

Reserved on 5.5.2022

Delivered on 17.5.2022

Court No. - 79

Case :- WRIT TAX No. - 464 of 2021

Petitioner :- M/s Sleeveco Traders through Its Proprietor Shri Alok Gupta

Respondent :- Additional Commissioner Grade- 2 (Appeal) Fifth, Commercial Tax and another

Counsel for Petitioner :- Mr. Aditya Pandey, Advocate

Counsel for Respondent :- Mr. A.C. Tripathi, Standing Counsel

Hon'ble Piyush Agrawal,J.

1. The present writ petition has been filed against the order dated 5.2.2021 passed by respondent no. 1 by which the order of detention was affirmed.
2. Brief facts of the case are that the petitioner is a registered proprietorship concerned and engaged in the business of purchase and sale of PVC Resin. During course of business a purchase order was received from K.R. Industries, Sandila, U.P. for supply of PVC Resin. In turn, the petitioner placed its purchase order to SAFE Climber, Thane, Maharashtra, who send the goods through Invoice No. SC/1994 19-20 dated 31.1.2020, mentioning the name of the petitioner under the head of buyer and consigned to K.R. Industries, Sandila (U.P.) on the tax invoice. Further the e-way bill was also generated where the sender's name has been mentioned as SAFE Climber and name of the purchaser i.e. petitioner has been mentioned and ship to K.R. Industries (Sandila). The said e-way bill was valid for a period up to 15.2.2020 along with bill built by New Sagar Indore Transport Corporation, the contract was also accompanying. The said consignment was onward journey from Maharashtra to Sandila, (U.P.) through Vehicle no. MP 09 HH9980. After reaching the said goods in the State of U.P., the same was intercepted by Mobile Squad at Kanpur and detained the vehicle on 7.2.2020. On detention of goods, certain documents were shown i.e. tax invoice of the petitioner, built and e-way bill but after the detention, show cause notice was issued under Section 129 (3) of

the Central G.S.T. Act for determining the tax and penalty in respect of release of the goods and vehicle in Form GST-MOV-07 dated 7.2.2020. The petitioner submitted reply to the show cause notice but the respondents without considering the same, passed the order dated 8.2.2020 demanding the petitioner to deposit the tax and penalty as determined. The petitioner deposited a sum of Rs.76,6656/- for release of the goods as well as the vehicle. Against the order of tax and penalty, the petitioner preferred an appeal, which was dismissed by the impugned order dated 5.2.2020. Hence the present petition.

3. Learned counsel for the petitioner submitted that in pursuance of the purchase order being received from K.R. Industries, Sandila, (U.P.) for purchase of PVC Resign, in turn, the petitioner placed its purchase order to SAFE Climber, Thane, Maharastra for supply of the said goods. The petitioner directed the SAFE Climber to directly ship the goods to the purchaser i.e. K.R. Industries, Sandila, (U.P.). Accordingly, the tax invoice was received, wherein the name of the petitioner was shown under the head of buyer and the consignee was shows as K.R. Industries, Sandila on the tax invoice. Further it is submitted that while generating the e-way bill by the Maharastra party, it has been specifically mentioned the name of the petitioner, consignment was shipped to K.R. Industries, Sandila, UP. The goods were also accompanying with builty of New Sagar Indore Transport Corporation and also mentioned in the goods to be consigned to K.R. Industries, Sandila. On reaching at Kanpur, the petitioner has only handed over to its Invoice no. 636 dated 31.1.2020 without taking the delivery of goods. He further submits that e-way bill generated by the seller at Maharastra was valid up to 15.2.2020, therefore, for the same transaction two e-way bills cannot be generated because the goods was in transit and the delivery was not taken. He further submitted that there was no contravention of the provisions of the Act as the goods in question were duly accompanying the requisite documents as required under the Act. He further submitted that the respondents were not justified in detaining the goods and demanding the amount of tax as well as penalty for release of the goods and vehicle. He further submitted that the appellate authority has erred in not considering the case in its true perspective and in the absence of any *mens rea*

for evading the payment of tax, the action of the respondents is illegal. The order passed by the authorities below cannot be sustained. He prays for quashing the impugned order.

4. Per contra, learned Standing Counsel supports the order of the authorities below. He submitted that as per the provisions any amount more than Rs. 50,000/- as mentioned in the tax invoice requires for generation of e-way bill. The tax invoice raised by the petitioner bearing tax Invoice no. 636 dated 31.1.2020 was not supported by e-way bill. Therefore, the authorities were not justified for demanding the tax as well as penalty thereon and the appellate authority was however justified in rejecting the appeal of the petitioner. He prays for dismissing the present petition.

5. After hearing learned counsel for the parties, the Court has perused the records.

6. The issue involved in the present writ petition cannot be decided without referring to the relevant provisions i.e. Sections 68, 129 (3), 130 Central Goods and Service Tax Act 2017 as well as Rules 130 and 138 A of Central Goods and Service Tax Rules, 2017. The relevant Sections as well as Rules are quoted hereunder:-

Central Goods and Service Tax Act 2017

Section 68: Inspection of goods in movement.

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Section 129 Detention, seizure and release of goods and conveyances in transit.

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,--

(a) on payment of the applicable tax and penalty equal to one 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 thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon 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 tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the 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 [fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided 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 seven days may be reduced by the proper officer.

Section 130. Confiscation of goods or conveyances and levy of penalty.

(1) Notwithstanding anything contained in this Act, if any person

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) *The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.*

(7) *The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.*

Central Goods and Service Tax Rules, 2017 :-

Rule 138 – Information to be furnished prior to commencement of movement of goods and generation of e-way bill.

(1) *Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—*

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

*shall, before commencement of such movement, furnish information relating to the said goods as specified in **Part A of FORM GST EWB-01**, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:*

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1.— For the purposes of this rule, the expression “handicraft goods” has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 32/2017-Central Tax dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1158 (E) dated the 15th September, 2017 as amended from time to time.

Explanation 1.— For the purposes of this rule, the expression —handicraft goods‡ has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 56/2018-Central Tax, dated the 23rd October, 2018, published in the Gazette of

India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E), dated the 23rd October, 2018 as amended from time to time.

Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

*(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill in **FORM GST EWB-01** electronically on the common portal after furnishing information in **Part B** of **FORM GST EWB-01**.*

*(2A) Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in **Part B** of **FORM GST EWB 01**:*

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

*(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in **Part A** of **FORM GST EWB-01**:*

Provided that the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

*Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in **FORM GST EWB-01** on the common portal in the manner specified in this rule:*

*Provided also that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in **Part B** of **FORM GST EWB-01**.*

Explanation 1.—For the purposes of this sub-rule, where the goods are

supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

*Explanation 2.-The e-way bill shall not be valid for movement of goods by road unless the information in **Part-B of FORM GST EWB-01** has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).*

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

*(5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in **Part A** of the **FORM GST EWB-01**, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in **Part B of FORM GST EWB-01**:*

Provided that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.

*(5A) The consignor or the recipient, who has furnished the information in **Part A** of **FORM GST EWB-01**, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in **Part B** of **FORM GST EWB-01** for further movement of the consignment:*

*Provided that after the details of the conveyance have been updated by the transporter in **Part B** of **FORM GST EWB-01**, the consignor or recipient, as the case may be, who has furnished the information in **Part A** of **FORM GST EWB-01** shall not be allowed to assign the e-way bill number to another transporter.*

*(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in **FORM GST EWB-02** maybe generated by him on the said common portal prior to the movement of goods.*

*(7) Where the consignor or the consignee has not generated the e-way bill in **FORM GST EWB-01** and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in **FORM GST EWB-01** on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in **FORM GST EWB-02** on the common*

portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in **Part A** of **FORM GST EWB-01** may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in **Part A** of **FORM GST EWB-01** shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in **FORM GSTR-1**:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in **FORM GST EWB-01**, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within twenty four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of **Part B** of **FORM GST EWB-01**.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

Sl. No.	Distance	Validity period
(1)	(2)	(3)
1	Upto 100 km.	One day in cases other than Over Dimensional Cargo.
2	For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
3	Upto 20 km.	One day in case of Over Dimensional Cargo
4	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

Provided that the Commissioner may, on the recommendations of the

Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

*Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in **Part B of FORM GST EWB-01**, if required.*

Explanation 1.— For the purposes of this rule, the “relevant date” shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2.— For the purposes of this rule, the expression “Over Dimensional Cargo” shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

(11) The details of the e-way bill generated under this rule shall be made available to the-

*(a) supplier, if registered, where the information in **Part A of FORM GST EWB-01** has been furnished by the recipient or the transporter; or*

*(b) recipient, if registered, where the information in **Part A of FORM GST EWB-01** has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.*

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

(a) where the goods being transported are specified in Annexure;

(b) where the goods are being transported by a non-motorised conveyance;

- (c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;*
- (d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;*
- (e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;*
- (f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;*
- (g) where the supply of goods being transported is treated as no supply under Schedule III of the Act;*
- (h) where the goods are being transported—*
 - (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or*
 - (ii) under customs supervision or under customs seal;*
- (i) where the goods being transported are transit cargo from or to Nepal or Bhutan;*
- (j) where the goods being transported are exempt from tax under notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 679(E) dated the 28th June, 2017 as amended from time to time and notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1181(E) dated the 21st September, 2017 as amended from time to time;*
- (k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;*
- (l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;*
- (m) where empty cargo containers are being transported; and*

- (n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.
- (o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.

Explanation.- The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

Sl. No.	Description of Goods
(1)	(2)
1	Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
2	Kerosene oil sold under PDS
3	Postal baggage transported by Department of Posts
4	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
5	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
6	Currency
7	Used personal and household effects
8	Coral, unworked (0508) and worked coral (9601)

Rule 138A – Documents and devices to be carried by a person- in-charge of a conveyance

- (1) The person in charge of a conveyance shall carry—
- (a) the invoice or bill of supply or delivery challan, as the case may be; and
- (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule

shall apply in case of movement of goods by rail or by air or vessel.

*Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in **Part A of FORM GST EWB-01***

*(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in **FORM GST INV-1** and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.*

2“(2) In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice”.

*(3) Where the registered person uploads the invoice under sub-rule (2), the information in **Part A of FORM GST EWB-01** shall be auto-populated by the common portal on the basis of the information furnished in **FORM GST INV-1**.*

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply.”;

7. Section 68 empowers the competent officer to inspect any conveyance carrying consignment of goods and verify any such documents as may be prescribed where the competent officer intercept the said conveyance. He may require the person in charge of the said conveyance to produce such document prescribed under the said Act for verification and such person shall be liable to produce the document and also allow to inspect the goods.

8. Section 129 provides that any person transports any goods while they are in transit in contravention of the provisions of the Act or Rules made

thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure shall be released on payment of applicable tax and penalty equal to one hundred percent of the tax payable on such goods. Further 129 (3) provides that proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c). Sub-section 6 provides where the 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 [fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130. Further Sub-section 5 provides on payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

9. Section 130 provides notwithstanding anything contained in this Act, if any person receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax then such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

10. Rule 138 provides that Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal.

11. Rule 138 A provides certain documents and devices to be carried by a person- in-charge of a conveyance such as the invoice or bill of supply or delivery challan, as the case may be and a copy of the e-way bill in physical form or the e-way bill number in electronic form.

12. Admittedly, the petitioner on receipt of the order from K.R. Industries,

Sandila, U.P., placed a purchase order to Maharashtra party, namely SAFE Climber for delivery of PVC Resin, directly to its purchaser namely K.R. Industries, Sandila, UP. While the goods was in transit along with invoice given by the seller of the petitioner namely SAFE Climber, it also issued tax invoice and charged I.G.S.T. and also generated e-way bill. In the e-way bill, the name of the petitioner was specifically mentioned and it further provided that the goods to be shifted to K.R. Industries, Sandila U.P. When the goods was in transit and entered in State of U.P. and reached at Kanpur without taking delivery of the goods, the petitioner handed over the tax invoice after charging C.G.S.T. and S.G.S.T. Copy of the bills have been annexed as Annexure no. 2 to this petition, which clearly discloses the said fact.

12. The record further reveals that the e-way bill generated by the Maharashtra party where the name of the petitioner and for delivery of the goods was to be made to the buyer of the petitioner i.e. K.R. Industries, Sandila, U.P. was specifically mentioned. In other words e-way bill clearly mentions the name of the buyer i.e. petitioner and ship to K.R. Industries, Sandila (U.P.). The e-way bill, generated by the Maharashtra party was valid up to 15.2.2020, copy of which has been filed as Annexure no. 1 to the present petition. It is not a case of the department that the goods which were coming in pursuance of the purchase order of the petitioner from Maharashtra which were to be delivered to the buyer of the petitioner i.e. K.R. Industries, Sandila, U.P. is different than the goods mentioned in the tax invoice given by the petitioner. Once the goods in question i.e. PVC Resin which was coming from Maharashtra and was to be delivered at Sandila to K.R. Industries, tax invoice on which I.G.S.T. was charged has not been disputed, therefore, no contravention of the provisions of the Act can be attributed. Once before starting the journey e-way bill was generated from Maharashtra and ending at Sandila, at the place of ultimate purchaser i.e. K.R. Industries was mentioned, it can not be said that there was any contravention of the provisions of the Act. The department was well aware of the fact that the goods in question was to be delivered at Sandila (U.P.). It is not the case of the department at any stage that the goods which were coming

from Maharashtra, the delivery of the same was taken from Transporter and the goods were unloaded in the business premises of the petitioner and thereafter the goods were again sent from the business premises of the petitioner to its ultimate buyer i.e. K.R. Industries, Sandila. Once the delivery of the goods which has not been taken by the petitioner, has not been disputed by the Revenue as well as validity of the e-way bill generated by Maharashtra party, which was valid up to 15.2.2020 i.e. the date of detention and passing of the order under Section 129 (3) of the G.S.T. Act, there cannot be any violation or contravention of the provisions of G.S.T. Act as well as the Rules framed thereunder. The purpose of Rule 138 A is that the information should be given to the department in respect of movement of the goods having value of more than Rs. 50,000/-. The Revenue has neither disputed the e-way bill generated by Maharashtra party nor the goods in question were found different than mentioned in the e-way bill of the Maharashtra party and the tax invoices issued by the petitioner. Some difference of value has been mentioned which occurs only on charges of C.G.S.T. and S.G.S.T. on the tax invoice issued by the petitioner cannot suggest any contravention of the provisions of the Act read with Rule 138 A of G.S.T. Rules. Once the valid document i.e. e-way bill was accompanying with the goods, the authorities ought to have released the vehicle.

13. On identical set of fact, the Apex Court in the case of **Assistant Commissioner (S.T.) and others Vs. M/s Satyam Shivam Paper Pvt. Limited and another in Special Leave to Appeal (c) No. 21132 of 2021** decided on 12.1.2022, while dismissing the appeal of State has enhanced the cost and observed as under:-

“The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.

Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law

in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic.

Having said so; having found no question of law being involved; and having found this petition itself being rather misconceived, we are constrained to enhance the amount of costs imposed in this matter by the High Court.

The High Court has awarded costs to the writ petitioner in the sum of Rs. 10,000/- (Rupees Ten Thousand) in relation to tax and penalty of Rs.69,000/- (Rupees Sixty-nine Thousand) that was sought to be imposed by the petitioner No.2. In the given circumstances, a further sum of Rs. 59,000/- (Rupees Fifty-nine Thousand) is imposed on the petitioners toward costs, which shall be payable to the writ petitioner within four weeks from today. This would be over and above the sum of Rs. 10,000/- (Rupees Ten Thousand) already awarded by the High Court.

Having regard to the circumstances, we also make it clear that the State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person/s responsible for this entirely unnecessary litigation.

This petition stands dismissed, subject to the requirements foregoing.

Compliance to be reported by the petitioners”

14. In view of above facts as stated above, the Court finds that there is neither any intention to evade the payment of tax nor any fault nor any contravention of the Act as all valid documents were accompanying with the goods as required under the Act, therefore, the proceedings initiated against the petitioner cannot sustain and are hereby quashed.

15. In the case in hand once the valid document i.e. e-way bill and tax invoice, built up was accompanying with the goods, therefore the authorities ought not to have drag the petitioner in an unnecessary litigation.

16. In view of above, the writ petition is **allowed** with cost of Rs. 5000/- (five thousand) payable to the petitioner. The impugned order is set aside.

17. The respondents will be at liberty to recover the said cost from the erring officer. The cost shall be deposited within three months from today and an affidavit of compliance in respect of deposit of cost shall be filed in the registry within a month thereafter, failing which the matter shall be listed in chamber for appropriate order.

Order Date :- 17.5.2022

Rahul Dwivedi/-