshold limit for getting the books of accounts audited for a person carrying on business was increased from one crore rupees to five crore rupees in cases where:-

(i) Aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt;

AND

(ii) Aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

In this budget It is proposed to increase the threshold from five crore rupees to ten crore.

Threshold limit of Rs. 10 crore to get the books of accounts audited may sound good at the first instance but it was very well observed that due to inherent conditions of the provision stated above, not even a small fraction of the assesses were able to derive any benefit.

6. Provisional attachment in Fake Invoice cases – Sec. 281B

As per the provisions of Section 281B Assessing Officer may provisionally attach any property of the assessee, in order to protect the interest of revenue upon proper approval.

It is proposed to include penalty proceedings under section 271AAD under this umbrella provided the following conditions are satisfied:

i. Amounts of penalty likely to be imposed exceeds rupees two crore,

ii. Proper approval from specified higher authority is obtained,

iii. Such attachments are Provisional and valid for 6 months,

iv. Section allows the assessee to furnish a bank guarantee.

7. Late payment of Employees' contribution to labour welfare funds

Allowablity of delayed deposit of employee's contribution towards various welfare funds has been a debatable issue since last decade. Divergent views have been expressed by High Courts in this regard, A Division Bench of the Kerala High Court in the case of CIT Vs. M/s. Merchem Ltd. (2015) 378 ITR 443 held in favour of the Revenue while Rajasthan High Court in the case of CIT Vs. M/s. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. and in many other cases held in favour of the Assessee. There are several decisions of High Courts & ITAT mostly in favour of the assessee.

Amidst ongoing judicial controversy respected Finance Minister thought it fit to propose insertion of Explanation to Section 36(1)(va)(i) and Section 43B so as to disallow the deduction of payment towards employees contribution after due date under respective acts.

It will be pertinent to note that the proposed amendment is bought by way of insertion of Explanation which reads "that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under the said clause"

However in the finance bill under the proposed amendment it is stated as under

"This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years."

Form reading of the above, intention of the government is not very clear and it will again create controversy.

8. Levy of TDS on Purchase of Goods – Sec. 194Q

In order to widen the scope of TDS, it is proposed to levy a TDS of 0.1% on a purchase transaction exceeding Rs. 50 lakh in a year. In order to reduce the compliance burden, it is also proposed to provide that the responsibility of deduction shall lie only on the persons whose turnover exceeds Rs. 10 crore.

In the recent past provision of TCS under section 206C (1H) were made applicable on similar lines. Practical difficulties were faced by the assesses in making the compliance of TCS provisions.

Now after the applicability of TDS provisions, TCS provisions on the same transactions will not be applicable.

9. Cash allowance in lieu of Leave Travel Concession (LTC)

It is proposed to grant cash allowance to the employees equivalent to their LTC component by permitting them to incur expenditure on purchase of goods or services which are liable for 12% or more GST rate. Such specified expenditure shall be reckoned against their LTC entitlement and shall not exceed Rs. 36000 per person or 1/3 of specified expenditure, whichever is less.

10. Increase in safe harbor limit for primary sale of residential units

The existing law permits an accepted variation of 10% in the stamp duty valuation and transaction value. In this budget a short-term relaxation has been provided to accept variation of 20% in the stamp duty valuation and transaction value. This will enable real estate developers to liquidate their unsold inventory at rates less than 20% of the prevailing stamp duty valuation without any impact on taxable income of the transferor and transferee. This proposal will certainly give new life to stagnant real estate sector.

11. Dispute Resolution Committee

It has been proposed to setup a Dispute Resolution Committee (DRC) to provide early tax certainty to small and medium taxpayers. The scheme shall cover cases where the returned income is upto fifty lakhs and aggregate variation proposed is upto ten lakhs.

12. Unit Linked Insurance Policy (ULIP) – Sec. 10(10D)

Considering the instances that high net worth individuals are claiming exemption under said section by investing in ULIP with huge premium, the Finance Bill 2021 has proposed that the exemption under Section 10(10D) shall not be available with respect to any ULIP issued on or after the 01-02-2021, if the amount of premium payable during the term of the policy exceeds Rs. 2,50,000 per annum.

13. Interest of Provident Fund account

It has been proposed that the exemption shall not be available for the

interest income accrued during the previous year on the recognised and statutory provident fund in the account of the person to the extent it relates to the contribution made by the employees in excess of Rs. 2,50,000 in a previous year.

14. Tax proceedings made faster to reduce litigation burden

- Time-limit for issuing notices for initiating scrutiny proceedings been reduced to three months from the end of financial year in which return is filed (earlier six months). Even the time-limit for completing scrutiny assessments has been reduced to nine months from the end of assessment year for cases pertaining to AY 2021-22 onwards. Also, time for processing of returns has been reduced to nine months.
- The reassessment time limits have been relaxed from six years to three years barring specific cases where the cases can be reopened upto ten years.
- The time limit for filing of belated return or revised return is proposed to be reduced by 3 months. Now the belated or revised return can be filed on or before December 31 of the A.Y. or before the completion of the assessment, whichever is earlier.

Particulars	**Present Due Dates**	**Revised Due Dates**
Filing of original ITR	31-7-2021 31-10-2021 30-11-2021	No Change
Filing of belated or revised ITR	31-03-2022	31-12-2021
Processing of return U/s 143(1)	31-03-2023	31-12-2022
Issue of notice for scrutiny assessment U/s 143(2)	30-09-2022	30-06-2022
Completion of scrutiny assessment U/s 143(3)	31-03-2023	31-12-2022
Completion of best judgment assessment U/s 144	31-03-2023	31-12-2022

15. Extension of date of incorporation for eligible start up claiming tax holiday

In order to support the start-up ecosystem in the Country, the sunset period of qualifying conditions has been further extended by a period of one year.

16. Rationalisation of provisions of Minimum Alternate Tax (MAT)

No MAT for foreign companies earning dividend income from India.

17. Charitable Trusts & Institutions

Raising of prescribed limit for exemption U/s 10 (23C) (iiiad) & (iiiae) of the Act

- Clause (23C) of section 10 of the Act provides for exemption of income received by any person on behalf of different funds or institutions etc. specified in different sub-clauses.
- Section 10 (23C)(iiiad) provides for the exemption for the income received by any person on behalf of university or educational institution as referred to in that sub-clause. The exemptions under the said sub-clause are available subject to the condition that the annual receipts of such university or educational institution do not exceed the annual receipts as may be prescribed.
- Similarly, section 10(23C)(iiiae) provides for the exemption for the income received by any person on behalf of hospital or institution as referred to in that sub-clause. The exemptions under the said sub-clause are available subject to the condition that the annual receipts of such hospital or institution do not exceed the annual receipts as may be prescribed.
- The presently prescribed limit for these two sub-clauses is Rs 1 crore as per Rule 2BC of the Income-tax Rule.

In order to provide benefit to small trust and institutions, it has been proposed that the threshold limit of annual receipts for claiming exemption under sub-clause (iiiad) and (iiiae) shall be increased to Rs 5 crore.

Under present difficult situations, proposals in the Union Budget as regards Income Tax can be termed as 'Balanced'.

❑

(20) Notification u/s 3 r/w Section 5 of CGST Act, 2017 amending No. 2/2017-Central Tax dated 19-6-2017 notifying amendment to jurisdiction of Central Tax officers

No. 02/2021-Central Tax

G.S.R. 18(E). New Delhi, Dated 12th January, 2021 - In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Government, hereby makes the following notification further to amend the notification of the Government of India, Ministry of Finance, Department of Revenue No. 2/2017-Central Tax, dated the 19th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) *vide* number G.S.R. 609(E), dated the 19th June, 2017, namely: -

In the said notification, -

(I). in Table I, -

(a) against Sl. No. 7, in column (4), for 7.4.2 and the entries relating thereto, the following shall be substituted, namely: -

	(4)
"7.4.2	Commissioner (Appeals I) Delhi and Additional Commissioner (Appeals II) Delhi";

(b) against Sl. No. 14, in column (4), for 14.4.1 and the entries relating thereto, the following shall be substituted, namely: -

	(4)
"14.4.1	Commissioner (Appeals II) Mumbai and Additional Commissioner (Appeals I) Mumbai";

(II). in Table III, the following shall be inserted at the end, namely: -

"Note 1: The Commissioner (Appeals I) Delhi mentioned in Column (4) for entries at Sl. No. 7.4.1 and 7.4.2 shall have jurisdiction over Delhi I and Delhi II mentioned in Column (2) at Sl. No. 13 and 14 of Table III;

Note 2: The Commissioner (Appeals II) Mumbai mentioned in Column (4) for entries at Sl. No. 14.4.1 and 14.4.2 shall have jurisdiction over Mumbai I and Mumbai II mentioned in Column (2) at Sl. No. 31 and 32

of Table III."

Note : The principal Notification No. 2/2017-Central Tax, dated the 19th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 609(E), dated the 19th June, 2017 and was last amended *vide* notification No. 04/2019 –Central Tax, dated 29th January, 2019, published *vide* number G.S.R. 64 (E), dated the 29th January, 2019.

[*Published in the Gazette of India dated 12-1-2021*]

❑

(21) Chhattisgarh Notification : Extension of time limit for FORM-18 Part-C,Year 2016-17 upto 10-02-2021

No. F 10-59/2020/CT/V (1) Dated 29th January 2021 - In exercise of the powers conferred by clause (ii) of sub-section (1) of section 15-B of the Chhattisgarh Value Added Tax Act, 2005 (No. 2 of 2005), the State Government, hereby, makes the following amendment in this departments notification No. F-10-59/2020/CT/V (135), dated 24-12-2020, namely :-

AMENDMENT

In the said notification,-

For the figures and punctuation "31-01-2021", wherever they occur the figures and punctuation "10-02-2021" shall be substituted.

❑

(22) Chhattisgarh Notification : Extension of time limit for FORM-18 - Year 2016-17 upto 10-02-2021

No. F 10-59/2020/CT/V (2) Dated 29th January 2021 - In exercise of the powers conferred by clause (ii) of sub-section (1) of section 15-B of the Chhattisgarh Value Added Tax Act, 2005 (No. 2 of 2005), the State Government, hereby, makes the following further amendment in this departments notification No. F-10-59/2020/CT/V (136), dated 24-12-2020, namely :-

AMENDMENT

In the said notification,-

For the figures and punctuation "31-01-2021", wherever they occur the figures and punctuation "10-02-2021" shall be substituted.

❑

(23) Relevant extract from Budget Speech of FM

Indirect Tax Proposals

GST

174. Before I come to my Indirect Tax proposals, I would like to appraise the House on GST. The GST is now four years old, and we have taken several measures to further simplify it. Some of the measures include:

i. nil return through SMS,
ii. quarterly return and monthly payment for small taxpayers,
iii. electronic invoice system,
iv. validated input tax statement,
v. pre-filled editable GST return, and
vi. staggering of returns filing.

The capacity of GSTN system has also been enhanced. We have also deployed deep analytics and Artificial Intelligence to identify tax evaders and fake billers and launched special drives against them.

175. The results speak for themselves. We have made record collections in the last few months.

176. The GST Council has painstakingly thrashed out thorny issues. As Chairperson of the Council, I want to assure the House that we shall take every possible measure to smoothen the GST further, and remove anomalies such as the inverted duty structure.

Custom Duty Rationalization

177. Our Custom Duty Policy should have the twin objective of promoting domestic manufacturing and helping India get onto global value chain and export better. The thrust now has to be on easy access to raw materials and exports of value added products.

178. Towards this, last year, we started overhauling the Customs Duty structure, eliminating 80 outdated exemptions. I also thank everyone who responded overwhelmingly to a crowd-sourcing call for suggestions on this revamp. I now propose to review more than 400 old exemptions this year. We will conduct this through extensive consultations, and from 1st October 2021, we will put in place a revised customs duty structure, free of distortions. I also propose that any new customs duty exemption henceforth will have validity up to the 31st March following two years from the date of its issue.

Electronic and Mobile Phone Industry.

179. Domestic electronic manufacturing has grown rapidly. We are now exporting items like mobiles and chargers. For greater domestic value addition, we are withdrawing a few exemptions on parts of chargers and sub-parts of mobiles. Further, some parts of mobiles will move from 'nil' rate to a moderate 2.5%.

Iron and Steel

180. MSMEs and other user industries have been severely hit by a recent sharp rise in iron and steel prices. Therefore, we are reducing Customs duty uniformly to 7.5% on semis, flat, and long products of non-alloy, alloy, and stainless steels. To provide relief to metal re-cyclers, mostly MSMEs, I am exempting duty on steel scrap for a period up to 31st March, 2022. Further, I am also revoking ADD and CVD on certain steel products. Also, to provide relief to copper recyclers, I am reducing duty on copper scrap from 5% to 2.5%.

Textile

181. The Textiles Sector generates employment and contributes significantly to the economy. There is a need to rationalize duties on raw material inputs to manmade textiles. We are now bringing nylon chain on par with polyester and other man-made fibers. We are uniformly reducing the BCD rates on caprolactam, nylon chips and nylon fiber & yarn to 5%. This will help the textile industry, MSMEs, and exports, too.

Chemicals

182. We have calibrated customs duty rates on chemicals to encourage domestic value addition and to remove inversions. Apart from other items, we are reducing customs duty on Naptha to 2.5% to correct inversion.

Gold and Silver

183. Gold and silver presently attract a basic customs duty of 12.5%. Since the duty was raised from 10% in July 2019, prices of precious metals have risen sharply. To bring it closer to previous levels, we are rationalizing custom duty on gold and silver.

Renewable Energy

184. In Part A, we have already acknowledged that solar energy has huge promise for India. To build up domestic capacity, we will notify a phased

manufacturing plan for solar cells and solar panels. At present, to encourage domestic production, we are raising duty on solar invertors from 5% to 20%, and on solar lanterns from 5% to 15%.

Capital Equipment and Auto Parts

185. There is immense potential in manufacturing heavy capital equipment domestically. We will comprehensively review the rate structure in due course. However, we are revising duty rates on certain items immediately. We propose to withdraw exemptions on tunnel boring machine. It will attract a customs duty of 7.5%; and its parts a duty of 2.5%. We are raising customs duty on certain auto parts to 15% to bring them on par with general rate on auto parts.

MSME Products

186. We are proposing certain changes to benefit MSMEs. We are increasing duty from 10% to 15% on steel screws and plastic builder wares. On prawn feed we increase it from 5% to 15%. We are rationalizing exemption on import of duty-free items as an incentive to exporters of garments, leather, and handicraft items. Almost all these items are made domestically by our MSMEs. We are withdrawing exemption on imports of certain kind of leathers as they are domestically produced in good quantity and quality, mostly by MSMEs. We are also raising customs duty on finished synthetic gem stones to encourage their domestic processing.

Agriculture Products

187. To benefit farmers, we are raising customs duty on cotton from nil to 10% and on raw silk and silk yarn from 10% to 15%. We are also withdrawing end-use based concession on denatured ethyl alcohol. Currently, rates are being uniformly calibrated to 15% on items like maize bran, rice bran oil cake, and animal feed additives.

188. There is an immediate need to improve agricultural infrastructure so that we produce more, while also conserving and processing agricultural output efficiently. This will ensure enhanced remuneration for our farmers. To earmark resources for this purpose, I propose an Agriculture Infrastructure and Development Cess (AIDC) on a small number of items. However, while applying this cess, we have taken care not to put additional burden on consumers on most items.

❑

(24) Memorandum explaining the provisions in FINANCE BILL, 2021

Goods and Service Tax

Note:

(a) CGST Act, 2017 means Central Goods and Services Tax Act, 2017

(b) IGST Act, 2017 means Integrated Goods and Services Tax Act, 2017

Amendments carried out in the Finance Bill, 2021 will come into effect from the date when the same will be notified, as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States and Union territories with Legislature.

I. AMENDMENTS IN THE CGST ACT, 2017:

S. No.	Amendment	Clause of the Finance Bill, 2021
1.	A new clause (aa) in sub-section (1) of Section 7 of the CGST Act is being inserted, retrospectively with effect from the 1st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration.	[99]
2.	A new clause (aa) to sub-section (2) of the section 16 of the CGST Act is being inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have beencommunicated to the recipient of such invoice or debit note.	[100]
3.	Sub-section (5) of section 35 of the CGST Act is being omitted so as to remove the mandatory requirement of getting annual accounts	[101]

S. No.	Amendment	Clause of the Finance Bill, 2021
	audited and reconciliation statement submitted by specified professional.	
4.	Section 44 of the CGST Act is being substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on selfcertification basis. It further provides for the Commissioner to exempt a class of taxpayers from the requirement of filing theannual return.	[102]
5.	Section 50 of the CGST Act is being amended, retrospectively, to substitute the proviso to sub-section (1) so as to charge interest on net cash liability with effect from the 1st July, 2017.	[103]
6.	Section 74 of the CGST Act is being amended so as make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.	[104]
7.	An *explanation* to sub-section (12) of section 75 of the CGST Act is being inserted to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.	[105]
8.	Section 83 of the CGST Act is being amended so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.	[106]

S. No.	Amendment	Clause of the Finance Bill, 2021
9.	A proviso to sub-section (6) of section 107 of the CGST Act is being inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of penalty has been paid by the appellant.	[107]
10.	Section 129 of the CGST Act is being amended to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.	[108]
11.	Section 130 of the CGST Act is being amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.	[109]
12.	Section 151 of the CGST Act is being substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.	[110]
13.	Section 152 of the CGST Act is being amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.	[111]

S. No.	Amendment	Clause of the Finance Bill, 2021
14.	Section 168 of the CGST Act is being amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.	[112]
15.	Consequent to the amendment in section 7 of the CGST Act paragraph 7 of Schedule II to the CGST Act is being omitted retrospectively, with effect from the 1st July, 2017.	[113]

II. AMENDMENTS IN THE IGST ACT, 2017:

S. No.	Amendment	Clause of the Finance Bill, 2021
1.	Section 16 of the IGST Act is being amended so as to:	[114]
(i)	zero rate the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit only when the said supply is for authorised operations;	
(ii)	restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services; and	
(iii)	link the foreign exchange remittance in case of export of goods with refund.	

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(25) जीएसटी रजिस्ट्रेशन के प्रावधानों में संशोधन

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वर्तमान प्रक्रिया :

अभी यह प्रक्रिया है कि कारोबारी द्वारा आवेदन करने पर आधार कार्ड में दर्ज मोबाइल नंबर पर ओटीपी आता है और यह अपलोड करने पर रजिस्ट्रेशन होता है।

फर्जी कंपनियों को रोकने के लिए जीएसटी मे अब नए कारोबारी का रजिस्ट्रेशन बायोमैट्रिक पहचान के बाद ही होगा, देने होंगे फिंगरिंप्रट।

फर्जी कंपनियों के रजिस्ट्रेशन रोकने के लिए केंद्र ने जीएसटी के नियमों में बड़ा बदलाव कर दिया है, अब कारोबारी को जीएसटी का रजिस्ट्रेशन बायोमेट्रिक पहचान साबित करने के बाद ही मिलेगा। इसके लिए उन्हें फिंगरप्रिंट को स्कैन कर अपलोड कराना होगा, केंद्र द्वारा 22 दिसंबर को जारी किए गए नोटिफिकेशन में रजिस्ट्रेशन नियमों में इस संबंध में प्रावधान कर दिए हैं, हालांकि इसे लागू करने में कुछ दिन लगेंगे, क्योंकि इसके लिए पोर्टल पर प्रोसेस अपलोड करना है और इसे आधार साइट से भी लिंक किया जाएगा जिससे बायोमेट्रिक पहचान को लिंक किया जा सके।

यह होगी रजिस्ट्रेशन की नई प्रक्रिया

नए संशोधित नियमों के अनुसार अब रजिस्ट्रेशन के लिए बायोमैट्रिक पहचान कराने, फिंगरप्रटिं स्कैनर के साथ ही वेबकेम के माध्यम से फोटो खिंचवाकर आनलाइन अपलोड करना होगा।

❖ यदि कोई बायोमेट्रिक पहचान नहीं कराता है तो कारोबारी को आधार कार्ड, फोटोग्राफ व अन्य दस्तावेजों की सत्यापित कॉपी कमिशनर द्वारा नोटिफाइ सेंटर पर भौतिक रूप से जाकर अपना बायोमैट्रिक सत्यापन कराना होगा।

❖ यदि कारोबारी पार्टनरशिप कंसर्न या कंपनी है तो ऐसी स्थिति में सभी पार्टनर्स या सभी डायरेक्टर्स को वेरीफिकेशन कराना होगा।

❖ यदि कोई व्यवसाई बायोमैट्रिक पहचान नहीं कराता या उनकी पहचान फेल होती जाती है या उनका बायोमैट्रिक अथेन्टिकेशन फेल हो जाता है तो ऐसी स्थिति में विभागीय अधिकारी

व्यवसाई के व्यवसाय स्थल पर जाकर सत्यापन के पश्चात् ही पंजीयन जारी करेंगे। सत्यापन के दौरान कारोबारी को वहां उपस्थित रहना होगा। यहाँ यह तथ्य महत्वपूर्ण है कि ऐसे वेरीफिकेशन में व्यवसाई को स्वयं व्यक्तिगत रूप से उपस्थित होना अनिवार्य होगा।

इनपुट टैक्स क्रेडिट के प्रावधानों में संशोधन :

❖ जब से जीएसटी लागू हुआ है उसी दिन से इनपुट टैक्स क्रेडिट को स्वीकार करने के नियमों में लगातार परिवर्तन किए जा रहे हैं। पूर्व में यह नियम लाया गया था कि यदि आपके जीएसटीआर 2-ए में जितनी इनपुट टैक्स क्रेडिट रिफ्लेक्ट हो रही है उसके 120 प्रतिशत के बराबर तक आप इनपुट टैक्स क्रेडिट क्लेम कर सकते हैं बाद में इसे 1 जनवरी 2020 से घटाकर 110 प्रतिशत कर दिया गया। 1 जनवरी, 2021 से इसे घटाकर 105 प्रतिशत कर दिया गया है। किंतु यूनियन बजट के द्वारा इसे पुनः संशोधित किया जाकर यह प्रावधान लाए गए हैं कि जितना क्रेडिट जीएसटीआर 2-ए में दिखेगा उतना ही क्रेडिट आप क्लेम कर सकेंगे।

❖ इनपुट टैक्स क्रेडिट क्लेम करने के लिए एक महत्वपूर्ण शर्त जीएसटी एक्ट में यह जोड़ दी गई है कि यदि माल के सप्लायर ने अपने जीएसटीआर-1 में आपका इनवॉइस दर्ज नहीं करा है तो आपको इनपुट टैक्स क्रेडिट नहीं मिलेगा। प्रस्तावित संशोधन के पूर्व क्योंकि जीएसटी एक्ट में ऐसे प्रावधान जीएसटी रूल्स में थे एक्ट में नहीं थे इसलिए व्यवसाई उसका पालन नहीं करते थे उसमें कसावट हेतु यह प्रावधान एक्ट में ही जोड़ दिए गए हैं अब यदि विक्रेता व्यवसाई अपने जीएसटीआर-1 में इनवाइस की डिटेल नहीं डालते हैं तो ऐसी स्थिति में क्रेता व्यवसाई को इनपुट टैक्स क्रेडिट बिल्कुल नहीं मिलेगा।

❖ एक बहुत ही महत्वपूर्ण एवं राहत प्रदान करने वाला संशोधन यह प्रस्तावित है कि पूर्व में यदि किसी व्यवसाई ने समय से रिटर्न प्रस्तुत नहीं किया है तो ऐसी स्थिति में उन्हें बिना इनपुट टैक्स क्रेडिट को क्लेम किए पूर्ण राशि पर ब्याज देने की दायित्व आता था इस हेतु जीएसटी काउंसिल के द्वारा यह कहा गया था कि अब इनपुट टैक्स क्रेडिट क्लेम करने के पश्चात् जो राशि विलंब से जमा हुई है उस पर ही ब्याज लगेगा किंतु एक्ट में उसे संशोधन के दिनांक से लागू किया गया था किंतु प्रस्तावित प्रावधानों में यह स्पष्ट कर दिया गया है कि यह प्रावधान जीएसटी के लागू होने के दिनांक से लागू हो गया है अर्थात यदि आपके द्वारा विलंब से रिटर्न प्रस्तुत किया गया है तो ऐसी स्थिति में जितना कर आपका देय था उसी पर ब्याज आपको लगेगा।

ई-वे बिल से संबंधित प्रावधानों में संशोधन :

संशोधन के पूर्व 100 किमी की दूरी के लिये ई-वे बिल की पात्रता 1 दिन की होती

थी। शासन को यह जानकारी प्राप्त हो रही थी, कि चूंकि 100 कि.मी. की दूरी अधिकतम 5-6 घंटे में ही तय की जा सकती है। अतः बहुत से ट्रांसपोर्टर द्वारा एक ही ई-वे बिल पर 2 से 3 फेरे लगा रहे थे। अतः अब 200 किमी की दूरी से के लिये ई-वे बिल की वेलिडिटी 1 दिन की कर दी गई है।

❖ 50 हजार से अधिक मूल्य की सामग्री के परिवहन पर ई-वे बिल लगता है, इसकी वैधता 100 कि.मी. के लिए एक दिन होती है, ऐसी शिकायतें आ रही थी कि कई कारोबारी एक ही ई-वे-बिल पर एक ही दिन में दो-तीन फेरे लगाकर टैक्स चोरी कर रहे थे। इसलिए अब एक दिन के लिए ईवे बिल पर अब 200 कि.मी. तक का सफर मान्य होगा। यह प्रावधान दिनांक 1-1-2021 से लागू हो गये हैं।

❖ जीएसटी में वर्तमान में गाड़ी रोके जाने के पश्चात् अनिश्चितकाल तक उसका डिस्पोजल नहीं होता था इसमें कसावट लाने के लिए यह नियम लाए गए हैं कि गाड़ी को रोके जाने या माल को जप्त किए जाने के 7 दिन के भीतर नोटिस जारी करना होगा तथा नोटिस सर्व होने के 7 दिन के भीतर अनिवार्य रूप से पेनल्टी का आदेश पारित करना होगा इससे व्यवसायियों एवं ट्रांसपोर्टर को राहत मिलेगी तथा उनका वाहन शीघ्र ही निरमुक्त हो सकेगा।

❖ वर्तमान में ई वे बिल के प्रावधानों के अनुसार यदि किसी व्यवसाय या ट्रांसपोर्ट के द्वारा उन्हें नोटिस किए जाने के 14 दिन तक कर एवं पेनल्टी की राशि जमा नहीं की जाती थी तो ऐसी स्थिति में उनके प्रकरण को धारा 129 से धारा 130 में हस्तांतरित कर दिया जाता था तथा उन्हें 100 प्रतिशत कर एवं 100 प्रतिशत पेनल्टी के बजाय माल की पूरी कीमत की पेनल्टी जमा करनी पड़ती थी यह प्रावधान बिल्कुल ही अव्यवहारिक एवं बहुत ही गलत था इस प्रावधान को समाप्त किए जाने हेतु प्रस्तावना दी गई है

❖ जीएसटी ई वे बिल की पेनल्टी समय से जमा नहीं करने पर माल एवं वाहन को बेचा जाकर उससे प्राप्त राशि को पेनल्टी हेतु समायोजित करने के प्रावधान लाए गए हैं अब यदि पेनल्टी आदेश व्यापारी के द्वारा प्राप्त किए जाने के 15 दिन के भीतर उनके द्वारा अगर पेनल्टी की राशि जमा नहीं की जाती है तो ऐसी स्थिति में उनका वाहन एवं माल दोनों बेचे जाने की कार्यवाही प्रारंभ किए जाने के प्रावधान लाए गए हैं।

❖ एक महत्वपूर्ण संशोधन यह किया गया है कि यदि किसी ट्रांसपोर्टर के द्वारा पेनल्टी की राशि अथवा रू 1,00,000/- दोनों में से जो कम हो वह जमा कर दिया जाता है तो ऐसी स्थिति में वाहन को निरमुक्त कर दिया जाएगा।

❖ वर्तमान में अगर रू 10,00,000/- की पेनल्टी लगी है तो वाहन तब तक निरमुक्त नहीं किया जाता था जब तक कि रू 10,00,000/- की पेनल्टी जमा नहीं कर दी जाए किंतु अब रू 10,00,000/- या एक लाख जो भी दोनों में से कम हो अर्थात एक लाख जमा करने पर वाहन को निरमुक्त कर दिया जाएगा तथा माल को जप्त रखा जाएगा इस प्रकार ट्रांसपोर्टर को लंबे समय तक वाहन को डिपार्टमेंट में रखने की आवश्यकता नहीं होगी ।

❖ वर्तमान में अगर ई वे बिल के प्रावधानों का पालन नहीं करने के कारण रू 5,00,000/- की पेनल्टी लगी है तथा रू 5,00,000/- का कर लगा है ता ऐसी स्थिति में पेनल्टी के 10 प्रतिशत के बराबर अर्थात रू 50,000/- जमा करके अपील की जा सकती थी किंतु नए नियमों के अनुसार अब कर एवं पेनल्टी प्रथक-प्रथक नहीं लगाई जाकर दोनों मिलाकर रू 10,00,000/- की पेनल्टी लगेगी तथा रू 10,00,000/- के 25 प्रतिशत के बराबर अर्थात 2,50,000/- रुपए जमा करने पर ही अपील प्रस्तुत की जा सकेगी इस प्रकार जहां पहले रू 50,000/- में ही अपील प्रस्तुत हो जाती थी अब उसकी जगह 2,50,000/- रुपए जमा करने होंगे ।

❖ वर्तमान में यह प्रावधान है कि यदि किसी व्यवसाई को ई-वे-बिल के प्रावधानों का पालन नहीं करने के कारण कोई नोटिस दिया जाता है तथा ऐसे नोटिस को जारी करने के 14 दिन के भीतर उनके द्वारा कर एवं पेनल्टी की राशि जमा नहीं की जाती है तो ऐसी स्थिति में उनके प्रकरण में जीएसटी अधिनियम की धारा 130 के तहत कार्यवाही प्रारंभ कर दी जाती थी तथा उन्हें माल की कीमत के बराबर कर एवं पेनल्टी लगा दी जाती थी। अब 14 दिन के भीतर पेनल्टी की राशि जमा नहीं किये जाने की स्थिति में प्रकरण को धारा 130 में हस्तांतरित करने से संबंधित प्रावधान हटा दिये गये हैं ।

❖ रजिस्ट्रेशन निरस्त करने के नियम में भी बदलाव हुए हैं और अब यदि कारोबारी द्वारा गलत क्रेडिट लेते है तो रजिस्ट्रेशन निरस्तीकरण की कार्यवाही प्रारंभ की जा सकेगी व रजिस्ट्रेशन नंबर सस्पेन्ड किये जाने की स्थिति में व्यवसाई ई-वे-बिल डाउनलोड नहीं कर पाएंगे, सस्पेंशन स्थिति में रिफंड भी नहीं मिलेगा ।

❖ एक बहुत ही महत्वपूर्ण परिवर्तन यह किया गया है कि वर्तमान में जीएसटीआर-9ब केवल चार्टर्ड अकाउंटेंट के द्वारा या कास्ट अकाउंटेंट के द्वारा ही भरा जा सकता था किंतु अब ऐसी कंडीशन को हटा दिया गया है नए प्रावधान यह लाए गए हैं कि व्यापारी 9 एवं 9ब को सेल्फ सर्टिफाई कर सकेंगे । इस प्रकार वर्तमान में जीएसटी ऑडिट के लिए चार्टर्ड अकाउंटेंट्स से ऑडिट कराने की बाध्यता समाप्त कर दी गई है ।

❖ पुराने नियमों के अनुसार किसी भी टैक्सेबल पर्सन के द्वारा जीएसटी अधिनियम की धारा 62, 63, 64, 67, 73 एवं 74 के प्रावधानों का उल्लंघन किये जाने की स्थिति में शासकीय राजस्व की सुरक्षा हेतु ऐसे व्यवसाईयों की प्रॉपर्टी को प्रोविजनली अटैच किया जा सकता था।

❖ किंतु नए प्रस्तावित प्रावधानों के अनुसार यदि कोई भी ऐसा व्यक्ति चाहे वह व्यवसाय का मालिक, डायरेक्टर, कंपनी सेक्रेट्री, चार्टर्ड अकाउंटेंट, एडव्होकेट, कर सलाहकार या कोई अन्य व्यक्ति, जो कि जीएसटी के निम्न कार्यों में लिप्त है, जिनके द्वारा ऐसे संव्यवहारों से लाभ प्राप्त किया हो उनकी प्रॉपर्टी बैंक के अकाउंट इत्यादि प्रोविजनली अटैच किए जा सकेंगे।

❖ यदि किसी व्यवसाई के द्वारा बिना बिल जारी किये मालों का विक्रय किया जाता है, या उनके द्वारा गलत एवं फर्जी बिल जारी कर मालों का विक्रय किया जाता है;

❖ मालों या सेवाओं सप्लाई किये बिना बिल जारी किये जाते हों;

❖ मालों या सेवाओं को प्राप्त किये बिना इनपुट टैक्स क्रेडिट का क्लेम किया गया हो

❖ इनपुट सर्विस डिस्ट्रीब्यूटर के प्रकरण में गलत इनपुट टैक्स क्रेडिट का क्लेम कर लिया हो.

❖ प्रापर्टी को प्राव्हीजनली अटैच करने के प्रावधानों का दायरे में वृद्धि कर दी गई है:-

❖ पूर्व में असेसमेन्ट से संबंधित चेप्टर-12 की धारा 62, 63 एवं 64 ही इसमें शामिल थी, परन्तु प्रस्तावित प्रावधानों में चेप्टर-12 के समस्त धाराओं को शामिल कर लिया गया है।

❖ पूर्व में विशेष जांच एवं माल के परिवहन के दौरान जांच से संबंधित चेप्टर-14 की धारा 67 ही इसमें शामिल थी, परन्तु प्रस्तावित प्रावधानों में चेप्टर-14 के समस्त धाराओं को शामिल कर लिया गया है।

❖ पूर्व में मांग एवं रिकवरी से संबंधित चेप्टर-15 की धारा 73 एवं 74 ही इसमें शामिल थी, परन्तु प्रस्तावित प्रावधानों में चेप्टर-15 के समस्त धाराओं को शामिल कर लिया गया है।

❖ जीएसटी की धारा 122 1 के अंतर्गत वह कार्य इस प्रकार हैं बिना बिल जारी किए माल, सेवाओं की आपूर्ति करना, दिलवाई जारी कर देना किंतु माल की सप्लाई नहीं करना अर्थात माल की सप्लाई प्राप्त किए बिना या सेवा प्राप्त किए बिना इनपुट टैक्स क्रेडिट क्लेम करना इत्यादि।

❑

(2021) 66 TLD 73

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.

Asharaf Ali. K.H

Vs.

Assistant State Tax Officer & Others

WP(C).No.: 21582 of 2020 (W)

October 13, 2020

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Misclassification - Section 129 of CGST Act, 2017 - The allegation of mis-classification of goods cannot warrant a detention of the goods under Section 129 of the GST Act.

On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find force in the contention of the learned counsel for the petitioner that the allegation of mis-classification of goods cannot warrant a detention of the goods under Section 129 of the GST Act. In my view, if the respondents feel that there has been a mis-classification of the goods, then it is for them to prepare a report based on the physical verification done by them, get the petitioner to sign on the same after recording his objections, if any, to the findings recorded therein, and thereafter forward a copy of the said report to the Assessing Officer of the petitioner, who can consider the said report and objections at the time of finalising the assessment in relation to the petitioner. The detention of the goods in transit cannot be justified for the said reasons. [Para 3]

Sri. P.N. Damodaran Namboodiri & Shri. Hrithwik D. Namboothiri, Advocates for the petitioner.

Dr. Thushara James, GP for the respondent.

:: JUDGMENT ::

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❑

(2021) 66 TLD 74

In the High Court of Kerala
Hon'ble K. Vinod Chandran, J.

Sameer Mat Industries & Other

Vs.

State Of Kerala & Others

WP(C).No.: 36413 of 2017 (B)

November 20, 2017

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Misclassification and under valuation - Section 129 of CGST Act, 2017 - The issue of mis-classification and under valuation has to be gone into by the respective assessing officers and not by the detaining officer.

Detention, seizure and release of goods and conveyances in transit - Jurisdiction - The specific power invoked in issuing the notice for detention is under the CGST/SGST which is applicable only to the intra-state movement of goods.

Writ petition allowed

The petitioners shall be permitted release of the goods on the execution of simple bond without sureties.

There is no doubt that the authorities appointed by the State have been empowered to implement the provisions of the enactments which regulates the inter-State as also the intra-State trade. However the specific power invoked in issuing the impugned notice is under the CGST/SGST which is applicable only to the intra-state movement of goods.

Sri. M. Gopikrishnan Nambiar, Sri. P. Gopinath, Sri. K. John Mathai, Sri. Joson Manavalan, Sri. Kuryan Thomas, Sri. Paulose C. Abraham & Sri. Raja Kannan, Advocates for the petitioners.

Senior Government Pleader Dr. Thushara James for R1 & R2, Sri. Bobby John, Advocate for R3.

:: JUDGMENT ::

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❑

(2021) 66 TLD 75

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.

Alfa Group

Vs.

Assistant State Tax Officer & Others

WP(C).No.: 30798 of 2019(Y)

November 18, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - MRP - Section 129 of CGST Act, 2017 - There is no provision under the GST Act which mandates that the goods shall not be sold at prices below the MRP declared thereon.

Detention Order quashed

When the statutory scheme of the GST Act is such as to facilitate a free movement of goods, after self assessment by the assessees concerned, the respondents cannot resort to an arbitrary and statutorily unwarranted detention of goods in the course of transportation. Such action on the part of department officers can erode public confidence in the system of tax administration in our country and, as a consequence, the country's economy itself. The High Court quashed the detention order and directed the respondents to forthwith release the goods belonging to the petitioner and also directed the Commissioner, Kerala State Taxes Department, Thiruvananthapuram to issue suitable instructions to the field formations so that such unwarranted detentions are not resorted to in future.

Smt. Blossom Mathew, Advocate for the petitioner.

:: JUDGMENT ::

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❑

(2021) 66 TLD 76

In the High Court of Kerala
Hon'ble Dama Seshadri Naidu, J.
Asianet Digital Network Private Ltd.
Vs.
Assistant State Tax Officer & Others
WP(C).No.: 38747 of 2018
November 29, 2018

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Mismatch between delivery challan and e-way bill - Section 129(1)(a) of CGST Act, 2017 - The Department's demand on the petitioner to comply with Section 129(1)(a) cannot be faulted - The Department's insisting on both the penalty and tax covering all the set-top boxes cannot be sustained.

Writ Petition allowed

Under these circumstances, I hold that the Department's demand on the petitioner to comply with Section 129(1)(a) cannot be faulted. At any rate, the Department's insisting on both the penalty and tax covering all the set-top boxes cannot be sustained. To be specific, the petitioner has already shown in the delivery challan 200 set-top boxes and mentioned its value as well. So for the remaining boxes, that is 600, the cost was not reflected. Subject to further adjudication of the issue before the State Tax Officer, the petitioner could provide a bank guarantee and personal bond under Section 129(1)(a) for the amount to be confined to the 600 set-top boxes.

Sri. Saji Varghese, Advocate for the petitioner.
Dr. Thushara James, GP., Sri Sreelal N, Warrier, SC for the respondents.

:: JUDGMENT ::

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❑

(2021) 66 TLD 77 In the High Court of Gujarat

Hon'ble Ms. Harsha Devani & Ms. Sangeeta K. Vishen, JJ.

Insha Trading Company

Vs.

State of Gujarat

R/Special Civil Application No. 16901 of 2019

October 18, 2019

Deposition : In favour of Petitioner

Confiscation of Goods or Conveyances - Section 130 of CGST Act, 2017 - The driver of the conveyance had duly produced the e-way bill as well as the invoice - Nothing has been pointed out to show that there was any discrepancy in the e-way bill or the tax invoice - In the light of the Circular dated 13-4-2018, since, no discrepancies were found, the conveyance was required to be allowed to move further.

Writ petition allowed

For the forgoing reasons, the petition succeeds and is accordingly, allowed. The order dated 8-4-2019 issued by the third respondent under section 130 of the CGST Act as well as the order of demand of tax and penalty dated 29-1-2019, issued in Form GST MOV-09 are hereby quashed and set aside and the third respondent is directed to forthwith release the conveyance and goods in question. [Para 8]

It is clarified that the fact that this court has ordered release of the goods and conveyance will not, in any manner, come in the way of the respondents in proceeding against the petitioner in connection with the contravention of any provisions of the GST Acts and the rules. [Para 8.1]

Mr. Chetan K. Pandya (1973) for the Petitioner(s) No. 1

Advance Copy Served To Government Pleader/PP(99) for the Respondent(s) No. 1. Notice Served By DS(5) for the Respondent(s) No. 1,2,3

:: JUDGMENT ::

The Judgment of Court was delivered by **MS. HARSHA DEVANI, J.:**

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❑

(2021) 66 TLD 78

In the High Court of Kerala
Hon'ble P.B. Suresh Kumar, J.
Age Industries (P) Ltd.
Vs.
Asst. State Tax Officer
WP(C).No.: 1680 of 2018
January 18, 2018

Deposition : In favour of Petitioner

Goods cannot be detained merely for infraction of Rule 138(2) of the State SGST Rules - The first reason on which the goods are detained, viz, that the goods were not accompanied by the document provided for under Rule 138(2) State SGST Rules is unsustainable.

Writ petition allowed

Power of detention contemplated under Section 129 of the SGST Act can be exercised only in respect of goods which are liable to be confiscated under Section 130 of the SGST Act; that there is no taxable supply when goods are transported on delivery chalans so long as the authenticity of the delivery chalan is not doubted and that therefore, such goods cannot be detained merely for infraction of Rule 138(2) of the State SGST Rules.

In the result, the writ petition is allowed, the impugned detention is held to be illegal and the respondent is directed to release the consignment to the petitioner forthwith. It is, however, made clear that this judgment will not preclude the respondent from initiating proceedings against the petitioner for imposition of penalty contemplated under the SGST Act for non-compliance of the provisions contained in the State SGST Rules, if such imposition is provided under law. [Para 6]

Sri. Harisankar V. Menon, Smt. Meera V. Menon & Smt. K. Krishna, Advocates for the petitioner.
Sr. Government Pleader Sri. V.K. Shamsudheen for the respondent.

:: JUDGMENT ::

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❑

(2021) 66 TLD 79

In the High Court of Patna
Hon'ble Jyoti Saran & Partha Sarthy, JJ.

Ram Charitra Ram Harihar Prasad

Vs.

State of Bihar & Others

Civil Writ Jurisdiction Case No.: 11221 of 2019

August 6, 2019

Deposition : In favour of Petitioner

E-way bill - Validation - Detention of goods - Amended Rule 138 as notified in the gazette dated 7-3-2018 enables a consignor of goods to validate his E-WAY BILL and which was done by the petitioner before the order of detention passed under Section 129.

The document at Annexure -A series would confirm that the goods were tax paid and thus the exercise had to be regulated under the provisions of Section 129(1)(b) which provides for a lenient applicability of the penal provisions and understandably because the tax amount on the goods has already been paid by the dealer.

Perhaps this important aspect of the matter has eluded the assessing authority while carrying out the exercise. In our opinion the entire exercise is dehors the provisions of amended Rule 138 as notified in the gazette dated 7-3-2018 which enables a consignor of goods to validate his E-WAY BILL.

In our considered opinion, once the assessing authority i.e. the Deputy Commissioner, State Tax has recorded in his proceedings that the E-WAY BILL has been generated, meaning thereby the goods carried a valid E-WAY BILL, the proceedings ought to have been brought to a close, rather than to perpetuate the illegality as done in the present case.

Mr. Jayanta Ray Chaudhury, Adv. & Mr. Binay Kumar, Adv. for the petitioner. Mr. Vikash Kumar, SC-11 for the respondents.

:: ORAL JUDGMENT ::

The Judgment of the Court was delivered by **JYOTI SARAN, J. :**

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❑

(2021) 66 TLD 80 Appellate Authority, GST, Himachal Pradesh
Rohit Chauhan, Addl. Commissioner, State Taxes & Excise (Gr-I)-cum-Appellate Authority, GST (Appeals)

Om Dutt

Vs.

ACST&E-cum-Proper Officer

Appeal No. : 012/2019

February 14, 2020

Deposition : In favour of Appellant

E-way bill - Procedural lapse - Penalty for certain offences - Section 122 and 129 of CGST Act, 2017 - Due to breakdown of goods carrying vehicle the goods were transshipped to another vehicle - Therefore, appellant should have updated the part-B of EWB before resuming his journey liable to pay miner penalty.

Appeal allowed

Due to breakdown of goods carrying vehicle the goods were transshipped to another vehicle. The e-way bill of the consignment which was produced before the proper officer pertains to the previous vehicle. The only mistake the e-way bill part-B was that the number of the vehicle in which the goods were transshipped had not been entered at the time of inspection of the vehicle. The appellant updated the e-way bill and the number of the second vehicle was updated in the part-B of the e-way bill. Despite the updation of the part-B of EWB the Ld. Respondent detained the vehicle and imposed tax/penalty.

The Ld. respondent has imposed penalty in a mechanical manner and has ignored the corrected and updated e-way bill as produced by the appellant. Therefore, the tax/penalty under section 129(3) of the CGST/HPGST Act, 2017 imposed is unsustainable.

The tax and penalty deposited by the appellant under section 129(3) may be refunded and a penalty of Rs. Ten Thousand only (Rs. 10,000) is imposed on the taxpayer under section 122(xiv) of the Act.

Sh. Rajeev Prabhakar, Advocate for the Appellant.
Shri Sanjay Kumar, ACST&E, Proper Officer for the Department.

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(2021) 66 TLD 81 Appellate Authority, GST, Himachal Pradesh

Rohit Chauhan, Addl. Commissioner, State Taxes & Excise (Gr-I)-cum-Appellate Authority, GST (Appeals)

Integrated Constructive Solutions

Vs.

ACST&E-cum-Proper Officer Chamba Circle

Appeal No. : 018/2019

February 14, 2020

Deposition : In favour of Appellant

E-way bill - Procedural lapse - Penalty for certain offences - Section 122 and 129 of CGST Act, 2017 - Due to breakdown of goods carrying vehicle the goods were transshipped to another vehicle - Therefore, appellant should have updated the part-B of EWB before resuming his journey liable to pay miner penalty.

Appeal allowed

Due to breakdown of goods carrying vehicle the goods were transshipped to another vehicle. The e-way bill of the consignment which was produced before the proper officer pertains to the previous vehicle. The only mistake the e-way bill part-B was that the number of the vehicle in which the goods were transshipped had not been entered at the time of inspection of the vehicle. The appellant updated the e-way bill and the number of the second vehicle was updated in the part-B of the e-way bill. Despite the updation of the part-B of EWB the Ld. Respondent detained the vehicle and imposed tax/penalty.

The Ld. respondent has imposed penalty in a mechanical manner and has ignored the corrected and updated e-way bill as produced by the appellant. Therefore, the tax/penalty under section 129(3) of the CGST/HPGST Act, 2017 imposed is unsustainable.

The tax and penalty deposited by the appellant under section 129(3) may be refunded and a penalty of Rs. Ten Thousand only (Rs. 10,000) is imposed on the taxpayer under section 122(xiv) of the Act.

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❑

(2021) 66 TLD 82

In the High Court of Kerala
Hon'ble Dama Seshadri Naidu, J.

Sabitha Riyaz

Vs.

Union of India & Others

WP(C).No.: 34874 of 2018

October 31, 2018

Deposition : In favour of Petitioner

E-way bill - Typographical error in distance - The High Court in view of Circular No.64/38/2018-GST, dated 14th September 2018 directed the respondents to release the goods.

Writ petition allowed

Indeed, the Central Board of Indirect Taxes and Customs has come across many minor discrepancies in the e-way bills, resulting in summary detention of the goods. Then, it has issued this circular.

I reckon the distance between Kerala and Uttarakhand is a matter of record and thus verifiable. As I have already noted, the e- way bill showed the distance as 280 Kms, instead of 2800 Kms—one zero missing. This cannot be anything other than a typographical error, and a minor at that.

Under these circumstances, I hold that the 11th respondent will consider the petitioner's request for release in terms of the circular, expeditiously. With these observations, I dispose of the writ petition.

Dr. K.P. Pradeep, Smt. Neena Arimboor, Smt. Rani Mumthas, Sri. Sanand Ramakrishnan, Smt. Anjana Kannath & Sri. T.T. Biju, Advocates for the petitioner.

Sri. N. Nagaresh, Assistant Solicitor General for the respondents.

:: JUDGMENT ::

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❑

(2021) 66 TLD 83(1) In the High Court of Kerala
Hon'ble Dama Seshadri Naidu, J.
Daily Express
Vs.
Assistant State Tax Officer & Others
WP(C).No.: 35665 of 2018
November 29, 2018

Deposition : In favour of the Department

Detention, seizure and release of goods and conveyances in transit - Section 129 of CGST Act, 2017 - Transporter - Section 129(1)((b) applies to all other persons interested in the goods than the consignor - If the petitioner (transporter) is interested, then it answers that description. [*The *DB also confirmed this judgment on 4-2-2020***]**

Writ petition dismissed

Smt. S. Sujini, Advocate for the petitioner.
Dr. Thushara James, GP for the respondents.

:: JUDGMENT ::

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❑

(2021) 66 TLD 83(2) In the High Court of Kerala
Hon'ble K.Vinod Chandran & Ashok Menon, JJ.
***Daily Express**
Vs.
Assistant State Tax Officer & Others
WA No.: 253 of 2019
February 4, 2019

Deposition : In favour of the Department

Detention, seizure and release of goods and conveyances in transit - Section 129 of CGST Act, 2017 - Transporter - The Division Bench confirmed the single bench judgment that the provisions under Section 129(1)(b) applies to the transporter as person interested in the goods and therefore notices of detention do not suffer from any

legal infirmity calling for interference.

Could the transporter having no tax liability, for the goods transported, face detention, seizure and penalty, as provided under Section 129 of the Central Goods and Services Tax Act, 2017 ("CGST Act" for brevity)?, is the question that arises for consideration in this appeal over WP(C) No.35665/2018 before us. [Para 1]

We cannot accept the argument of the appellant for the reason that Section 129(1) makes it adequately clear that any person who is interested in the goods shall be liable under Section 129(1)(b). Particularly, a reading of Section 129(6) would indicate that where a person transporting any goods or the owner of the goods, fails to pay the amount of tax and penalty as provided in sub-Section (1) within 14 days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of Section 130. This would undoubtedly indicate action not only against the goods, but also against the transporter. [Para 7]

The non-obstante clause in Section 129 indicate that neither Section 126, nor the general provision of penalty under Section 125, or Section 122 would apply in cases where Section 129 is attracted. Section 126 refers to 'minor breaches'. Explanation(a) to section 126 states that a breach shall be considered a 'minor breach', if the amount of tax involved is less than five thousand rupees. Hence for that reason alone, Section 126 is not attracted in the instant case. [Para 8]

The learned Single Judge had rightly dismissed the Writ Petition refusing to find any infirmity in Exts.P5 to P7 notices and therefore, the Writ Appeal is without any merits and requires to be dismissed, which we do. [Para 9]

:: JUDGMENT ::

The Judgment was delivered by Ashok Menon, J. -

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❑

(2021) 66 TLD 85 Appellate Authority, GST, Himachal Pradesh

Rohit Chauhan, Addl. Commissioner, State Taxes & Excise (Gr-I)-cum-Appellate Authority, GST (Appeals)

Godrej Consumer Products Ltd., Solan

Vs.

ACST&E-cum-Proper Officer, Circle Baddi-II

Appeal No. : 005/2019, Order No.: 2986/91

February 11, 2020

Deposition : In favour of Appellant

E-way bill - The mistake in entering distance in E-way bill is a typographic error and may be treated as a minor one.

Sh. Vijay Dhiman, Asst. Manager for the Appellant.
Shri Deep Chand, ASTEO, Shri Ajay Kumar, ASTEO, Proper Officer for the Department.

:: ORDER ::

7. As per the circumstantial evidence and as per the decision of Hon'ble Kerala High Court [SABITHA RIYAZ (2021) 66 TLD 82 (Ker)], it appears that the mistake in entering distance in E-way bill is a typographic error and may be treated as a minor one. Therefore, the appeal of the appellant is accepted and the order of the Assistant Commissioner State Taxes & Excise - Cum proper officer Baddi Circle-II is set aside. The additional demand of Rs. 1,54,798/- (IGST - 77,399/- + penalty INR 77,399/-) deposited by the appellant may be refunded and the penalty of Rs. 500/- under SGST and Rs. 500/- under CGST u/s 125 of CGST/HPGST Act, 2017 is imposed on the Appellant in accordance to CBIC Circular No. 64/38/2018-GST, dated 14th Sep 2018 and the State Circular No. 12-25/2018-19-EXN-GST-(575)-6009-6026 dated 13th March 2019. The judgment in this case was reserved on 4-1-2020 and is released today.

Parties be informed accordingly.

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❑

(2021) 66 TLD 86

In the High Court of Kerala
Hon'ble A. Muhamed Mustaque, J.
Rai Prexim India Private Limited
Vs.
State of Kerala & Others
WP(C).No.: 39022 of 2018
December 4, 2018

Deposition : In favour of Petitioner

E-way bill - Human error - If a human error which can be seen on naked eye is detected, such human error cannot be capitalised for penalisation.

Writ petition disposed of

If a human error which can be seen on naked eye is detected, such human error cannot be capitalised for penalisation. Normally, this Court could not have persuaded to accept the contention on prima facie value as it is a matter for decision by competent authority and this Court can only order release of the vehicle and goods as against Bank guarantee. But I am persuaded to adopt a different course for the simple reason that if the petitioner had paid the IGST in accordance with the value as shown in the original bill, goods cannot be detained and shall be released to the petitioner. Therefore, the following orders are issued.

On verification, if it is found that the petitioner had paid the IGST in accordance with the value shown in Ext.P4, the vehicle and the goods shall be released to the petitioner on executing a simple bond. However, if it is found that the petitioner had not paid the IGST according to the value shown in Ext.P4, the petitioner's goods and vehicle need be released only on furnishing bank guarantee.

This writ petition is disposed of as above

Dr. K.P. Pradeep, Smt. Anjana Kannath, Smt. Neena Arimboor, Smt. Rani Mumthas, Sri. Sanand Ramakrishnan & Sri. T.T. Biju, Advocates for petitioner. Smt. Thushara James, Government Pleader for the respondent.

:: JUDGMENT ::

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❑

(2021) 66 TLD 87(1) In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.

Kannangayathu Metals

Vs.

Assistant State Tax Officer & Others

WP(C).No.: 30185 of 2019

November 8, 2019

Deposition : In favour of Petitioner

E-way bill - Alternate route - There cannot be a mechanical detention of a consignment solely because the driver of the vehicle had opted for a different route, other than what is normally taken by other transporters of goods covered by similar e-Way bills.

Sri.Tomson T. Emmanuel, Advocate for the petitioner.
M.M. Jasmine, GP for the respondents.

:: JUDGMENT ::

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❑

(2021) 66 TLD 87(2) In the High Court of Telangana
Hon'ble M.S. Ramachandra Rao & T. Amarnath Goud, JJ.

Commercial Steel Company

Vs.

The Assistant Commissioner of State Tax

Writ Petition No.: 2161 of 2020

March 4, 2020

Deposition : In favour of Petitioner

E-way bill - There is no material placed on record by the 1st respondent to show that any attempt was made by the petitioner to deliver the goods at a different place - Wrong destination is not a ground to detain the vehicle carrying the goods or levy tax or penalty.

Writ petition allowed

Shaik Jeelani Basha, Advocate for the petitioner.
G.P. for Commercial Tax TG.

:: ORDER ::

The Order of the Court was made by **M.S. RAMACHANDRA RAO, J. :**

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❑

(2021) 66 TLD 88

In the High Court of Kerala
Hon'ble Alexander Thomas, J.
M.R. Traders
Vs.
Assistant State Tax Officer (INT) State GST & Others
WP(C).No.: 2713 of 2020(L)
January 31, 2020

Deposition : In favour of Petitioner

E-way bill - Address - The address shown in the invoice is different from the address shown in the E Way bill etc. is only a clerical mistake and is not a serious mistake which should justify the detention and penalty proceedings.

Writ petition disposed of

The 1st respondent shall taken take into consideration the vital contention urged by the petitioner that the so called error pointed out by the respondent for issuing Ext. P4 order, that the address shown in the invoice is different from the address shown in the E Way bill etc. is only a clerical mistake and is not a serious mistake which should justify the detention and penalty proceedings and also the contentions raised by the petitioner on the basis.

Sri. Krishna Prasad S., Smt. Rohini Nair & Smt. Sneha Manjooran, Advocates for the petitioner.
Smt. M.M, Jasmine, Govt. Pleader for the respondents.

:: JUDGMENT ::

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❑

(2021) 66 TLD 89 In the High Court of Allahabad
Hon'ble Bharati Sapru & Saumitra Dayal Singh, JJ.

Ramdev Trading Company and Another

Vs.

State of U.P. and 3 Others

Writ Tax No.: 779 of 2017

November 30, 2017

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - TDF - Section 129 of CGST Act, 2017 - TDF is absent and that the goods have been mis-described is not a valid ground for imposing penalty.

Writ petition allowed

At the stage of seizure the detaining authority had not applied his mind, nor formed any opinion as to intention to evade tax. The only allegation made in the seizure order is to the effect that the TDF is absent and that the goods have been mis-described. There is no allegation whatsoever as to the intention of the petitioner to evade tax.

In absence of any allegation or evasion of tax being made against the petitioner at the stage of detention and seizure and even at the stage of issuance of notice of penalty, it is difficult to sustain the penalty.

The goods were infact being transported from Rajasthan to Assam as disclosed in the Tax Invoice and other documents found accompanying the goods. The breach was purely technical.

The seizure order as also the penalty order are wholly unsustainable and are hereby quashed. The goods and vehicle may be released forthwith without furnishing any security. Writ petition is allowed.

Shubham Agrawal, Advocate for the petitioners.
C.S.C., A.S.G.I. for the respondents.

:: ORDER ::

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❑

(2021) 66 TLD 90 Appellate Authority, GST, Himachal Pradesh

Rohit Chauhan, Addl. Commissioner, State Taxes & Excise (Gr-I)-cum-Appellate Authority, GST (Appeals)

Bhushan Power & Steel Limited

Vs.

ACST&E (Proper Officer), Circle Mall Road

Appeal No. : 007/2019, 008/2019 & 009/2019, Order No.: 2980-85

February 11, 2020

Deposition : In favour of Petitioner

E-way bill - E-way bill is invalid only if Part-B of E-way bill is not filled or a considerable time to update the Part-A of e-way bill has gone by - When consignment of goods is accompanied with an invoice or any other specify document and also an e-way bill, proceeding u/s 129 of the GST Act may not be initiated - Therefore, imposition of tax/ penalty by the respondent is harsh and unsustainable.

Appeal allowed

Rule 138(10) says that validity of e-way bill may be extended within 8 hours from the time of its expiry but in the instant cases the vehicle was practically apprehended in almost 08 to 09 hours of the expiry of the e-way bill, prima facie it appears that, the appellant has been not given reasonable opportunity to update the Part-A of e-way bill. It was noted that Part-B of the e-way bill was duly filled which puts to rest on any doubts about the intention of the appellant to evade tax. Secondly, Circular No. 64/38/2018-GST dated 14th of September, 2018 issued by the Central Board of Indirect Taxes and Customs and the circular of Government of Himachal Pradesh dated 13-3-2019 valid from 14-9-2018 clearly states the issue. [Para 15]

Sh. Rakesh Sharma,Adv. for the Appellant.
Ms. Poonam Thakur, ACST&E, Proper Officer for the Department.

:: ORDER ::

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❑

(2021) 66 TLD 91

In the High Court of Gujarat
Hon'ble J.B. Pardiwala & Bhargav D. Karia, JJ.

Synergy Fertichem Pvt. Ltd.

Vs.

State of Gujarat

R/Special Civil Application No.: 4730 of 2019, 6125 of 2019 & 6118 of 2019

February 19, 2020

Deposition : In favour of Petitioner

Confiscation of Goods or Conveyances - Suspicion - Section 130 of CGST Act, 2017 - Merely on suspicion, the authorities may not be justified in invoking Section 130 of the Act straightway - If the authorities are of the view that the case is one of invoking Section 130 of the Act at the very threshold, then they need to record their reasons for such belief in writing.

Writ petition disposed of

It is now for the applicants to make good their case that the show cause notice, issued in GST-MOV-10, deserves to be discharged.

In view of the above, this writ application stands disposed of. Rule is made absolute to the aforesaid extent.

For the reasons recorded in the Special Civil Application No. 4730 of 2019, the Special Civil Application No. 6125 of 2019 and the Special Civil Application No.6118 of 2019 also stands disposed of.

Uchit N. Sheth (7336) for the Petitioner(s) No. 1, 2.
Mr. Soham Joshi, LD. AGP for the Respondent(s) No. 1, 2.

:: COMMON ORAL ORDER ::

The Order of the Court was made by **J.B. PARDIWALA, J. :**

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❑

(2021) 66 TLD 92(1)

In the High Court of Karnataka
Hon'ble Mrs. S. Sujatha, J.

Shree Enterprises & Another

Vs.

Commercial Tax Officer, Shivamogga

Writ Petition No.: 6445 of 2019 & 7370 of 2019 (T-RES)

March 14, 2019

Deposition : In favour of Petitioner

Confiscation - Section 130 of CSGT Act, 2017 - It is well settled law that unless the tax and penalty are quantified, no confiscation order could be passed - It is necessary to provide opportunity.

Sri. Harish V.S., Advocate for the petitioner.
Sri. Vikram A. Huilgol, HCGP for the respondent.

:: ORDER ::

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❑

(2021) 66 TLD 92(2)

In the High Court of Kerala
Hon'ble Dama Seshadri Naidu, J.

Noushad Allakkat

Vs.

The State Tax Officer (WC) & Others

WP(C).No.: 32237 of 2018

October 4, 2018

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Penalty - Section 129 of CGST Act, 2017 - The non-production of goods is not a ground for imposition of penalty and there would be no requirement to distinguish on facts the decision in Madhu M.B.

:: JUDGMENT ::

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❑

(2021) 66 TLD 93

In the High Court of Madras
Hon'ble Dr. Anita Sumanth, J.

G. Murugan

Vs.

Government of India & Another

W.P. No.: 4106 of 2019 & W.M.P. No.: 4609 & 4613 of 2019

February 14, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Non-speaking order - Section 129 of CGST Act, 2017 - The non-speaking order of detention cannot be sustained and the same is quashed.

Writ petition allowed

Thus, detention/seizure is provided for only in cases where the Department is prima facie convinced that there is a contravention of the provisions of the Act and the Rules. The order of detention has to reflect the reasons for which the seizure of the conveyance/goods has been effected. [Para 9]

Though Section 107 of the Act provides for appeals or revisions that may be filed by any person aggrieved by any decision or order passed under this Act by an adjudicating authority, I am not inclined, in the circumstances of the present case, to relegate the petitioner to the statutory remedy provided. Any appeal that the petitioner might file would have to assume the contraventions that the impugned order is based upon since the impugned order is incomplete and wholly non-speaking, leaving even mandatory fields in the order, blank. [Para 12]

Mr. K. Krishnamoorthy, Advocate for the petitioner.
Mr. Dhana Madhri, Government Advocate for the respondent.

:: ORDER ::

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❑

(2021) 66 TLD 94

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.

Polycab India Limited

Vs.

State of Kerala & Others

WP(C).No.: 31965 OF 2019(U)

November 27, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Possibility/Assumption - Section 129 of CGST Act, 2017 - The goods were detained on the ground of possibility of evasion of payment of IGST and further the consignee of the goods was an unregistered dealer - Reasons not sufficient for detention.

Writ petition disposed of

On a consideration of the facts and circumstances of the case as also the submissions made across the Bar and taking note of the factual circumstances narrated above, I am of the view that there was no justification for detention of the goods in terms of Section 129 of the CGST/SGST Act. This is more so because the reasons stated in the detention order are wholly irrelevant for the purposes of S.129 of the Act. I therefore, direct the 3rd respondent to release the goods and vehicle to the petitioner, on the petitioner producing a copy of this judgment, before the said respondent. The 3rd respondent may thereafter, forward the files to the adjudicating authority for an adjudication under Section 130 of CGST/SGST Act.

Sri. A. Kumar, Sri. P.J. Anil Kumar, G. Mini, Sri. P.S. Sree Prasad, Job Abraham & Sri. Ajay V.Anand, Advocates for the petitioner.
Smt. Thushara James; G.P. for the respondents.

:: JUDGMENT ::

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❑

(2021) 66 TLD 95

In the High Court of Karnataka
Hon'ble Mrs. S. Sujatha, J.

Bright Road Logistics

Vs.

Commercial Tax Officer (Enforcement-09), South Zone, Bangalore

Writ Petition No. : 50631/2019 (T-RES)

November 12, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Natural justice - Section 129 of CGST Act, 2017 - The respondent having issued show-cause notice calling upon the petitioner to file objections, cannot turn around and take a decision that the petitioner has no locus standi either to file objections or to putforth dispute on behalf of the consignor/consignee or the owner of the conveyance - The order impugned is against the principles of natural justice which is the fundamental parameter required to be observed by the quasi- judicial authority.

Hence, the petitioner is at liberty to file any additional objections to the show-cause notice issued u/s 129(1)(b) of the Act. The respondent shall consider the preliminary objections as well as final/additional objections to be filed by the petitioner, in accordance with law and an appropriate order shall be passed in an expedite manner. [Para 7]

Accordingly, the impugned order is quashed and the proceedings are restored to the file of the respondent. [Para 8]

All the rights and contentions of the parties are left open.

Writ petition disposed of

Ms. Veena J. Kamath, Adv. for M/s. Kamath & Kamath, Advs. for the petitioner.

Sri Vikram Huilgol, Adv. for the respondent.

:: ORDER ::

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❑

(2021) 66 TLD 96 In the High Court of Gujarat

Hon'ble Ms. Harsha Devani & Ms. Sangeeta K. Vishen, JJ.

F.S. Enterprise

Vs.

State of Gujarat

R/Special Civil Application No. : 7061 of 2019 with 7062 of 2019 with 7063 of 2019 with 7064 of 2019

October 11, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Deficiency in the lorry receipt - Section 129 of CGST Act, 2017 - Carrying the lorry receipt is not a requirement prescribed under rule 138A(1) of the rules - Detention was without authority of law.

Insofar as the Lorry Receipt issued by the transporter is concerned, carrying the same is not a requirement prescribed under rule 138A(1) of the rules. It was submitted that under the circumstances, in the absence of any statutory provision empowering the respondents to make an order of detention under section 129(1) of the CGST Act for any deficiency in the lorry receipt issued by the transporter, the impugned order of detention is without authority of law.

Prima facie, the contention raised by the learned advocate for the petitioner appears to be valid. Under the circumstances, a prima facie case has been made out for grant of interim relief as prayed for in the petition. [Para 3]

Uchit N. Sheth (7336) for the Petitioner(s) No. 1.

Mr. Trupesh Kathiriya, Assistant Government Pleader (1) for the Respondent(s) No. 1, 2

:: COMMON ORAL JUDGMENT ::

The Judgment of the Court was delivered by **MS. HARSHA DEVANI, J. :**

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❑

(2021) 66 TLD 97

In the High Court of Calcutta
Hon'ble Shekhar B. Saraf, J.

Bansal Earthmovers Pvt. Ltd.

Vs.

Assistant Commissioner State Goods & Service Tax & Ors.

WPA No. 82 of 2019

December 5, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Service of Notice - Section 129 of CGST Act, 2017 - Notice for imposition of penalty requires to be served upon the person on whom the penalty is to be imposed.

WPA disposed of

On an interpretation on first principles, it is clear that notice for imposition of penalty requires to be served upon the person on whom the penalty is to be imposed. Furthermore, an opportunity of hearing has to be granted. In the event, such hearing is not granted, the same would definitely amount to violation of principles of natural justice. [Para 12]

It is trite law that the Circular issued by the Central Board of Indirect Tax and Customs is only binding upon the authorities and not upon the assessee. I have to mention here that the Circular and the Form are not complying with the mandatory provision of giving notice to the person who is the owner of the goods and upon whom the imposition of penalty is to be made. [Para 14]

The matter has been remitted to the concerned officer for a reasoned decision.

Mr. Boudhayan Bhattacharyya, Mr. Anindya Bagchi & Mr. Partha Pratim Saha for the Petitioner.
Mr. Subir Kr. Saha & Mr. Bikramiditya Ghosh for the State.

:: ORDER ::

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❑

(2021) 66 TLD 98 In the High Court of Allahabad
Hon'ble Munishwar Nath Bhandari & Vikas Kunvar Srivastav, J.

Gaurav Agro Kendra

Vs.

State of U.P. & Ors.

Misc. Bench No.: 34276 of 2019

December 11, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - E-way bill - Section 129 of CGST Act, 2017 - E-way bill procedure during 1-2-2018 to 31-3-2018 was not applicable - Ignorance of the judgment of a superior Court on the similar issue cannot be expected rather the appellate authority needs to be careful in future.

Writ petition disposed of

The main contention raised therein was that the notification to apply E-Way bill was not made known to the assessee. Mandate to apply mechanism of E-way bill was earlier circulated by the Government in the year 2017 but then it was kept in abeyance. The notification to apply E-way bill mechanism was revised subsequently but was not notified to the assessee. In absence of information of application of E-way bill mechanism, the petitioner made the transaction, as per the procedure then existing with required declaration. The document in that regard were not considered by the Assessing Authority as well as by the Appellate Authority as compliance of E-way bill system was not made by the petitioner though it was not notified by the Government.

The impugned orders are accordingly set aside with remand of the case to the Assessing Authority to examine the matter afresh in light of the law propounded by this Court. It would be without applying E-way bill mechanism. [Para 5]

Yogesh Chandra Srivastava & Shubham Agrawal for the petitioner.
C.S.C. for the respondents.

:: ORDER ::

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❑

(2021) 66 TLD 99

In the High Court of Kerala
Hon'ble A. Muhamed Mustaque, J.

Stove Kraft Pvt. Limited

Vs.

Assistant State Tax Officer & Other

WP(C).No.: 3957 of 2019

February 11, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Multiple number of invoices mentioned in the e-way bill - Section 129 of CGST Act, 2017 - The goods along with vehicle shall be released to the petitioner on executing simple bond.

Writ petition disposed of

Petitioner is a dealer. The goods and vehicle have been detained; in the e-way bill generated, petitioner has shown three invoices. Noting that separate e-way bill will have to be generated to each of the invoices, goods have been detained. It is to be noted that, it is not a case where e-way bill does not mention all the invoices. There may be practical difficulty for the Department in tracking the invoices, when multiple number of invoices mentioned in the e-way bill generated. Anyhow, I am of the view that goods and vehicle shall be released to the petitioner on executing a bond. Though the learned Government Pleader submits that the petitioner's case will be considered by the respondent by tomorrow. Taking note of the nature of the issue, I am of the view that the goods along with vehicle shall be released to the petitioner on executing simple bond.

Sri. Aji V. Dev, Smt. O.A. Nuriya, Sri. Alan Priyadarshi Dev & Sri. M.G. Shaji, Advocates for the petitioner.

M.M. Jasmine, Government Pleader for the respondents.

:: JUDGMENT ::

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❑

(2021) 66 TLD 100

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.
Unitac Energy Solutions (I) Pvt. Ltd.
Vs.
Assistant State Tax Officer & Others
WP(C).No.: 28573 of 2019(V)
October 29, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Return defaulter - Section 129 of CGST Act, 2017 - The reason for detention was stated to be that the consignee was a return defaulter for the last five months - Detention notice quashed.

The petitioner is aggrieved by the alleged unlawful seizure and detention of a consignment of goods. The reason for detention is stated to be that the consignee, the petitioner herein, was a return defaulter for the last five months.

On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find force in the contention of the learned counsel for the petitioner that in terms of Section 129 of the CGST Act, the reason shown by the respondents in Ext. P3 detention notice is not one that can justify a detention. Accordingly, I quash Ext. P3 detention notice and direct the respondents to release the consignment covered by Ext. P3 notice to the petitioner forthwith on the petitioner producing a copy of of this judgment before the respondents. [Para 3]

Smt. Blossom Mathew, Advocate for the petitioner.
Dr. Thushara James, Government Pleader for the respondents.

:: JUDGMENT ::

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❑

(2021) 66 TLD 101

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.

Relcon Foundations (P) Ltd.

Vs.

Assistant State Tax Officer & Others

WP(C).No.: 30102 OF 2019(K)

November 8, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Non-filing of returns - Section 129 of CGST Act, 2017 - Non-filing of returns cannot be a ground for detaining the goods in terms of Section 129 similarly, the said ground cannot form the basis of notice proposing confiscation of the goods.

On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find force in the contention of the learned counsel for the petitioner that the reasons stated in Ext.P1 order cannot be a justification for detaining the goods in terms of Section 129 of the KGST Act. Similarly, the said ground cannot form the basis of Ext.P4 notice proposing confiscation of the goods detained inasmuch as the ingredients of the offence covered by Section 130 are not satisfied in the instant case. I, therefore, dispose the writ petition by quashing Exts.P1 and P4 and directing the 1st respondent to forthwith release the goods and the vehicle to the petitioner on the petitioner producing a copy of the judgment before the said respondent. I make it clear that nothing in this judgment will prevent the respondents from initiating any penal action against the goods, if warranted, by following the procedure under the GST Act. [Para]

Sri. Ramesh Cherian John, Advocate for the petitioner.
Dr. Thushara James, Government Pleader for the respondents.

:: JUDGMENT ::

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❑

(2021) 66 TLD 102

In the High Court of Allahabad
Hon'ble Saumitra Dayal Singh, J.

Patel Hardware

Vs.

Commissioner, State G.S.T. and 2 Others

Writ Tax No.: 1388 of 2018

December 10, 2018

Deposition : In favour of Petitioner

Service of order - Penalty order was served on the driver of the truck while the penalty order is directed against the owner of the goods - The Appellate Authority may condone the delay and proceed to decide the appeal as expeditiously as possible.

Writ petition allowed

The language of Section 107(1) of the Act provides for a period of limitation of three months from the date of communication of the order. Then Section 107(4) of the Act limits the period for which delay may be condoned in filing of such appeal to a period of one month and no more. [Para 7]

Keeping in mind the fact that the delay in filing the appeal may not be condoned beyond the period of one month from the expiry of period of limitation, the phrase "communicated to such person" appearing in Section 107(1) of the Act commend a construction that would imply that the order be necessarily brought to the knowledge of the person who is likely to be aggrieved. Unless such construction is offered, the right of appeal would itself be lost though a delay of more than a month would in all such cases be such as may itself not warrant such strict construction. [Para 8]

Ved Prakash Singh, Advocate for the petitioner.
C.S.C. for the respondents.

:: ORDER ::

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❑

(2021) 66 TLD 103

In the High Court of Allahabad
Hon'ble Pankaj Mithal & Ashok Kumar, J.

R.K. International

Vs.

Union of India and 3 Others

Writ Tax No.: 1411 of 2018

November 12, 2018

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Indemnity bond - Section 129 of CGST Act, 2017 - The interim order of the court dated 4-10-2018 is very clear - It only directs for furnishing security of indemnity bond of the value of the tax and penalty and therefore the Assistant Commissioner can not demand security or indemnity bond of any higher value.

Writ petition allowed

In the present case, it is the owner who has come forward for release of the goods and the vehicle and therefore in the light of the interim direction of this court, security or indemnity bond equal to the amount of the purposed tax and penalty alone as mentioned above could have been demanded by the Assistant Commissioner (Commercial Tax), instead he has unnecessarily asked for security/indemnity bond of heavy amount of Rs. 10,75,770/-.

We would like to observe that the impugned order is nothing but an act of harassment at the hands of the authorities of the Commercial Tax. Such highhandedness on part of the authorities is highly depreciated and a note of caution is sounded to the department to be careful in dealing with such matters and to follow the directions issued by the High Court in its true sense without intermedling with them.

Naveen Chandra Gupta, Advocate for the petitioner.
C.S.C., A.S.G.I., Om Prakash Srivastava for the respondents.

:: ORDER ::

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❑

(2021) 66 TLD 104 In the High Court of Kerala
Hon'ble C.K. Abdul Rehim & Mrs. Anu Sivaraman, JJ.

Smeara Enterprises

Vs.

State Tax Officer & Another

WA. No.: 2291 of 2019

November 11, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Confiscation - Section 129 of CGST Act, 2017 - No proceedings for confiscation of the goods as contemplated under section 130 can be proceeded until disposal of the statutory appeal.

Writ appeal disposed of

The provision under section 129 is clear and unambiguous that the goods under detention can be released only on compliance with the provisions of sub-section (6) of section 67 of the Act, which is made applicable with respect to the condition under section 129, by virtue of section 129(2) of the Act. The procedure for compliance of the conditions stipulated under section 67(6) is literally provided under section 140 of the Central Goods and Services Tax Rules, 2017. Therefore, unless the security as contemplated under section 129(2), read with section 67(6), is furnished with; or payment of the entire amount of tax and penalty imposed under section 3 is made, the goods are not liable to be released. Therefore the relief sought for the release of the goods, pending disposal of the appeal, cannot be entertained.

Sri. K.N. Sreekumaran, Sri. P.J. Anilkumar (A-1768) & Sri. N. Santhoshkumar, Advocates for the petitioner.
Sr. GP. Sri. Mohammed Rafiq for the respondents.

:: JUDGMENT ::

[*Full text of the Judgment not produced here. For full text of the Judgment login to* ***www.dineshgangrade.com*****]**

❑

(2021) 66 TLD 105

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.

Devices Distributors

Vs.

Assistant State Tax Officer & Others

W.P(C).No.: 14969 of 2020

July 23, 2020

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Invoices did not bear continuous numbers - Doubt/Suspicion - Section 129 of CGST Act, 2017 - The entertainment of doubt by the authority cannot be a justification for detaining the goods when transportation accompanied tax invoices as also e-way bills.

Writ petition allowed

On a consideration of the rival submissions, I find that the power to detain a vehicle in the course of transit is specified in section 129 of the GST Act, and applies inter alia to cases where any person transports goods in contravention of provisions of the Act or Rules. As per the Act and Rules, a person transporting goods is obliged to carry the documents that are mentioned in section 68 of the GST Act, read with rule 138 of the GST Rules. Accordingly such a person is required to carry a copy of the tax invoice, together with a copy of the e-way bill, while transporting the goods either inter-State or intra-State. The form of the invoice is specified in section 31 of the CGST Act read with rule 46 of the GST Rules. In the instant case, it is not in dispute that e-way bills did accompany the goods. It is also not in dispute that the transportation was covered by tax invoices. The objection of the respondents is only that the invoices did not bear continuous numbers and hence they suspect that the invoices bearing serial numbers that fell between the numbers on the invoices produced at the time of transportation, could have been used for transportation of other goods that had not been brought to the notice of the Department. [Para 4]

In my view, the entertainment of such a doubt by the authority cannot be a justification for detaining the goods in question, especially when they were admittedly accompanied by tax invoices as also e-way

bills that clearly indicated the particulars that were required by rule 46 of the GST Rules. It is also relevant to note that the doubt entertained by the respondents were, at any rate, in respect of goods that may have been transported under cover of the invoices that numerically fell between the numbers shown in the invoices that were carried along with the goods, and in that sense, pertained to goods other than those that were actually detained. The detention in the instant case cannot be justified under section 129 of the GST Act. [Para 5]

I therefore allow this writ petition and direct the respondents to forthwith release the goods detained by Ext.P4 notice, on the petitioner producing a copy of this judgment before them. The Government Pleader shall communicate the gist of the directions in this judgment to the respondents for enabling an expeditious release of the vehicle and the goods. [Para 5]

Sri. Joseph Markose (SR.), Sri. V. Abraham Markos, Sri. Mathews K.Uthuppachan, Sri. Abraham Joseph Markos, Sri. Isaac Thomas, Sri. P.G. Chandapillai Abraham, Shri.Alexander Joseph Markos & Shri. Sharad Joseph Kodanthara, Advocates for the petitioner.
Smt. Thushara James, Govt. Pleader for the respondents.

:: JUDGMENT ::

The petitioner, who is a distributor of home appliances of various brands, has approached this Court aggrieved by Ext.P4 detention notice under the GST Act that was served on him while goods were being transported from Kottayam to Thiruvananthapuram at his instance. A perusal of Ext.P4 detention notice indicates that the objection of the respondent is essentially with regard to the invoices that accompanied the transportation of the goods. It was found that the tax invoices furnished, although carried serial numbers, they were not consecutive for the three invoices. In particular, it was noticed that while one invoice carried the serial number as 46000152. The other two invoices carried the serial numbers 53000029 and 53000030. The detaining authority, therefore, suspected that the invoices carrying the serial numbers in between the two sets of invoices indicated above might have been used for transportation of other goods that were not brought to the notice of the Department. Reference is also made in the detention notice to the 'Revised Invoice Rules, 2017, which, according to the learned Senior Counsel for the petitioner, has no relevance to the facts in the instant case.

2. I have heard the learned counsel for the petitioner and the Government Pleader for the respondents.

3. Learned Government Pleader would refer to Rule 46(1)(b) of the GST Rules that specifies the requirement of a tax invoice containing a consecutive serial number not exceeding 16 characters in one or multiple series, containing alphabets or numerals or specific characters respectively, and any combination thereof, to point out that in the instant case, the tax invoices did not contain a combination of alphabets, numerals, and specific characters. It is contended, therefore, that insofar as the tax invoices that accompanied the goods did not conform to the requirement of R.46, the detention could not be seen as unjustified.

4. On a consideration of the rival submissions, I find that the power to detain a vehicle in the course of transit is specified in Section 129 of the GST Act, and applies inter alia to cases where any person transports goods in contravention of provisions of the Act or Rules. As per the Act and Rules, a person transporting goods is obliged to carry the documents that are mentioned in Section 68 of the GST Act, read with Rule 138 of the GST Rules. Accordingly such a person is required to carry a copy of the tax invoice, together with a copy of the e-way bill, while transporting the goods either interstate or intrastate. The form of the invoice is specified in Section 31 of the CGST Act read with Rule 46 of the GST Rules. In the instant case, it is not in dispute that e-way bills did accompany the goods. It is also not in dispute that the transportation was covered by tax invoices. The objection of the respondents is only that the invoices did not bear continuous numbers and hence they suspect that the invoices bearing serial numbers that fell between the numbers on the invoices produced at the time of transportation, could have been used for transportation of other goods that had not been brought to the notice of the Department.

5. In my view, the entertainment of such a doubt by the authority cannot be a justification for detaining the goods in question, especially when they were admittedly accompanied by tax invoices as also e-way bills that clearly indicated the particulars that were required by Rule 46 of the GST Rules. It is also relevant to note that the doubt entertained by the respondents were, at any rate, in respect of goods that may have been transported under cover of the invoices that numerically fell between the numbers shown in the invoices that were carried along with the goods, and in that sense, pertained to goods other than those that were actually detained. The detention in the instant case

cannot be justified under Section 129 of the GST Act.

I therefore allow this writ petition and direct the respondents to forthwith release the goods detained by Ext.P4 notice, on the petitioner producing a copy of this judgment before them. The Government Pleader shall communicate the gist of the directions in this judgment to the respondents for enabling an expeditious release of the vehicle and the goods.

❑

(2021) 66 TLD 108 In the High Court of Telangana
Hon'ble M.S. Ramachandra Rao & T. Amarnath Goud, JJ.

Same Deutzfahr India P. Ltd.

Vs.

State of Telangana

W.P. No.: 13392/2020

September 23, 2020

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Stock transfer - Section 129 of CGST Act, 2017 - There was no occasion for the respondent to collect tax and penalty from the petitioner on the pretext that there is illegality in the transport of goods as it would merely amount to stock transfer and there is no element of sale of goods or services in it.

Writ petition allowed

Once it is clear that petitioner has additional place of business in the State of Telangana in Bongulur village, Ibrahimpatnam Mandal and the goods were being transported to that address from its Corporate office at Ranipet, Tamil Nadu State, it cannot be said that the petitioner was indulging in any illegal activity when the tax invoice shows that the supplier is the petitioner's Corporate office in Ranipet, Tamil Nadu State and that it was shipped to its Depot in Bongulur village in Ibrahimpatnam Mandal.The payment by the petitioner of the tax and penalty demanded by 3rd respondent was obviously under economic duress apprehending that the 3rd respondent was likely to confiscate the goods and arrest its officials under the Act. [Para 14]

In any event, now that 3rd respondent is made aware that petitioner

has the principal Office at Tamil Nadu and principal place of business at Hayatnagar and additional place of business at Bongulur village, Ibrahimpatnam Mandal, the tax and penalty collected from the petitioner cannot be allowed to be retained by respondents. [Para 16]

Accordingly, the Writ Petition is allowed; and respondents are directed to refund within four (04) weeks the sum of Rs.6,70,448/- collected towards CGST and State GST and penalty from the petitioner with interest @ 9%a. from 05-03-2020 till date of payment to petitioner by the respondents. The 3rd respondent shall also pay costs of Rs.1,500/- (Rupees One Thousand and Five Hundred only) to the petitioner. [Para 17]

Vedula Srinivas, Advocate for the petitioner.
G.P. for Commercial Tax TG.

:: ORDER ::

The Order of the Court was made by **M.S. RAMACHANDRA RAO, J. :**

[*Full text of the Order not produced here. For full text of the Order login to* ***www.dineshgangrade.com*****]**

❑

(2021) 66 TLD 109

In the High Court of Allahabad
Hon'ble Pankaj Bhatia, J.

Ranchi Carrying Corporation

Vs.

State Of U.P. And 2 Others

Writ Tax No. - 657 of 2020

December 7, 2020

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Service of Notice - Section 129 of CGST Act, 2017 - Service of notice on the driver or a fixation of the copy of the order on the truck in question is none of the methods prescribed under Section 169 GST Act.

The counsel for the petitioner argues that none of the notices as are required to be served under Section 129 of the GST Act have been

served upon the petitioner, as such the proceedings initiated and concluded against the petitioner are ex-parte proceeding.

The service on the driver or a fixation of the copy of the order on the truck in question is none of the methods prescribed under Section 169 GST Act and thus it is clear that the orders were never served and the proceedings were held ex-parte.

A perusal of the impugned order shows that at no point of time, was the petitioner granted an opportunity of submitting his reply and the grounds taken by the petitioner before the Appellate Authority were not considered recording them to be an afterthought. Thus, on a plain reading, a failure of natural justice has been occasioned to the petitioner.

Aditya Pandey for the petitioner.
C.S.C. for the respondent.

:: ORDER ::

The instructions are taken on record.

The present petition has been filed for the following reliefs:-

"I. Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 31-8-2020 passed by the respondent no.2 in Appeal No. KNP3/72/2020 Assessment Year 2019-20 under the provisions of section 130 of U.P. Goods and Services Tax Act in relation to the vehicle.

II. Issue a suitable writ, order or direction in the nature of certiorari quashing the order dated 23-1-2020 Form GST MOV-09 related to vehicle.

III. Issue a suitable writ, order or direction in the nature of certiorari quashing the entire proceedings initiated by the respondent authorities in relation to vehicle under section 129 and 130 against the petitioner as the same has been initiated in contravention of the provisions of the integrated Goods and Services Tax Act/Rules and in contravention of the circulars issued by the Central Government which are binding on the respondents."

The counsel for the petitioner argues that none of the notices as are required to be served under Section 129 of the GST Act have been served upon the petitioner, as such the proceedings initiated and concluded against the petitioner are ex-parte proceeding.

On the basis of the said averments, this Court vide order dated 26-11-2020 had granted the Standing Counsel time to obtain instructions with regard to the averments on account of nonservice of the notices and no opportunity of hearing.

The Standing Counsel Sri Jagdish Mishra, on the basis of instructions, states that the order dated 6-1-2020 was got served on the driver of the truck in question and secondly the order MOV-06 and MOV-07 was also served on the driver of the truck and with regard to the order dated 23-1-2020, MOV-09, the same was neither served on the driver nor on the owner and was served through a fixation on the truck in question.

Counsel for the petitioner argues that Section 169 of the GST Act provides for the manner of service of notice in certain circumstances, the same is quoted hereinbelow:-

"(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in

some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).”

He thus submits that the service on the driver or a fixation of the copy of the order on the truck in question is none of the methods prescribed under Section 169 GST Act and thus it is clear that the orders were never served and the proceedings were held ex-parte.

A perusal of the provisions of Section 169 makes it clear that a manner is specifically provided for service of notices. It is well settled that whenever a manner is prescribed, the thing should be done in that manner alone.

In respect of the order passed by the Appellate Authority dated 31-8-2020, the counsel for the petitioner submits that at the time of the filing of the appeal, the petitioner had submitted the requisite documents justifying his stand, however, the Appellate Authority held that as no reply was filed to the notices sent, the grounds taken in the appeal appear to be afterthought and thus the appeal was also dismissed.

A perusal of the impugned order shows that at no point of time, was the petitioner granted an opportunity of submitting his reply and the grounds taken by the petitioner before the Appellate Authority were not considered recording them to be an afterthought. Thus, on a plain reading, a failure of natural justice has been occasioned to the petitioner.

Accordingly, the order dated 31-8-2020 and the order dated 23-1-2020 are set aside with a liberty to the respondents to conclude proceedings against the petitioner, in accordance with law.

As the notices have now been served upon the petitioner, the petitioner shall file a fresh reply to the same within a period of three weeks and the respondents shall pass fresh orders, as expeditiously as possible, preferably within a period of four weeks from the date of filing of the objections, in accordance with law.

The petition is disposed off.

❑

(2021) 66 TLD 113

In the High Court of Allahabad
Hon'ble Anil Kumar & Saurabh Lavania, JJ.

Swastik Traders

Vs.

State of U.P. & Ors.

Misc. Bench No.: 19798 of 2019

July 22 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Natural justice - Section 129 of CGST Act, 2017 - The judgment and order has been passed without hearing to the petitioner, as such, the same is in violation of principles of natural justice - The matter is remanded back to the Appellate Authority.

Writ petition allowed

Further, Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural justice are "basic values" which a man has cherished throughout the ages. They are embedded in our constitutional framework and their pristine glory and primacy cannot be allowed to be submerged by exigencies of particular situations or cases. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness. [Para 17]

The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Its essence is good conscience in a given situation; nothing more-but nothing less. [Para 18]

Cases referred :

* Bishambhar Nath Kohli Vs. State of U.P., AIR 1955 SC 65

Himanshu Suryavanshi & Amithabh Agrawal for the petitioner.

C.S.C. for the respondent.

:: ORDER ::

Heard Shri Amitabh Agarwal, learned counsel for the petitioner and learned Standing Counsel.

Facts in brief of the present case are that the petitioner is a registered dealer having GSTIN No.09ABYFS0479C1ZN under the relevant provisions of Goods and Services Tax Act, 2017 and deals in purchase and sale of Aluminium Section, Aluminium Sheets and their related hardware goods.

During the year 2017-18, one of the consignment of the sale made by the petitioner vide Tax Invoice No.GR-17-18/224 dated 16-12-2017 disclosing sale of Aluminium Section weighing 4013.16 Kgs. was being transported to the purchasing customer i.e. Maa Kripa Plywood & Hardware of Faizabad having GSTIN No.09AUXPM8745R1Z2 through Truck No.UP-70 DT/5611. The said truck was intercepted by Mobile Squad Officer vide Interception Memo No.13 dated 17-12-2017.

The Assistant Commissioner, State Tax, Mobile Squad Unit, Faizabad was not satisfied with the explanation made by the petitioner and goods as well as vehicle were seized under Section 129 (1) of the UPGST Act vide Seizure Memo No.14 dated 19-12-2017 merely on the ground that Tax Invoice discloses the sale of Aluminium Section only whereas Aluminium Section and Aluminium Composite Sheets were found in the vehicle in question.

Apart from seizing the goods and vehicle, Mobile Squad Officer issued a show cause notice being No.014 dated 19-12-2017 under Section 129 (3) of UPGST Act proposing to levy demand tax @ 18% on the total valuation of goods of Rs.6,66,665/- i.e. amounting to Rs.1,20,000/- and equivalent amount of penalty of Rs.1,20,000/- (cumulatively Rs.2,40,000/-) which was deposited by the petitioner by the Demand Draft.

The petitioner was not satisfied with the levy of demand of tax and penalty to the tune of Rs.2,40,000/- as the relevant documents were duly produced at the time of interception of the vehicle by the Mobile Squad Officer. As such, the petitioner preferred First Appeal before the Additional Commissioner, Grade-II (Appeals) Ist, Commercial Tax, Ayodhya. By order dated 12-3-2019 served on 18-4-2019, the appeal was dismissed and the order dated 19-12-2017 passed under Section 129 (3) of the UPGST Act

was upheld.

From the perusal of the record, the position which emerges is that the judgment and order dated 12-3-2019 has been passed without hearing to the petitioner, as such, the same is in violation of principles of natural justice.

Natural justice is an important concept in administrative law. In the words of Megarry J it is "justice that is simple and elementary, as distinct from justice that is complex, sophisticated and technical". The principles of natural justice or fundamental rules of procedure for administrative action are neither fixed nor prescribed in any code. They are better known than described and easier proclaimed than defined.

Natural justice is another name for common-sense justice. Rules of natural justice are not codified cannone. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

The expressions "natural justice" and "Legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defense.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. There principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable

opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed. against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". the classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principles was thus stated:

"Even God himself did not pass sentence upon Adam before he was called upon to make his defense. 'Adam'(says God), 'where art thou? hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat ?"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

It is not possible to define precisely and scientifically the expression "natural justice". Though highly attractive and potential, it is a vague and ambiguous concept and, having been criticised as "sadly lacking in precision, has been consigned more than once to the lumberroom. It is a confused and unwarranted concept and encroaches on the field of ethics. Though eminent judges have at times used the phrase "the principles of natural justice", even now the concept differs widely in countries usually described as civilised.

It is true that the concept of natural justice is not very clear and therefore, it is not possible to define it; yet the principles of natural justice are accepted and enforced. In reply to the aforesaid criticism against natural justice, Lord Reid in the historical decision of Ridge V. Baldwin (1963) 2 All ER 66 (HL) observed:

"In Modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist……"

Further, Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural

justice are "basic values" which a man has cherished throughout the ages. They are embedded in our constitutional framework and their pristine glory and primacy cannot be allowed to be submerged by exigencies of particular situations or cases. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness.

The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Its essence is good conscience in a given situation; nothing more-but nothing less.

As Lord Denning in the case of Kandaa v. Govt. of Malaya, 1962 AC 322 observed that *"if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused person to know the case which is made against him. .He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them."*

Hon'ble the Apex Court in the case of **Bishambhar Nath Kohli Vs. State of U.P., AIR 1955 SC 65** held that *"in revision proceedings, the Custodian General accepted new evidence produced by one party, but no opportunity was given to the other side to meet with the same. The Supreme Court held that the principles of natural justice were violated."*

For the foregoing reasons, writ petition is ***allowed*** and the impugned order dated 12-3-2019 passed by opposite party no.3 is set aside. The matter is remanded back to the Appellate Authority to decide the same within a period of eight weeks from the date of receiving a certified copy of this order. The petitioner shall not take any unnecessary adjournment before the Appellate Authority.

❑

(2021) 66 TLD 118 In the High Court of Kerala
Hon'ble C.K. Abdul Rehim & R. Narayana Pisharadi, JJ.
VE Commercial Vehcles Ltd.
Vs.
Union of India & Others
W.A. No.: 1703 of 2019
August 2, 2019

Deposition : In favour of Petitioner

Detention, seizure and release of goods and conveyances in transit - Enchashment of bank Guarantee - Section 129 of CGST Act, 2017 - The High Court opined that the interest of justice on equitable basis can be achieved by issuing a direction to the respondents not to encash the bank Guarantee furnished by the appellant, if ultimately the adjudication goes against them and if penalty is imposed in such proceedings, until the expiry of 14 days from the date of service of order on such adjudication.

However, we make it clear that, the appellant will be at liberty to take appropriate challenges against the order imposing penalty, if any passed against them, either in the writ petition or in any other appropriate proceedings. The appellant will also be entitled to seek appropriate interim relief in any such proceedings, if the order imposing penalty is challenged, as mentioned above, for restraining encashment of the bank Guarantee, pending such challenge. [Para 5]

We are of the considered opinion that the interest of justice on equitable basis can be achieved by issuing a direction to the respondents not to encash the bank Guarantee furnished by the appellant, if ultimately the adjudication goes against them and if penalty is imposed in such proceedings, until the expiry of 14 days from the date of service of order on such adjudication. [Para 6]

Sri. A. Kumar, Smt. G. Mini (1748), Sri. Ajay V. Anand, Sri. P.J. Anilkumar & Sri. P.S. Sree Prasad for the petitioner.
Sri. Mohammed Rafiq, Sr. G.P. & Sri. R. Prasanth Kumar, C.G.C. for the respondent.

:: JUDGMENT ::

The Judgment of the Court was delivered by **ABDUL REHIM, J. :**

The petitioner in W.P (C) No.14719/2019 is challenging the interim order passed by the Single Judge, dated 29th May, 2019. The respondents herein are the respondents in the writ petition.

2. The appellant challenged validity of Section 129 of the Central Goods and Services Tax Act, 2017 (CGST Act for short), to the extent it provides imposition of tax and penalty in the manner as set out therein, in cases where there are only mere technical breaches or contraventions of the provisions of the Act and where there is no evasion of tax, the above said provision was challenged as illegal and violative of Article 14 and 300 A of the Constitution of India. Inter alia, the appellant challenged Ext.P11 notice issued requiring them to appear for an adjudication proceedings initiated under Section 129 (1) of the CGST Act based on interception of goods transported and Ext.P4 notice issued. Evidently, the appellant sought for an interim relief in the writ petition to direct the respondents not to encash the Bank Guarantee furnished by the petitioner at the time of release of the intercepted goods. The learned Single Judge had passed the impugned order by observing that, the appellant can work out their remedies under law against any order which may be passed against pursuant to Ext.P11 and will be entitled to obtain orders from the appropriate forum. It was observed that, the appellant had already obtained release of the detained goods by complying with the requirement contemplated under Section 129 of the CGST Act. Since the appellant had already chosen to get release of the detained goods by complying with that procedure, granting of any interim order as prayed for would amount to deviate from the order of release made under Ext.P8, which is in compliance with Section 129. It was found that, even if an order is passed on completion of the adjudication, the appellant has got remedy under the statute. On the other hand, the learned Judge observed that, putting any restrainment on encashment of Bank Guarantee may result in deviating the conditions under which the release was already ordered.

3. Assailing the impugned order, learned counsel for the appellant contended that, encashment of the Bank Guarantee on the basis of order if any passed to the extent of imposing penalty, will in turn defeat the purpose of the writ petition itself. Since the power conferred by virtue of Section 129 to impose penalty for technical violation itself is under challenge in the writ petition, it

was only just and proper in the interest of justice that the Single Judge ought to have restrained the respondents from encashing the Bank Guarantee, till the writ petition is disposed of. It is pointed out that in an identical case another learned Judge of this court had passed Ext.P12 order restraining encashment of the Bank Guarantee till the disposal of the writ petition. According to learned counsel, it was improper on the part of the learned Single Judge in not following the order passed in a similar case.

4. While appreciating the above said contentions, we take note of the fact that the writ petition was filed at a stage after release of the goods on the appellant furnishing the Bank Guarantee with respect to the security deposit demanded through Ext.P4 notice. As observed by the learned Single Judge, release of the goods was effected on the basis of the Bank Guarantee furnished, in compliance with the requirement under Section 129 of the CGST Act. Now the adjudication proceedings is pursued. The interim relief sought for in the writ petition is to restrain encashment of the Bank Guarantee. If it is granted, it will amount to an order in anticipation that the adjudication will culminate in imposition of penalty. If such an anticipatory restrainment is put on the respondents, as observed by the learned Single Judge, that will be in a manner defeating the interest of the respondents who ordered release of the goods by securing the probable amount which may be due after the adjudication, in accordance with the provisions contained in Section 129 of the Act. Therefore we do not find any illegality, error or impropriety in the judgment of the learned Single Judge.

5. However, we make it clear that, the appellant will be at liberty to take appropriate challenges against the order imposing penalty, if any passed against them, either in the writ petition or in any other appropriate proceedings. The appellant will also be entitled to seek appropriate interim relief in any such proceedings, if the order imposing penalty is challenged as mentioned above, for restraining encashment of the Bank Guarantee, pending such challenge.

6. We are of the considered opinion that the interest of justice on equitable basis can be achieved by issuing a direction to the respondents not to encash the Bank Guarantee furnished by the appellant, if ultimately the adjudication goes against them and if penalty is imposed in such proceedings, until the expiry of 14 days from the date of service of order on such adjudication.

❑

SHABBIR HASHMI ADVOCATE

RATE OF PETROL AND DIESEL AT A GLANCE

Vallue Added Tax

Tax Sec.9AA

Period 01-04-2017 to 31-03-2018

Commodity	Period	Rate	Period	Rate per lt.
Diesel	01-04-17/13-10-17 F-A-3-78-2014-1V(64)19-12-14	27%	01-04-17/13-10-17 F-A-3-60-2015-1V(11) 22-01-2016	1.5
	14-10-17/31-03-18 A-3-60-2015-1V(119)13-10-17	22%	14-10-17/31-03-18 A-3-60-2015-1V(119A)13-10-17	0
Petrol	01-04-17/13-10-17 F-A3-78-2014-1-V(64)19-12-14	31%	01-04-17/31-03-18 A-3-60-2015-19V(39)16-08-16	4
	14-10-17/31-03-18 A-3-60-2015-1V(119)13-10-17	28%		

Period 01-04-2018 to 31-03-2019

Diesel	01-04-18/04-10-18 A-3-60-2015-1V(119)13-10-17	22%	01-04-18/31-03-19 A-3-60-2015-1V(119A)13-10-17	0
	05-10-18/31-03-19 A-3-60-20151-V(93)04-10-18	18%		
Petrol	01-04-18/31-03-19 A-3-60-2015-1V(119)13-10-17	28%	01-04-18/04-10-18 A-3-60-2015-19V(39)16-08-16	4
			05-10-18/31-03-19 A-3-60-2015-1-V(94)04-10-18	1.5

Period 01-04-2019 to 31-03-2020

Diesel	01-04-19/22-09-19 A-3-60-20151-V(93)04-10-18	18%	01-04-19/05-07-19 A-3-60-2015-1V(119A)13-10-17	0
	23-09-19/31-03-20 A-3-58-2015-1V(62)19-09-19	23%	06-07-19/31-03-20 A-3-60-2015-1V(55)05-07-19	2
Petrol	01-04-19/22-09-19 A-3-60-2015-1V(119)13-10-17	28%	01-04-19/05-07-19 A-3-60-2015-1-V(94)04-10-18	1.5
	23-09-19/31-03-20 A-3-58-2015-1V(62)19-09-19	33%	06-07-19/31-03-20 A-3-60-2015-1V(55)05-07-19	3.5

Period 01-04-2020 TO----------

Diesel	01-04-20 TO---- A-3-58-2015-1V(62)19-09-19	23%	01-04-20/12-06-20 A-3-60-2015-1V(55)05-07-19	2
			13-06-20/----- A-3-60-2015-1-V(41)12-06-20	3
Petrol	01-04-20 TO ----- A-3-58-2015-1V(62)19-09-19	33%	01-04-20/12-06-20 A-3-60-2015-1V(55)05-07-19	3.5
			13-06-20/----- A-3-60-2015-1-V(41)12-06-20	4.5

POSTAL REGN. NO. MP/IDC/412/2021-2023
REGN.NO. 47503/87/ OF REGISTRAR OF NEWS PAPER FOR INDIA.

Vol. 66 Part-2 February-2021 Date of Publication & Posting 15-2-2021

टैक्स बार एसोसिएशन, कोरबा की नवीन कार्यकारिणी का सर्वसम्मति से मनोनयन

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सभी को बहुत बहुत बधाईयां, हार्दिक शुभकामनाएं

TAX LAW DECISIONS -Published and Printed by Smt. Jaishree Gangrade. F-312, Sewa Sardar Nagar, Indore-452001, Printed at Jai Shree Offset Printers Company, Indore. Guardian **:** R.P. Tripathi

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