

M/S Godrej And Boyce Manufacturing Co. ... vs State Of U.P. And 02 Others on 18 September, 2018

Equivalent citations: AIRONLINE 2018 ALL 4329

Author: Sudhir Agarwal

Bench: Sudhir Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD

(AFR)

Reserved on 25.04.2018

Delivered on 1

Court No. 34

(1) Case :- WRIT TAX No. - 587 of 2018

Petitioner :- M/S Godrej And Boyce Manufacturing Co. Ltd.

Respondent :- State Of U.P. And 02 Others

Counsel for Petitioner :- Praveen Kumar

Counsel for Respondent :- C.S.C.

(2) Case :- WRIT TAX No. - 454 of 2018

Petitioner :- L.G. Electronics India Pvt. Ltd.

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Atul Gupta,Utkarsh Malviya

Counsel for Respondent :- C.S.C.,A.S.G.I.

(3) Case :- WRIT TAX No. - 455 of 2018

Petitioner :- Bharti Airtel Limited

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Nishant Mishra

Counsel for Respondent :- C.S.C.

(4) Case :- WRIT TAX No. - 462 of 2018

Petitioner :- M/S Guala Closures(India) Pvt. Ltd.

Respondent :- State Of U.P. And 2 Ors

Counsel for Petitioner :- Nishant Mishra

Counsel for Respondent :- C.S.C.

(5) Case :- WRIT TAX No. - 458 of 2018

Petitioner :- M/s. Ras Polytex Pvt. Limited

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Bipin Kumar Pandey,Aditya Pandey

Counsel for Respondent :- C.S.C.,A.S.G.I.,Vaibhav Tripathi

(6) Case :- WRIT TAX No. - 559 of 2018

Petitioner :- Rimjhim Ispat Limited

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

Counsel for Petitioner :- Ritvik Upadhya,Vinod Kumar Upadhya

Counsel for Respondent :- C.S.C.,A.S.G.I.,Anant Kumar Tiwari

(7) Case :- WRIT TAX No. - 560 of 2018

Petitioner :- Rimjhim Ispat Limited

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Ritvik Upadhya,Vinod Kumar Upadhya

Counsel for Respondent :- C.S.C.,A.S.G.I.,Anant Kumar Tiwari

(8) Case :- WRIT TAX No. - 478 of 2018

Petitioner :- M/s. Gaurang Products Pvt. Ltd.

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

Counsel for Petitioner :- Nishant Mishra,Vipin Kumar Kushwaha

Counsel for Respondent :- C.S.C.

(9) Case :- WRIT TAX No. - 464 of 2018

Petitioner :- M/s. Aditya Birla Fashion And Retail Ltd.

Respondent :- State Of U.P. And 2 Ors

Counsel for Petitioner :- Praveen Kumar

Counsel for Respondent :- C.S.C.

(10) Case :- WRIT TAX No. - 551 of 2018

Petitioner :- M/s. Navyug Airconditioning

Respondent :- State Of U.P. And 02 Others

Counsel for Petitioner :- Nishant Mishra,Tanmay Sadh

Counsel for Respondent :- C.S.C.

(11) Case :- WRIT TAX No. - 87 of 2018

Petitioner :- M/s. Proactive Plast Pvt. Ltd.

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

Counsel for Petitioner :- Mr Nishant Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Sudhir Agarwal,J.

Hon'ble Ifaqat Ali Khan,J.

(Delivered by Hon'ble Sudhir Agarwal,J.)

1. In all these writ petitions seizure orders and notices issued under sections 129 (1) and (3), respectively, by various authorities, mainly on the ground that E-Way Bill-01 under U.P. Goods and Service Tax Act 2017 (hereinafter referred to as U.P.G.S.T ACT) read with Integrated Goods and Services Tax Act 2017 (hereinafter referred to as I.G.S.T. Act 2017) and Rules framed thereunder were not accompanied by Transporters when goods were intercepted within State of U.P. during Intra State or Inter State transportation, have been challenged on the ground that there is no requirement of accompanying said E-Way Bill; provisions of Provincial Statute cannot override provisions of Central Statute and, in any case, omission is only indeliberate and unintentional.

2. This writ petition under Article 226 of Constitution of India has been filed challenging order dated 21st March 2018 passed by Assistant Commissioner, State Commercial Tax, Mobile Squad, Unit-I, Shamli in purported exercise of powers under Section 129 (1) of UPGST Act, 2017 on the allegation that in respect of goods transported by Vehicle No. DL-1LW-5527, aforesaid authority has reason to believe that for evasion of State Goods and Service Tax (hereinafter referred to as "SGST") goods have been transported by said vehicle. Estimated value of goods constituting machines and parts, mentioned in the order is Rs. 9,85,000/-. Petitioner M/s. Godrej and Boyce Manufacturing Company Limited has transported six loading/unloading machines from its manufacturing unit situated at Thane, (State of Maharashtra) through two tax invoices dated 16.03.2018, to its Ghaziabad office, for the purpose of being used at Warehouse of M/s. Alstom Manufacturing India Pvt. Limited, Saharanpur as inter unit stock. Aforesaid goods were transported through M/s. Delhi Bombay Goods Carrier, Mumbai vide GR No. 41448 dated 16.03.2018 by vehicle no. DL-1LW-5527. Petitioner company downloaded Central Government E-Way Bill at its Thane unit for invoice no. Bo20101800000130 dated 16.03.2018. Due to bonafide omission, no Central E-Way Bill for remaining goods could be downloaded. Aforesaid E-Way Bill was for four items of machines mentioned therein. Remaining two items of machines were subjected to tax invoice no. Do20101800000131 but no E-Way-Bill with respect to aforesaid invoice was downloaded. In transit goods were intercepted by respondent authorities on 20.03.2018 and finding that E-Way Bill in respect of Government of U.P. was not available with goods, same were detained. Thereafter, Transporter downloaded said E-Way Bill on 21.03.2018 and presented the same before Assistant Commissioner but on the same date he passed seizure order impugned in present petition. A show cause notice under section 129 (3) has also been issued by Assistant Commissioner, requiring petitioner to show cause up to 28.03.2018 as to why tax and penalty of Rs. 1,87,300/- may not be imposed upon the petitioner. The aforesaid order of seizure has been challenged on the ground that mistake was unintentional, Assistant Commissioner has no jurisdiction to pass order of seizure as there is no requirement of carrying any other E-Way Bill under U.P.G.S.T Act, 2017 and Rules framed thereunder.

3. This writ petition has been filed by M/s. LG Electronics India Limited assailing interception memo dated 15.03.2018, seizure order dated 16.03.2018 and show cause notice dated 16.03.2018 issued by Assistant Commissioner, State Commercial Tax Division Mobile Squad III, Sonbhadra.

This writ petition has also challenged Notification dated 21.07.2017 issued by State of U.P. making carrying on E-Way Bill-01 for import of goods worth Rs. 50,000/- from out side the State in State of U.P. mandatory, and also letters dated 06.02.2018 and 18.02.2018 issued by State Government. Petitioner is a Private Limited Company engaged in manufacturing of electronic goods and items having its principal place of business at Plot No. 51, Udyog Vihar, Surajpur Kasna Road, Greater Noida, Gautam Budh Nagar (State of U.P.). It has several manufacturing units as well as Warehouses in different States across the country. Petitioner is registered in State of Jharkhand with Goods and Service Tax Department (hereinafter referred to as "G.S.T. Department") and has been allotted GSTIN-20AAACL1745QIZI. In State of U.P. also petitioner is duly registered with U.P.G.S.T Department and has been allotted GSTIN-09AAACL1745QIZ2. Petitioner has a warehouse in Ranchi (State of Jharkhand). Goods in dispute were transported from Ranchi to Gautam Budh Nagar and intercepted. The goods were transported by M/s. Saluja Freight Carriers which is also registered with G.S.T Department bearing GSTIN-06AUKPS7618E1ZC. The goods were loaded on vehicle no. HR3SV0769 against G.R. No. 3001-3002 dated 14.03.2018 issued by Transporter to petitioner. Tax invoices issued in respect to aforesaid goods were numbered as STNAKW2018647, STNAKW2018648 and STNAKW2018649 dated 13.03.2018. All the requisite details of transportation of said goods were mentioned in receipts issued by Transporter. Requisite documents were with driver of vehicle. The vehicle was intercepted by Mobile Squad Team of Uttar Pradesh Commercial Tax Division, (hereinafter referred to as "UPCTD") and detained at Raparganj, District Sonbhadra by Assistant Commissioner Mobile Squad III. Interception memo dated 15.03.2018 at 10:30 A.M was issued and handed over to driver of vehicle. Memo of interception was issued on the ground that driver of vehicle was not carrying E-Way Bill 01, though in possession of original tax invoices issued by Consignor and LR receipts issued by Transporter. Thereafter physical verification was made by Assistant Commissioner who submitted report dated 16.03.2018 stating that goods worth more than Rs. 50,000/- being interstate supply were being transported but not accompanied by E-Way Bill-01. Subsequently, Assistant Commissioner passed a seizure order under section 129 (1) of U.P.G.S.T. Act 2017 on 16.03.2018 and issued a show cause notice proposing recovery of tax of Rs. 1163472/- and penalty of the same amount i.e. total Rs. 2326944/-. It has been challenged on the ground that there is no provision for carrying of E-Way Bill-01, while the goods are in transit for interstate transfer and impugned orders are without jurisdiction.

4. This writ petition has been filed by M/s. Bharti Airtel Telecommunication Company, having its registered office at New Delhi. It is engaged in providing cellular telephony services in different areas of telecom pursuant to telecom license granted by Government of India Department of Telecommunication. It has various offices in State of U.P. including at Lucknow and Varanasi. It is duly registered under U.P.G.S.T Act 2017 having GSTIN No. 09AAACB2894GIZP. Petitioner transferred stock by two consignments of eight boxes each, of telecom goods from its New Delhi office to Varanasi. It generated two separate E-Way Bill-01 giving details of both the transactions including details of goods and vehicle number. These two E-Way Bills numbered as 1803W177918800367522 and 1803W177918800369265 dated 12.03.2018. The goods were transported through GIR Movers Pvt. Limited by vehicle no. UP32F/N6684. Petitioner also issued invoices-Cum-Challan no. DLG25723 and DLG25727 dated 12.03.2018 for two transactions after charging Integrated Goods and Service Tax (hereinafter referred to as "I.G.S.T Act") at the rate of 18%. When goods were in transit from Delhi to Varanasi, the vehicle in which they were being

transported i.e. UP32F/N6684, broke down. Hence goods were transferred to another vehicle no. DL1GC/3360 at Hathras. Aforesaid vehicle DL1GC/3360 while crossing Commercial Tax Department check post, at about 4:30 P.M. on 13th March 2018 was intercepted by Assistant Commissioner. Finding different vehicle number in the documents, goods were detained. Interception memo dated 13.03.2018 issued by Assistant Commissioner mentioned this fact. Though Transporter explained reason for transportation of goods in different vehicle, but Assistant Commissioner i.e. respondent 3 passed seizure order dated 14.03.2018 under section 129 (1) and also issued notice dated 14.03.2018 under section 129 (3) of UPGST Act 2017, requiring petitioner to show cause why tax of Rs. 12,76,155/- and penalty of same amount be not realized from petitioner. Seizure order dated 14.03.2018 and show cause notice of the same date have been challenged by this petitioner on the ground that goods were transported in interstate transaction governed by provisions of IGST Act and therefore, governed by Central Goods and Service Tax Act 2017 (hereinafter referred to as "CGST Act") and Rules framed thereunder. The mechanism of E-Way Bill under Central Goods and Service Tax Rules 2017 (hereinafter referred to as "CGST Rules 2017") have not been implemented by Central Government. Hence, E-Way Bill alongwith goods were not carried by Transporter and that cannot be a ground for seizure or imposition of penalty. Hence, there is no violation of any provisions of IGST Act 2017/CGST Act 2017 or the Rules framed thereunder. Therefore, provisions of section 129 (1) of UPGST Act cannot be invoked against petitioner. UPGST Act 2017 cannot transgress upon field occupied by IGST Act 2017 and Notification issued under Rule 129 is beyond the power conferred by UPGST Act 2017.

5. This writ petition has been filed under Article 226 of Constitution of India by M/s. Guala Closures (India) Pvt., Ltd., having its Registered Office D-1, Sesa Ghor, Patto, P.O. Box No. 101, Panjim, Goa, challenging order of seizure dated 05.03.2018 and show cause notice of same date. Petitioner Company, engaged in manufacturing Nip Cap (Bottle Cap), has its manufacturing unit at Survey No. 4/44, 4/14, National Highway, No. 8, Kerala Village, Bavaria Taluka, District Ahmadabad, (Gujarat). M/s. Pernod Ricard India, (P) Ltd., Daurala, Meerut, U.P. issued a purchase order and pursuant thereto for transporting goods, petitioner issued invoice No. A2094 dated 23.02.2018 for Rs. 882,961.00/- after charging IGST at the rate of 18%. Petitioner also generated E-Way Bill dated 23.02.2018. Goods were transported by M/s. Agarwal Packers & Movers Ltd., who issued G.R. dated 23.02.2018 and transported goods vide vehicle No. DL-IM-9213. Purchaser, also provided E-Way Bill-01 dated 26.02.2018, prescribed under U.P. Goods and Services Tax Rules 2017 (hereinafter referred to as "Rules") which was valid up-to 15.03.2018 and same was given by petitioner to Transporter. The vehicle was intercepted on 5th March, 2018 by Assistant Commissioner VI, Ghaziabad and goods were detained on the ground that State E-Way Bill- 01, was not being carried by transporter. Thereafter a seizure order was issued on 05.03.2018 alleging that without E-Way Bill- 01 goods were being transported in State of U.P. from outside U.P. A show cause notice under section 129 (3) of U.P.G.S.T. 2017 was also issued on 05.03.2018. It is also challenged on the ground that respondents have no authority to intercept goods, detain, and pass order of seizure as there was no requirement of carrying E-Way Bill- 01 and provisions of provincial Statute cannot override provisions of Central Statute.

6. This writ petition has been filed by M/s. RAS Polytex Pvt. Ltd having its manufacturing unit E-II, Ramnagar, Industrial Area, Chandauli (State of U.P.). It has assailed seizure order dated 09.03.2018

passed by Deputy Commissioner/Assistant Commissioner, Unit Chandauli and notice dated 09.03.2018 passed under section 129 (3) of U.P.G.S.T. Act 2017. It has also sought a writ of certiorari for quashing Notification No. KA.NI.-1014/XI-9(52)/17-U.P. and U.P. Act-1-2017 ORDER-(31)-2017 dated July 21, 2017. The facts in brief, are that petitioner is a Pvt. Ltd. Company engaged in manufacture and sale of HDPE/P.P. bags and registered under G.S.T Act 2017. P.P. Compound is used by petitioner as raw material for manufacturing of bags and for said purpose placed an order of supply of P.P. compound to M/s. Kalpana Industries (India) Limited, situated at Village & Post Chaturbhujkathi, Kandua, P.S. Sankrail, Howrah (State of West Bengal). The aforesaid supplier booked consignment for transport of raw material to petitioner by Transporter M/s. Swastik Cargo Movers. Goods were being transported by truck no. UP63T-3207. Driver of vehicle was carrying requisite documents i.e. tax invoices, bilty and Central E-Way Bill. Goods were intercepted and detained on 09.03.2018 at 4:00 A.M. at Chandauli on the ground that same were imported in the State of U.P. from out side U.P. without E-Way Bill-01. Seizure order was passed under section 129 (1) on 09.03.2018 and it is also mentioned that U.P. E-Way Bill was not accompanied and Central E-Way Bill dated 07.03.2018 was generated on trial basis, therefore, it was not legally acceptable. Respondent 4 also issued notice under section 129 (3) proposing imposition of tax of Rs. 1,07,460/- and penalty of same amount i.e. Rs. 1,07,460/-.

(VI) Writ Tax No. 559 of 2018 & Writ Tax No. 560 of 2018

7. Both these writ petitions have been filed by same petitioner M/s. Rimjhim Ispat Limited, having its manufacturing unit at Industrial Area, Sumerput, District Hamirpur (U.P.) and registered office at 123/360, Fazalganj, Kanpur. In Writ Petition No. 559 of 2018 seizure order dated 11.03.2018 and show cause notice issued under section 129 (3) dated 17.03.2018 have been challenged, which have been passed by Assistant Commissioner GST/State Tax, Mobile Squad, 7th Unit Kanpur. Here petitioner sold Stainless Steel Bright Bars to M/s. M.R.S. Corporation Aligarh for which tax invoice no. 008573 dated 08.03.2018 was generated for a total amount of Rs. 10,13,673/-. The said goods were transported from petitioner's factory at Hamirpur to M/s. M.R.S Corporation, Kanpur through Shree Balaji Transport Company by truck no. UP78CT 4540 E-Way Bill-02 dated 08.03.2018 was generated giving all requisite information. However, respondent 2 intercepted the vehicle and detained at Kanpur on the ground that since E-Way Bill-02 had already expired therefore, there was no valid E-Way Bill-02 being carried by Transporter. Consequently seizure order dated 11.03.2018 was passed and a show cause notice proposing tax of Rs. 77,314/- (CGST), 77,314/- (SGST) and penalty of same amount was issued.

8. In Writ Petition No. 560 of 2018 seizure order dated 07.03.2018 and notice under section 129 (3) is dated 13.03.2018 issued by Assistant Commissioner Mobile Squad Kannauj are under challenge. Here S.S. Rods purchased by M/s. Bansal Wire Industries Limited Unit-II, B-3, Site II, Loni Road Industrial, Mohan Nagar District Ghaziabad were being transported through Transporter M/s. Buland Road Transport Company by Truck no. UP78BT2199. Petitioner has generated tax invoice no. 08440 dated 28.02.2018 for goods worth Rs. 21,31,051/- which includes IGST. E-Way Bill-02 dated 28.02.2018 was also generated by petitioner giving all details. Same were intercepted and detained by Assistant Commissioner Mobile Squad, Kannauj on the ground that E-Way Bills had already expired. Consequently seizure order was passed on 07.03.2018 and a show cause notice

under section 129 (3) were issued on the same date, proposing tax of Rs. 3,27,420/- and penalty of same amount.

9. This writ petition has been filed by M/s. Gaurang Products Pvt. Ltd., having its Unit at Industrial Area, Ghaziabad challenging, seizure order dated 19.03.2018 and show cause notice of the same date issued by Assistant Commissioner, State/Commercial Tax, Mobile Squad, Unit-12, Kanpur. Petitioner is engaged in manufacturing M.S. Tubes & Pipes and duly registered with GST Department of U.P. having GSTIN No. 09AACCG0182L120. It has supplied 4300 Meters of M.S. Tubes and Pipes to U.P. Jal Nigam and same was to be delivered at Jal Nigam office at Allahabad. Petitioner prepared invoice no. 5267 dated 16.03.2018 in respect of 266.71 meters of M.S. Tubes & Pipes after charging IGST. The goods were handed over to M/s. Pragati Logistic Pvt. Ltd., Transporter against GR dated 16.03.2018 and same were transported by truck no. UP13T-0693. E-Way Bill-02 was also downloaded by petitioner on 16.03.2018 at 7:01 PM and it was carried by driver of vehicle. On 19.03.2018 at 08:44 AM vehicle was intercepted at Kanpur by respondent 3, who found that validity period of E-Way Bill-02 had already expired. The goods were accordingly seized by him and seizure order was passed on 19.03.2018. Same day notice under section 129 (3) of UPGST was also issued proposing to impose tax of Rs. 1,23,764/- and equivalent amount of penalty.

10. This writ petition has been filed by M/s. Aditya Birla Fashion and Retail Ltd., Rave Multiplex Complex, V.I.P. Road, Kanpur. Petitioner placed an order for supply of certain goods (advertising material) to M/s. J.K. Advertising, J-10, Jahangeerpuri, New Delhi in respect of said goods. 7 invoices were prepared on 11/12.03.2018 and goods were transported through Transporter M/s. Maa Chamunda Devi Transport Service, Tilak Nagar, New Delhi, through truck no. HR55AA-0252. Transporter issued four separate GRs on 12.03.2018 and also downloaded a consolidated E-Way Bill for the aforesaid transaction from the website of Central Government on 12.03.2018. While in transit, goods were intercepted by Assistant Commissioner Mobile Squad Unit, Etah, in the morning on 13.03.2018 and same were detained on the ground that E-Way Bill-01 of U.P. Government was not available alongwith goods. After getting knowledge seven E-Way Bill-01 were downloaded from the website of Commercial Tax Department of Government of U.P. on 13.03.2018 and placed before respondent 3. However, respondent 3 has passed seizure order on 14.03.2018 under section 129 (1) and also issued notice under section 129 (3). Copy of notice has not been filed. Petitioner is only challenging seizure order 14.03.2018.

11. This writ petition has been filed by M/s. Navyug Air Conditioning, Hotel Rainbow Market, Railway Road, Bazaria, Ghaziabad. It is a proprietorship firm engaged in trading of Air conditioners and its parts. Petitioner placed purchase order of compressor assembly with accessories-FOW to M/s. Tecumseh Products India Private Limited, 38 Km Stone Delhi-Mathura Road, Ballabgarh (Haryana). The said supplier prepared invoice no. IBW/DOM/SALE1555 dated 23.03.2018 for Rs. 10,14,139/- including IGST at 18%. The goods were handed over for transportation by truck no. DL-ILY-2278 for delivery at Ghaziabad. The goods were intercepted by Assistant Commissioner Mobile Squad, Unit-V, Noida on 24.03.2018 and detained on the ground that goods did not accompany E-Way Bill-01 prescribed under UPGST Rules 2017. A seizure order was passed on 25.03.2018 and notice under section 129 (3) was also issued on the same date proposing levy of tax of Rs. 1,54,699/- and penalty of the same amount.

12. This writ petition has been filed by M/s. Proactive Plast Pvt. Ltd., Plots No. 274, 275, 280, 281, Ecotech-1 Extension, Kasna, Greater Noida, District Gautam Budh Nagar. He has filed this writ petition challenging seizure order dated 20.01.2018 and notice issued on same date under section 129 (1) and (3) of UPGST Act 2017. Petitioner company is engaged in manufacture of packing material and registered under UPGST Act 2017, having GST TIN No. 09AADCP5536C1ZJ. Petitioner placed purchase order of raw material i.e. 2,500 Kg of NUCREAL AE Resin and 7,500 Kg of SURLYN SR Resin to a Ex-U.P. Registered dealer i.e. M/s. Fibro Plast Corporation, Mumbai, Maharashtra. The supplier who has registered office at Mumbai and its godown at Bhiwandi, (Maharashtra) had issued proforma on invoice dated 15.01.2018, indicating all the details. Goods were handed over to Transporter for transporting the same from Bhiwandi (State of Maharashtra) to Greater Noida by truck no. HR55X4835. For the purpose of E-way Bill Form 01, petitioner also generated Intermediate no. 1801W166944700522219 from online portal on 15.01.2018 and provided the same to supplier for transportation of goods. Supplier however, mentioned alongwith invoice, the details of documents supplied by petitioner as E-Way Bill-01. When vehicle entered U.P., it was intercepted at Noida, by Assistant Commissioner Mobile Squad, Sixth Unit, Noida and he detained goods on the ground of absence of E-Way-Bill-01, vide interception memo dated 19.01.2018. Thereafter, seizure order was passed on 20.01.2018 under section 129 (1) and notice under section 129 (3) was also issued on the same date proposing tax of Rs. 31,17,500/- and penalty of same amount.

13. In order to give a consolidated bird eye view of details of invoices, seizure orders, show-cause notices and the amount of tax/penalty proposed, a chart is being given as under:

S. N.	Writ Petition No.	Name of petitioner	Date of invoice	Date of interception	/seizure order	Date of show cause notice	Amount of tax/ penalty proposed	Date of Final order
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1.

587/2018 M/s Godrej and Boyce Manufacturing co. Ltd. Hapur.

16.3.18 21.3.18 21.3.18 374600/-

2. 454/2018 LG Electronics India Pvt. Ltd.

13.3.18 15.3.18/ 16.3.18 16.3.18 2326944/-

3. 455/2018 Bharti Airtel Limited 12.3.18 14.3.18 14.3.18 2552310/-

4. 462/2018 Mrs. Guala Closures (India) Pvt. Ltd.

23.2.18 5.3.18 5.3.18 269378/-

5. 458/2018 M/s RAS Polytex Pvt. Ltd.

7.3.18 9.3.18 9.3.18 209520/-

6. 559/2018 Rimjhim Ispat Ltd.

8.3.18 11.3.18 11.3.18 309256/-

17.3.18

7. 560/2018 Rimjhim Ispat Ltd.

28.2.18 6.3.18/ 7.3.18 7.3.18 654840/-

13.3.18

8. 478/2018 M/s Gaurang Products Pvt. Ltd.

16.3.18 19.3.18 19.3.18 247528/-

9. 464/2018 M/s Aditya Birla Fashion and Retail Ltd. Kanpur 11.3.18 & 12.3.18 14.3.18

461450/-(Approx value of seized goods)

10. 551/2018 M/s Navyug Airconditioning 23.3.18 24.3.18/ 25.3.18 25.3.18 154699/-

11. Proactive Plast Pvt. Ltd.

15.1.18 19.1.18/ 20.1.18 20.1.18 1122300/-

14. Seizure orders passed by authorities concerned as also notices issued under section 129 (3) are challenged by different counsels appearing in these writ petitions broadly on following grounds;

(i) There was no requirement of e-way-bill under UPGST Act 2017 and Rules framed thereunder to be accompanied by the Transporters, hence, authority concerned has no jurisdiction to pass orders under Section 129 and orders impugned in this writ petition are patently without jurisdiction.

(ii) Provisions of U.P.G.S.T Act 2017 will have to sub-serve to the provision of I.G.S.T Act 2017 when goods are transported in an Inter-State transaction, which is governed by I.G.S.T Act 2017.

(iii) Fault in any case is unintentional and therefore, there could have been no seizure or imposition of penalty in the exercise of powers under Section 129.

(iv) Tax having already been paid and shown in tax invoices, there is no occasion to levy tax again on aforesaid goods and it is wholly without jurisdiction and illegal.

(v) Demand of penalty is illegal since applicable tax had already been paid prior to transportation of goods in the matters where the allegation is that e-way-bill has expired.

(vi) The fact is that vehicle transporting the goods broke down hence, goods were transferred to another vehicle or after repair transportation resumed therefore delay was neither intentional nor deliberate and hence penalty is not attracted.

(vii) Notification no. 1014 dated 21.07.2017 prescribed e-way-bill-02 for Intra-State movement of goods and Circular no. 1102 dated 9th August 2017 prescribed 48 hours time period in respect of e-way-bill-02. On account of substitution of Rule 138 by UPGST (13th Amendment) Rules 2018 which came into force on 01.02.2018, earlier Notification dated 21 July 2017, and Circular dated 9th August 2017 became unenforceable and seizure thereafter for violation of circular dated 09 August 2017 is without jurisdiction.

(viii) Under Rule 138, power has been conferred upon State Government to specify documents which in charge of conveyance shall carry, when goods are in movement. The State Government not only prescribe e-way-bill-02 as document for intra-State movement, but also sub-delegated procedure to be prescribed by Commissioner for downloading e-way-bill-02. In the garb of prescription of procedure for downloading e-way-bill-02, Commissioner vide circular dated 9 August, 2017 also prescribed 48 hours time period during which e-way-bill-02 shall remain valid and this prescription by Commissioner is ultra-vires and beyond the power conferred upon him as it is not contemplated either under the Act or the Rules or even Notification dated 21 July, 2017 issued by State Government. Prescription of time period of validity of e-way-bill-02 could have been done only by the State Government and not the Commissioner and this power exercised by Commissioner

vide circular dated 09th August, 2017 is wholly ultra-vires.

(ix) Rule 138 confers no power upon State Government to sub-delegate power to Commissioner.

(x) Commissioner in its circular dated 09th August 2017 has prescribed time period of validity for e-way-bill-01 for Inter-State movement and also for e-way-bill-02 for Intra-State movement. However, for the same distance, time period for e-way-bill-02 is only 48 hours while for e-way-bill-01 it is ten days. This distinction/different period of time is clearly discriminatory and arbitrary having no rationale and nexus with the object sought to be achieved. In any case in the substituted Rule 138 made effective from 01.02.2018, time period specified for validity of e-way-bill-01 is one day for 100 km, and, therefore, reliance on Commissioner's Circular applying different time period is clearly illegal.

(xi) In the matter of inter-state transactions State Government cannot prescribe e-way-bill-01 and this prescription is wholly without jurisdiction. Where the transaction is inter-state, it is governed by IGST Act 2017. In the tax invoices IGST was charged and transaction is not covered under UPGST Act 2017, hence, it cannot be said that there is any contravention of provisions of UPGST Act 2017 and Rules framed thereunder.

(xii) UPGST Act 2017 is applicable to transactions within the State of U.P. i.e. Intra-state and not to the Inter-State transactions. It would be covered by the provisions of IGST Act 2017 and CGST Act 2017, hence, respondent-authorities had no jurisdiction to impose any conditions on Intra-State transactions and seizure orders and notices issued are wholly without jurisdiction.

15. Per-Contra learned Standing Counsel argued that a valid Notification was issued under Section 129 and petitioners having flouted the provisions thereof, in order to give opportunity, show cause notices have been issued after passing seizure orders and the same warrant no interference.

16. We have heard Sri V.K. Upadhyay, learned Senior Advocate assisted by Sri Praveen Kumar, Sri Nishant Mishra, Sri Ritvik Upadhyay, Sri Tanmay Sadh and Sri Atul Gupta, learned counsel for Petitioners and Sri Manish Goyal, Additional Advocate General assisted by Sri C.B. Tripathi, learned counsel for the respondents. We have also perused record of all writ petitions and relevant statutes in depth.

17. Concept of Goods and Services Tax (hereinafter referred to as "G.S.T.") has been brought by Parliament through One Hundred and First Constitution Amendment vide "Constitution (One Hundred and First Amendment) Act, 2016. G.S.T has been introduced so as to replace various indirect taxes levied by Central Government and State Governments i.e. Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparation (Excise Duties) Act 1955, Service Tax Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services. It includes State Government's Taxes like State Value Added Tax/Sales Tax, Entertainment Tax, (other than the tax levied by the local bodies), Central Sales Tax levied by Centre and collected by States), Octroi and Entry-Tax Purchase Tax, Luxury Tax, Taxes on lottery,

betting and gambling and State Cesses and surcharges in so far as they relate to supply of goods and services. Aforesaid Constitutional Amendment inserted Articles 246-A and 269-A which read as under.

"246-A. Special provision with respect to goods and services tax,-(1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of Inter-state trade or commerce.

Explanation.- The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of Article- 279-A take effect from the date recommended by the Goods and Services Tax Council."

"269-A. Levy and collection of goods and services tax in course of inter-State trade or commerce.- (1) Goods and services tax on supplies in the course of Inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendation of the Goods and Services Tax Council.

Explanation- For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under Article 246-A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under Article 246-A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5). Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

18. There are corresponding amendments in Articles 248, 249, 250, 268, 269, 270, 271, 286, 366, 368 and in Sixth and Seventh Schedules of the Constitution. Article 268-A has been omitted by the aforesaid Amendment. Provision of Constitution of Goods and Services Tax Council has been made by insertion of article 279-A.

19. Definitions of "Goods and Service Tax" and "Services" had been provided by insertion of clauses 12-A and 26-A in Article 366 and the aforesaid two clauses read as under:

"(12-A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;',
(26-A) "Services" means anything other than goods;"

20. Section 1 (2) of One Hundred and First Amendment Act 2016 provides that the aforesaid amendment of Constitution shall come into force on such date as Central Government may, by Notification in the Official Gazette. appoint and different dates may be appointed for different provisions of the said Act. Provisions of aforesaid Amendment have been made effective with effect from 16th September, 2016.

21. Parliament thereafter enacted certain statutes in respect of G.S.T and in the present cases, we are concerned with C.G.S.T Act 2017 and I.G.S.T Act 2017.

22. C.G.S.T Act 2017 makes provisions to levy tax on all Inter State supplies of goods or services or both, except supply of alcoholic liquor for human consumption, at a rate to be notified not exceeding 20% as recommended by Goods and Services Tax Council (hereinafter referred to as "G.S.T.C"); to broad base input tax credit by making it available in respect of taxes paid on supply of any goods and services or both; "to impose obligation on electronic commerce operators to collect tax at source at such rate not exceeding one percent or not any net value of taxable supplies; to provide sale-assessment of taxes payable by registered person; to provide for conduct of audit of registered persons in order to verify compliance with the provisions of Act; to provide for recovery of arrears of tax using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person; to provide for powers of inspection search, seizure and arrest to the officers; to establish G.S.T Appellate Tribunal by Central Government; to make provision for penalties for contravention of the credit; to provide for an anti-profiteering clause in order to ensure that business passes on the benefit of reduced tax incidence on goods and services or both to the consumers and to provide for elaborate for transitional provisions.

23. IGST Act 2017 to some extent has replaced Central Sales Tax Act 1956. Article 269 of Constitution empowered Parliament to make laws on the taxes to be levied on the sale or purchase taking place in the course of Inter-State Trade or Commerce. Consequently Central Sales Tax 1956 for levying Central Sales Tax on sales taking place during the course of Inter-State Trade or Commerce, was enacted. Central Sales Tax was collected and retained by exporting States. Crucial aspect of the above tax was that it was non-vatable i.e. credit of this tax was available as set off for future tax liability to be discharged by purchaser. Further since rate of Central Sales Tax was different from Value Added Tax being levied on Intra-State sale, it credited a tax arbitrage which

was exploited by unscrupulous elements. Thus, after the constitutional amendment as stated above Parliament enacted IGST Act 2017, with the objective to levy tax on all Inter-State supplies of goods or services or both except supply of alcoholic liquor for human consumption at a rate to be notified not exceeding 40% as recommended by G.S.T Council; levy of tax on goods imported into India in accordance with the provisions of Customs Tariff Act 1975 read with Customs Act 1962; levy of tax on import of services on reverse charge basis; empower Central Government to grant exemptions; determination of nature of supply as to whether it is an Inter-State or an Intra-State supply; to provide elaborate provisions for determining place of supply in relation to goods or services or both; payment of tax by a supplier of online information and data-base access or retrieval services; refund of tax paid on supply of goods to tourist leaving India; apportionment of tax and settlement of funds and for transfer of input tax credit between Central Government, State Government and Union Territory; application of certain provisions of C.G.S.T Act 2017; and transitional transactions in relation to import of services made on or after appointed day.

24. Sections 1, 2, 3, 14, 20 and 22 of IGST Act 2017 were enforced w.e.f 22.06.2017. Sections 4 to 13, 16 to 19, 21, and 23 to 25 were enforced w.e.f 01.07.2017. For the purpose of execution of provisions of CGST Act 2017, Sections 3 to 5 make provisions for appointment and power of Officers and Section 6 makes provision, authorizing officers of State tax or Union Territory tax as proper officers in certain circumstances. Above provisions are reproduced as under:-

"3. Officers under this Act.-- The Government shall, by Notification, appoint the following classes of officers for the purposes of this Act, namely:--

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax,
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,
- (d) Commissioners of Central Tax or Additional Directors General of Central Tax,
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
- (i) any other class of officers as it may deem fit:

PROVIDED that the officers appointed under the Central Excise Act, 1944 (1 of 1944) shall be deemed to be the officers appointed under the provisions of this Act.

4. Appointment of officers.-- (1) The Board may, in addition to the officers as may be notified by the Government under Section 3, appoint such persons as it may think fit to be the officers under this Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of Section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

5. Powers of officers.-- (1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.-- (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by Notification, specify.

(2) Subject to the conditions specified in the Notification issued under sub-section (1),

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

25. We may notice that Sections 3, 4 and 5 of CGST Act 2017 were enforced w.e.f 22.06.2017 and section 6 was enforced w.e.f 01.07.2017.

26. Similarly in IGST Act 2017 there are two provisions i.e. Sections 3 and 4, and same read as under:-

"3. Appointment of officers.-- The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.

4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.-- Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by Notification, specify."

27. Section 20 of IGST Act 2017 applies provisions of CGST Act 2017 in relation to various aspects, detailed therein, in relation to Integrated Tax in the same manner as CGST Act 2017 applies in relation to Section 20 of IGST Act 2017 which reads as under:-

"20. Application of provisions of Central Goods and Services Tax Act.-- Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,--

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration;
- (vi) tax invoice, credit and debit notes;
- (vii) accounts and records;
- (viii) returns, other than late fee;
- (ix) payment of tax;
- (x) tax deduction at source;

(xi) collection of tax at source;

(xii) assessment;

(xiii) refunds;

(xiv) audit;

(xv) inspection, search, seizure and arrest;

(xvi) demands and recovery;

(xvii) liability to pay in certain cases;

(xviii) advance ruling;

(xix) appeals and revision;

(xx) presumption as to documents;

(xxi) offences and penalties;

(xxii) job work;

(xxiii) electronic commerce;

(xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

PROVIDED that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent from the payment made or credited to the supplier:

PROVIDED FURTHER that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

PROVIDED ALSO that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

PROVIDED ALSO that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties."

28. As we have already said section 3 of IGST Act 2017 was made effective from by 22.06.2017 and section 4 was made effective from 01.07.2017. Section 164 of CGST Act 2017 confers Rule framing power upon Central Government and pursuant thereto CGST Rules 2017 were made and enforced w.e.f 22nd June 2017. Similarly section 22 of IGST Act 2017 confers power upon Central Government to makes Rules and pursuant thereto Integrated Goods and Service Rules 2017 (hereinafter referred to as "IGST Rules 2017") were framed and came into force w.e.f 22.06.2017. It is a small set of Rules containing only two Rules. Rule 1 relates to short title and commencement Rule 2nd applies provisions of CGST Rules 2017 for carrying out provisions specified in Section 20 IGST Act 2017 in so far as the same may apply in relation to Integrated Tax, as they apply in relation to Central Tax.

29. So far as UPGST Act 2017 is concerned, it was made effective with effect from 22.06.2017 in its entirety. Section 164 of UPGST Act 2017 confers power upon Governor to make Rules and in exercise thereto, UPGST Rules 2017 were framed which came into force on 29.06.2017. Since, in the present case, dispute relates to e-way-bill i.e. documents to be carried by a person in charge of a conveyance carrying any consignment of goods, we are confining ourselves only to relevant provisions in this regard.

30. It is Section 129 of CGST Act 2017 and UPGST Act 2017 which provides for detention seizure and release of goods and conveyance in-transit. The provisions in both statutes are pari-materia and therefore, are being reproduced in the form of a comparative chart, as under:

CGST Act 2017 UPGST Act 2017

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 seven 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.

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 seven 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.

31. In CGST Act 2017 as well as in UPGST Act 2017, Section 68 provides for "Inspections of goods in movement" and the provisions are pari-materia. For conveyance, we are reproducing the same below in the form of a comparative chart, and as already said both these provisions came into force w.e.f 01.07.2017.

Section 68 CGST Act Section 68 U.P. GST Act

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.

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.

32. In both sets of Rules i.e. CGST Rules 2017 and UPGST Rules 2017 Chapter VI deals with "Tax invoices, Credit and Debit Notes." Similarly, Chapter XVI deals with "E-Way-Bill Rules". Rule 138 which was pari-materia in both the sets of Rules as initially enacted, read as under.

CGST Rules 2017 UPGST Rules 2017

138. E-way Rule- Till such time as an E-way-Bill system is developed and approved by the Council, the Government may, by Notification, specify the documents that the person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage.

138. E-way Rule- Till such time as an E-way-Bill system is developed and approved by the Council, the Government may, by Notification, specify the documents that the person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage.

33. U.P. Government in purported exercise of powers under Rule 138 of UPGST Rules 2017, issued a Notification no. KA.NI-1014/XI-9(52)/17-UPGST-Rules-2017-Order-(31)-2017-Lucknow dated 21st July 2017 specifying documents required be carried by a person in charge of conveyance carrying any consignment of goods while in movement or in transit, storage in U.P. and it reads as under:-

"Uttar Pradesh Shashan Sansthaagat Vitta, Kar Evam Nibandhan Anubhag -2 Notification No.-K.A.NI.-1014/XI-9(52)/17-U.P.GST Rules-2017-Order-(31)-2017 Lucknow : 21 July 2017 In exercise of the powers under Rule 138 of the Uttar Pradesh Goods and Services Tax Rules, 2017 framed under the Uttar Pradesh Goods and Services Tax Act, 2017 (U.P. Act No. 1 of 2017) the Governor is pleased to specify the following documents that a person incharge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage in Uttar Pradesh :-

(1) In case of transportation of taxable goods valuing Rs. 5000 or more from a place outside Uttar Pradesh into the State the enclosed Form e-way bill 01 shall be carried with the goods during the transportation or transit storage of the goods:

Provided that if a person transports goods valuing less than Rs. 50,000 for his personal use as a personal luggage by a personal vehicle or by any public passenger transport vehicle with his personal identification documents, the form e-way bill-01 shall not be required.

(2) In case of transportation of taxable goods valuing rupees 1 lakh or more mentioned as follows within Uttar Pradesh or from a place within the State to a place outside the State, the enclosed Form e-way bill 02 shall be carried with the goods during the transportation or transit storage of the goods:

a) Mentha Oil, Menthol and D.M.O.,

b) Supari,

c) Iron and Steel,

d) All types of edible oils and Vanaspathi ghee.

(3) In case of transportation of taxable goods by e-commerce operators or their authorized transporters, courier agents or agents for delivery to a person within Uttar Pradesh, the enclosed form e-way bill-03 shall be carried with such goods during the transportation of goods or transit storage within State.

(4) In case of transportation of taxable goods valuing Rs. 5,000 or more from a place outside Uttar Pradesh to a place outside the State, the form TDF-01 shall be carried with such goods during the transportation of goods or their transit storage within the State and on the exit of goods from the State, the information shall be provided in Form TDF-02.

(5) The forms mentioned in clauses (1), (2), (3) and (4) above shall be downloaded by the procedure prescribed by the Commissioner State Tax/Commercial Tax from the

website of Commercial Tax Department-<http://comtax.up.nic.in> This Notification shall be effective from such date as the Commissioner State Tax/Commercial Tax may mention in the circular prescribing the procedure of downloading the said forms."

34. In view of requirement of Circular of Commissioner so as to give effect to the provisions of Notification dated 21.07.2017, Commissioner issued Circular No. Sa.Da.GST/Maal Parivahan/2017-18/2017/Vanijya Kar dated 22.07.2017 laying down procedure for downloading E-way-bills. Commissioner also notified 26.07.2017 from which date Notification dated 21.07.2017 would become effective. Subsequently, by another Circular No. Sa.Da.GST/Maal Parivahan/2017-18/1028/Vanijya Kar dated 27.07.2017, date for giving enforcement to Notification dated 21.07.2017 was deferred and instead of 26.07.2017 it was declared to be effective from 16.08.2017. Then another Circular No. GST/Maal Parivahan/2017-18/1102/Vanijya Kar dated 09.08.2017 was issued amending procedure for downloading relevant forms and it was also declared that Government Notification dated 21.07.2017 shall be effective from 16.08.2017.

35. Further in exercise of powers under Section 164 of UPGST Act 2017, U.P. Goods and Services Tax (Fourth Amendment) Rules 2017 (hereinafter referred to as 'UPGST (Fourth Amendment) Rules 2017') were published vide Notification no. KA.NI-2-1359/XI-9(42)/17-UPGST-Rules-2017-Order-(45)-2017-Lucknow dated 20th September 2017 and Rule 138 was substituted by following Sub Rule 1 to 14:-

"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 reason 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 in Part-A of FORM GST EWB-01 electronically, on the common portal.

(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 by railways or by air or by vessel, the said person or the recipient may 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.

(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 in Part B of FORM GST EWB-01 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, as the case may be, 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 less than ten 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 transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation I. 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 movement of goods.

Explanation 2 -The information in Part A of FORM GST EWB-01 shall be furnished by the consignor or the recipient of the supply as consignee where the goods are transported by railways or by air or by vessel.

(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) Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in FORM GST EWB-01:

Provided that where the goods are transported for a distance of less than ten 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 conveyance may not be updated in the e-way bill.

(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 may be generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions of sub-rule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate 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.

(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 details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier 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, either directly or through a Facilitation Centre notified by the Commissioner, within 24 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.

(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 the goods have to be transported, as mentioned in column (2):

Table Sr. no.

Distance Validity period

1.

Upto 100 km One day

2. For every 100 km or part thereof thereafter One additional day Provided that the Commissioner may, by Notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of e-way bill, the transporter may generate another e-way bill after updating the details in Part B of FORM GST EWB-01 Explanation.--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 twenty-four hours.

(11) The details of e-way bill generated under sub-rule (1) shall be made available to the recipient, if registered, on the common portal, who shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the recipient referred to in sub-rule (11) does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under rule 138 of the Central Goods and Services Tax rules or Goods and Services Tax rules of any other State shall be valid in the State.

(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 port, airport, aircargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs: and

(d) in respect of movement of such goods and within such areas in the State and for values exceeding such amount as the Commissioner of State Tax in consultation with the Chief Commissioner of Central Tax may notify.

Explanation- The facility of generation and cancellation of e-way bill may also be made available through SMS."

36. Rules 1 (2) of UPGST (4th Amendment) Rules 2017 provides that amendment in the Rules notified on 20th September 2017 shall come into force on such date as State Government may by Notification in official gazette appoint, By the aforesaid Amendment it also inserted Rules 138-A,

Rule 138-B, Rule 138-C and Rule 138-D.

37. In furtherance of Rule 1 (2) of UPGST (4th Amendment) Rules 2017 read with section 164 of UPGST Act 2017 and 21 of U.P. General Clauses Act, Governor by Notification No. KA.NI-2-138/XI-9(42)/17-U.P. Act-1-2017-Order-(101)-2018 dated 30.01.2018 appointed 1st February 2018 enforcing the amendment made in the provisions at serial no. 10 and 11 of notification no. KA.NI-2-1359/XI-9(42)/17-UPGST-Rules-2017-Order-(45)-2017-Lucknow- dated "20th September 2017". However, what we find is that instead of date 20th September 2017, in Notification dated 30th January 2018, date of the notification no. KA. NI-2-1359/XI-9(42)/17-UPGST-Rules-2017-Order-(45)-2017-Lucknow it was mentioned as "20th October 2017". At serial no. 10 and 11, Rule 138 was substituted and Rule 138-A was inserted by U.P. GST(4th Amendment) Rules 2017. Notification dated 30th January 2018 reads as under:

"Notification No. KA.NI.-2-138/XI-9(42)/17-U.P. Act-1-2017-Order-(101)-2018 Lucknow : Dated : January 30, 2018 In exercise of the powers conferred by section 164 of the Uttar Pradesh Goods and Services Tax Act, 2017 (U.P. Act no. 1 of 2017) read with section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904), the Governor hereby appoints the 1st day of February, 2018 as the date from which the provisions of serial number 10 and 11 of Notification No. KA.NI-2-1359/XI-9(42)/17-U.P. GST Rules-2017-Order-(45)-2017 dated 20-10-2017, shall come into force."

38. Perhaps this mistake was noticed by Government subsequently and, therefore, it issued another Notification no. KA.NI-177/XI-9-(42)/17-UP Act-1-2017-Order-(109)-2018-Lucknow- dated 6th February 2018 , w h e r e b y N o t i f i c a t i o n n o . KA.NI-2-138/XI-9(42)/17-UP-Act-1-2017-Order-(101)-2018-Lucknow dated 30th January 2018 was rescinded. Notification dated 6th February 2018 reads as under:

"Notification KA.NI.177/XI-9(42)/17-U.P. ACT-1-2017-ORDER (109)-2018, DATED 6-2-2018 In exercise of the powers conferred by section 164 of the Uttar Pradesh Goods and Services tax Act, 2017 (U.P. Act no 1 of 2017) read with section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904), the Governor hereby rescinds, except as respects things done or omitted to be done before such r e s c i s s i o n , t h e N o t i f i c a t i o n n o . KA.NI.-2-138/XI-9(42)/17-U.P.Act-l-2017-Order-(101)-2018 dated 30-1-2018."

39. Before 06.02.2018, another Notification KA.NI-2-155/XI-9(42)/17-UPGST-Rules-2017-Order-(103)- 2018- Lucknow dated 31.01.2018 in purported exercise of powers under Section 164 of UPGST Act 2017 read with Section 21 of UPGST Act, 2017 was issued with a view to amend UPGST Rules, 2017 and it is called UPGST (13th Amendment) Rules 2018.

40. At serial no. 12 of Notification dated 31.01.2018, Rule 138 was sought to be substituted with effect from 01.02.2018 and relevant extract thereof reads as under:-

"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 or 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 at the common portal and a unique number will be generated on the said portal:

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

Provided further that where handicraft goods are transported from one State to another 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 Notification No. KA.NI.-2-1414/XI-9(15)/17-U.P. Act-1-2017-Order-(48)-2017 dated 27-09-2017 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.

(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 by railways or by air or by vessel, the said person or the recipient may 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:

Provided that 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 furnish, on the common portal, the-

(a) information in Part B of FORM GST EWB-01; and

(b) the serial number and date of the Railway Receipt or the Air Consignment Note or Bill of lading, as the case may be.

(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, as the case may be 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 less than ten 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 consigner 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 FORM GST

EWB-01:

Provided that where the goods are transported for a distance of less than ten 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 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 consignment:

Provided that once 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 may be generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions of sub-rule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case maybe, 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, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator.

(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 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 24 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 the unique number generated under sub-rule (1) shall be valid for 72 hours 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:--

Table
Sr. No. Distance Validity period
Upto 100 km One day
For every 100 km or part thereof thereafter One additional day
Provided that the Commissioner may, by Notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein:

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

Explanation.--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 twenty-four hours.

(11) The details of e-way bill generated under sub-rule (1) 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, 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 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, Schedule given below;

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

(c) where the goods are being transported from the 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 such goods and within such areas in the State as the Commissioner of state tax, in consultation with the Principal Chief Commissioner/Chief Commissioner of central tax, may notify;

(e) where the goods, other than de-oiled cake, being transported are specified in the Schedule appended to Notification No.KA.NI-2-837/XI-9(47)/17-UP Act-1-2017-Order-(07)-2017 dated 30.6.2017 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; and

(g) where the goods being transported are treated as no supply under Schedule III of the Act.

Explanation- The facility of generation and cancellation of e-way bill may also be made available through SMS."

41. To complete the chain of the events, we may mention that UPGST (Fourteenth Amendment) Rules 2018 (hereinafter referred to as "(Fourteenth Amendment) Rules 2018") has been published vide Notification no. KA.NI.-2-487/XI-9(42)/17-U.P.GST Rules-2017-Order-(120)-2018 dated 26.03.2018 whereby again Rule 138 has been substituted and it reads as under.

"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 consign- -ment 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 that the transporter, on an authorization received from the registered person, may furnish information 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 further that where the goods to be transported are supplied through an e-commerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency 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 Notification No. KA.NI.--2-1414/XI-9(15)/17-U.P.Act-I-2017-Order-(48)-2017 dated 27-09-2017 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 may be 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:--

Sr. No. Distance Validity period

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 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:

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 such goods and within such areas in the State and for values not exceeding such amount as the commissioner of State Tax, in consultation with the principal Chief Commissioner/Chief Commissioner of Central Tax, may, subject to conditions that may be specified, notify;

(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to Notification No. KA.NI.--2-837/XI-9(47)/17-U.P.Act-1-2017-Order-(07)-2017 dated 30-06-2017 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. KA.NI.--2-853/XI-9(47)/17-U.P.Act-1-2017-Order-(20)-2017 dated 30-06-2017 as amended from time to time and Notification No. KA.NI.--2-1425/XI-9(47)/17-U.P.Act-1-2017-Order-(53)-2017 dated 04-10-2017 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.

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."

42. Rule 1 (2) of 14th Amendment Rules, 2018 provides that the provisions in said Notification shall come into force on such date as State Government may by Notification in the gazette, appoint. In furtherance thereof, State Government has issued Notification no. KA.NI-2-498/XI-9(42)/17-UP-Act-1-2017-Order-(121)-2018-Lucknow dated 27.03.2018 appointing 01.04.2018 for giving effect to Rule 3 [other than sub-rule(7)] and rules 4, 5, 6, 7 and 8 on (Fourteenth Amendments) Rules 2018. The said Notification reads as under:-

"Notification KA.NI.-2-498/XI-9(42)/17-U.P. ACT-1-2017-ORDER-(121)-2018, Lucknow Dated March 27, 2018 In exercise of the powers under sub-rule (2) of rule 1 of the Uttar Pradesh Goods and Services Tax (Fourteenth Amendment) Rules, 2018 published with Notification No. KA.NI.-2-487/XI-9(42)/17-U.P. GST Rules-2017, Order-(120)-2018 dated March 26, 2018, the Governor is pleased to appoint the 1st day of April, 2018 as the date from which the provisions of rule 3 [other than sub-rule (7)] and rules 4, 5, 6, 7 and 8 of the said rules shall come into force."

43. Above legislative history would disclose that constitutional amendment relating to GST was made effective from 16.09.2016. Thereafter, relevant statutes were enacted by Parliament as well as Provincial Legislature which came into force on different dates i.e. 22.06.2017 and 01.07.2017. Rule framing power under IGST Act, 2017 contained in Section 22 and under CGST Act, 2017 contained in Section 164, came into force on 22.06.2017 but U.P. GST Act, 2017 in its entirety came into force on 22.06.2017 which included Section 164, conferring Rules framing power upon Governor. First set of Provincial Rules namely U.P. GST Rules, 2017 came into force on 29.06.2017.

44. Rule 138 as was initially framed under U.P. GST Rules, 2017 was in primitive form, stating that till such time e-way bill system is developed and approved by GSTC, the Government may, by Notification, specify the documents that a person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage. This rule 138 in U.P. GST Rules, 2017 came into force on 29.06.2017. In furtherance of Rule 138 of U.P. GST Rules, 2017, first Notification was issued by Governor on 21.07.2017 but this Notification also declares that Notification itself shall be effective from such date as Commissioner, State Tax/Commercial Tax may mention in the circular prescribing procedure of downloading the forms mentioned in the said Notification. Thus in furtherance of Rule 138 of U.P. GST Rules, 2017, which came into force on 29.06.2017, first Notification though issued on 21.07.2017 but it was not made effective from that date and, on the contrary, it was to be declared by Commissioner State Tax/Commercial Tax. In furtherance of State Government's Notification No.

KA-NI-1014/XI-9(52)/17-U.P.GST Rules-2107-order(31)-2017 dated 21.07.2017, Commissioner issued Circular No. Sa.Da.GST/Maal Parivahan/2017-18/2017/Vanijya Kar dated 22.07.2017 laying down procedure for downloading of E-way bill 01, E-way-bill 02, E-way-bill 03 and T.D.F. 01 and made Government Notification effective from 26.07.2017. On representation of Traders and Transporters Association Commissioner issued another Circular No. Sa.Da.GST/Maal Parivahan/2017-18/1028/Vanijya Kar dated 27.07.2017, modifying date of making Government Notification dated 21.07.2017 effective and new date was 16.08.2017, the reason being that traders found a lot of difficulties in downloading relevant Forms. Taking note of difficulties Commissioner also issued Circular No. Sa. Da. GST/Maal Parivahan/2017-18/1102/Vanijya Kar dated 09.08.2017 amending procedure for downloading relevant Forms and it was declared that Government Notification dated 21.07.2017 shall be effective from 16.08.2017.

45. Then comes amendment by substitution of Rule 138 by Notification dated 20.09.2017. However, it was not made effective and operative since for the said purpose, Rule-1(2) of U.P. GST (Fourth Amendment) Rules 2017 requires another Notification by State Government, appointing date of enforcement of substituted Rule 138. This substituted Rule 138 as notified on 20.9.2017 was sought to be enforced with effect from 01.02.2018 by Notification dated 30.01.2018 but a glaring error was committed and instead of giving effect to Notification dated "20.09.2017", it mentioned the date as "20.10.2017". Thus Notification dated 20.09.2017 did not come into effect and Rule 138 as sought to be substituted by Notification dated 20.09.2017 remained unenforced and inoperative. On 31.01.2018 UPGST (Thirteenth Amendment) Rules 2018, were published which came into force w.e.f. 23.1.2018, except otherwise provided in the Notification dated 31.01.2018. Substituted Rule 138 made by Notification dated 31.01.2018 was made effective from 01.02.2018. Therefore, Rule 138, as initially enacted and made effective from 29.6.2017 read with Government Notification dated 21.7.2017, prescribing procedure, came into force on 16.08.2017 by Commissioner's Circular dated 22.07.2017 read with Circulars dated 27.02.2017 and 09.08.2017, stood replaced by Rule 138 by Notification dated 31.01.2018 which came into force on 01.02.2018.

46. Since Rule 138 which came into force on 01.02.2018 vide Notification dated 31.01.2018 provided a complete procedure itself including the Forms we have no hesitation in observing that Rule 138 read with all subordinate legislation namely, Government's Notification dated 21.07.2017 and Commissioner's Circular dated 22.07.2017, 27.07.2017 and 09.08.2017 insofar as not consistent with Rule 138 (made effective from 01.02.2018), ceased to be operative on and after 01.02.2018. After 01.02.2018, Form Numbers required under Rule 138 (as came into force on 1.2.2018), were different than what was alleged to be non-possessed or obtained by Petitioners or Transporters, carrying goods in dispute by making reference to Government's Notification dated 21.07.2017 and Commissioner's Circular dated 09.08.2017. Even the authorities concerned, it is evident, were not clear as to what are the correct Forms in these cases.

47. Further, it is not the case of respondents that the Forms consistent with Rule 138 made effective from 01.02.2018 were made available on the portal.

48. We also find that under Rule 138 (10) period of validity of e-way bill was clearly different than what was mentioned in Commissioner's Circulars dated 09.08.2017. Thus, Rule 138 as was brought

in by Notification dated 31.01.2018 w.e.f. 01.02.2018 was operative during the period of transactions with which we are concerned in the present set of writ petitions, except writ petition no. 87 of 2018 which is governed by Rule 138, as initially enacted read with Government's Notification dated 21.07.2017 and Commissioner's Circulars dated 22.07.2017, 27.07.2017 and 09.08.2017 since the invoice herein is dated 15.01.2018 and seizure was made on 20.01.2018.

49. Seizure orders, show cause notices and final orders (wherever passed) in writ petitions under consideration, (except Writ Petition No. 87 of 2018) we find that concerned authority, in all above documents, has referred to Government's Notification dated 21.07.2017 and Commissioner's Circular dated 09.08.2017, though the Forms were already changed, procedure was also made different vide Rule 138 brought in by Notification dated 31.01.2017, made effective from 01.02.2018. These orders, therefore, passed by authorities concerned are clearly erroneous due to mistake of relevant provisions, hence apparently it is difficult to sustain the same.

50. It appears that legislative changes were made in such a quick succession that field authorities could not track themselves with such changes and, hence, adhered to compliance of provisions which stood already substituted by new provisions and earlier ones had become otiose. Insistence upon petitioners, at the time of issue of seizure memos and show cause notices to have downloaded E-way-bill 01 and/or 02 and its non compliance by referring to Government's Notification dated 21.07.2017 read with Commissioner's Circulars dated 22.07.2017 and 09.08.2017 and also Rule 138 as substituted vide Government Notification dated 20.09.2017, though it was never imposed and made operative, was/is clearly erroneous and illegal. Notification dated 31.01.2018 whereby Rule 138 was completely changed by substitution and made effective from 01.02.2018, it appears, escaped attention of authorities concerned, though it is this provision which had to be complied by petitioners. Unfortunately, authorities concerned have completely failed to observe the same. It appears that for the field authorities there was a gross chaos on account of quick changes in relevant provisions, hence, authorities concerned could not appreciate, what provision is supposed to be followed by concerned person and what is actual default, if any, which has been committed by such person. Petitioners (except Writ Petition No. 87 of 2018) in the present cases, when goods in transit were intercepted and impugned orders were issued, met an unauthorized act and suffered illegal order.

51. To complete the story, we may observe that Rule 138 again stood substituted by Notification dated 26.03.2018 which has come into force on 01.04.2018 but here also sub rule (7) has not been made effective.

52. Counsel for the petitioners contended that Notification dated 20.09.2017 having been rescinded subsequently will not result in revival of earlier provision but the submission, in our view, does not arise at all in view of discussions made above, showing that Rule 138 as substituted by U.P. GST (Fourth Amendment) Rules 2017 (Notification dated 20.09.2017), as a matter of fact, never became operative. The first amendment by substitution of Rule 138 is by way of U.P. GST (Thirteenth Amendment) Rules 2018 vide Notification dated 31.01.2018 which came into force on 01.02.2018 and it continued upto 31.03.2018. Thereafter, it stands substituted by another Rule 138 vide U.P. GST (Fourteenth Amendment) Rules 2018, Notification dated 26.03.2018, made effective from

01.04.2018. Probably, the above pace of change derailed respondent authorities also in their understanding as to which provision has to be followed and implemented and what has to be observed/applied/obeyed by Petitioners and their Transporters. That is how impugned orders have been passed under a clear misconception of non-downloading of e-way bill 01 or 02, as the case may be, though under Rule 138, which had come into force on 01.02.2018, the Form(s) required to be downloaded by Dealers or Transporters are different.

53. In these peculiar facts and circumstances of the case, in our view, neither it can be said that Petitioners have deliberately committed any fault or disobeyed law intentionally or fraudulently, particularly when respondent-authorities themselves were not very clear. It also cannot be said that there is/was any intention of evasion of tax on the part of these petitioners. In the facts and circumstances, in all the writ petitions (except Writ Petition No. 87 of 2018), we are clearly of the view that seizure orders, show-cause notices issued under section 129 (3) and final orders, if any, are not sustainable in law.

54. So far as, Writ Petition no. 87 of 2018 is concerned, here orders of seizure and show-cause notices are referable to Rule 138 as came into force on 29.06.2017 read with Government's Notification dated 21.07.2017 and Commissioner's Circulars dated 22.07.2017 and 09.08.2017. In this regard submission has been made that goods were transported from Bhiwandi (State of Maharashtra) to Gautam Budh Nagar and transaction being inter-State, provisions could not have been made by State Government of U.P. GST Act, 2017, hence Rule 138 of U.P. GST Rules, 2017 read with Notification dated 21.07.2017 and Commissioner's Circulars dated 22.07.2017 and 09.08.2017 are ultra vires.

55. We have already discussed relevant provisions of various Statutes and it is evident that the provisions are *pari materia*. Officers of State are also competent for search, seizure and imposition of penalty in respect of violation of Central Enactments. Moreover, provisions relating to search and seizure are not for the purpose of imposition of a new liability but to regulate fiscal statutory provisions in order to avoid evasion of tax. Nothing has been placed on record to show that similar requirement of relevant documents was not provided by Central Government also in respect of inter-state transactions. There is also a principle that mere mention of a wrong provision will not make an order bad, if otherwise, power exists in the Statute. In the circumstances, we are not satisfied that the provisions made by Governor vide Rule 138 read with Government's Notification dated 21.07.2017 and Commissioner's Circulars dated 22.07.2017 and 09.08.2017 are ultra vires of any Statute. The argument otherwise is rejected. Submission that non-observance is not intentional or deliberate, needs an investigation into facts. We find that only a show-cause notice has been issued which is under challenge. Petitioner has remedy of submitting reply to the same before authority concerned and if final order is passed even thereafter there is remedy of appeal. We therefore find no reason to interfere with the seizure order and show-cause notice impugned in writ petition no. 87 of 2018. Instead we relegate petitioner to avail remedy provided under the Statute. With the aforesaid liberty writ petition no. 87 of 2018 is liable to be dismissed.

56. In the ultimate result, Writ Tax No. 587 of 2018, 454 of 2018, 455 of 2018, 462 of 2018, 458 of 2018, 559 of 2018, 560 of 2018, 478 of 2018, 464 of 2018 and 551 of 2018 are hereby allowed to the

extent that seizure orders, show-cause notices and final orders, impugned in these writ petitions are hereby set aside.

57. Writ Tax No. 87 of 2018 is hereby dismissed with the liberty to petitioner to submit reply to show-cause notice, and, if any final order is passed, thereafter to avail remedy of appeal provided in the Statute.

58. Costs made easy.

Order Date :-18.09.2018 Akn/Vikram