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न्यायालय ज्वाइन्ट कमिश्नर (अपील) राज्य कर हल्द्वानी।

उपस्थितः—श्री रोहित श्रीवास्तव ज्वाइन्ट कमिश्नर (अपील) राज्य कर।

अपील संख्या—397 / 2021 वर्ष 2021—2022 आदेश एकीकृत माल एवं सेवा कर अधिनियम, 2017 की धारा—20 सपठित केन्द्रीय माल एवं सेवा कर अधिनियम की धारा—129(3) के अन्तर्गत पारित जी0एस0टी0 एम0ओ0वी0—09 के विरूद्ध

सर्वश्री देवभूमि कास्टिंग प्रा0लि0,गोविन्दगढ़, पंजाब। **GSTIN-03AAGCD0542F2Z9**

बनाम्

आयुक्त राज्य कर।

प्रतिनिधित्वः—

अपीलार्थी की ओर से — श्री हेमन्त सिंघल, सी0ए0 एवं अधिकृत प्रतिनिधि।

विभाग की ओर से— कोई उपस्थित नहीं / केवल लिखित आख्या प्रेषित।

:— निर्णय :—

अपील संख्या—397 / 2021 वर्ष 2021—2022 आदेश एकीकृत माल एवं सेवा कर अधिनियम, 2017 की धारा—20 सपठित केन्द्रीय माल एवं सेवा कर अधिनियम की धारा—129(3) के अन्तर्गत श्री चन्दन सिंह बोरा, राज्य कर अधिकारी, सचल दल, खटीमा द्वारा दिनांक—30.11.2021 को पारित आदेश जी0एस0टी0 एम0ओ0वी0—09 के विरूद्ध दायर की गयी हैं, जिसमें जांच अधिकारी द्वारा जांच के दौरान पाया कि अपीलकर्ता द्वारा परिवहित वाहन संख्या— PB11BA5495 के साथ उपलब्ध ई—वे बिल संख्या—331384087067 की वैधता समाप्त हो गयी है अर्थात उक्त वाहन से माल का परिवहन एक्सपायर्ड ई—वे बिल के माध्यम से किये जाने के कारण जांच अधिकारी द्वारा वाहन एवं माल का अवरोधन करते हुए अभिग्रहण की कार्यवाही की गयी एवं धारा 129(3) के अन्तर्गत आदेश जी0एस0टी0 एम0ओ0वी0—09 पारित किया गया, जिसमें करयोग्य माल के मूल्य रू0—1708780.00 पर IGST Act, 2017 की धारा—20 सपठित CGST Act, 2017 की धारा—129(3) के अन्तर्गत रू0—307580.00 कर एवं रू0—307580.00 अर्थदण्ड आरोपित किया गया, जिसे अपीलकर्ता द्वारा जमा करते हुए माल मय वाहन अवमुक्त कराया गया। इस प्रकार इस अपील में उक्त कर व शास्ति की राशि विवादित है।

अपीलकर्ता की ओर से सुनवाई पर श्री हेमन्त सिंघल, सी0ए0 एवं अधिकृत प्रतिनिधि उपस्थित हुए तथा तर्क प्रस्तुत कियां गया कि :—

i. That the proper officer has grossly erred in passing the impugned order under Section 129(3) of the GST Act. Order passed by the proper officer is against the settled principles of law and is liable to be quashed.

ii. That Appellant Supplierwas transporting goods in the state under cover of valid Tax invoice dulychargingthe applicable IntegratedTax of Rs3,07,581/-. Also worthwhile to mention that E Way Bill and E invoice was generated for the movement of goods with correct vehicle detailsand Goods Details.

iii. It is clearly evident that,even remotely, there are no chances of evasion of tax in the present case and there is only a technical breach on the part of transporter who failed to update E way bill within the prescribed time.

iv. **The Learned officer has grossly erred in passing the Impugned Order for imposition of tax and penalty liable to be quashed by the Honorable Appellate Authority on following grounds:**

   a. **SCN (MOV 07) not issued,**
   b. **Almost impossible to update E way Bill within the prescribed time window,**
   c. **Impugned order is contrary to the circular no. 64/38/2018-GST,**

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d. **Reasoned Order not given by the assessing authority,**

e. **Order is against the well settled principles of law decided by the Courts.**

v. We have analyzed provisions of GST Act in the foregoing paragraphs to substantiate the grounds of appeal raised above.

vi. That with due permission of the Authority, the appellant reserves the right to add /amend or alter the grounds of appeal or add/amend fresh/further evidence in support of his submission for the proper administration of justice

SCN (MOV 07) NOT ISSUED

vii. Sub Section (4) of Section 129 of GST Act provides that "No tax Interest or penalty shall be determined under sub section (3) without giving the person concerned an opportunity of being heard."

viii. That the learned officer did not issue any Show Cause Notice to the Appellant. **Show Cause Notice (MOV 07) is not issued in the present case. SCN in MOV 07 is a mandatory document to be served for penalty proceedings under section 129. The same is neither served in person to the driver or the appellant and is also not available on the GSTN Portal.**

ix. **The above fact is also evident in DRC 01 'Summary of SCN' issued on 30 Nov 2021**

(Reference No.- ZD0511210071928) wherein Row No. 5. 'SCN Reference No.' and Row No. 6 'SCN Date' are left blank as under:

5.	SCN Reference No.	-NA-
6.	SCN Date	-NA-

x. The proceeding under Section 129 are void –ab- intio due to Non- issuance of SCN (MOV 07).

xi. That the vehicle had reached its destination and was parked at nearby Dhaba, waiting for the plant to be opened.

xii. Perusal of the orders passed would clearly show that these factual positions were not at all examined by the proper officer. Rather, the Learned officer has passed the impugned order without

- issuing SCN, affordingproper opportunity of being heard and examining the facts of the case.

xiii. The proceeding under Section 129 are not automatic, rather require hearing the appellant, examining the facts of the case and thereafter providing a reasoned order. That the due process of law was not followed, the impugned order cannot be sustained and is liable to be quashed.

xiv. That in the matter of **Ahnas Mohammed vs. Assistant Tax Officer W.P. No. 1525 of 2020, Dated 20 Jan 2020;** the Honourable High Court of Kerala held**:**

xv. "For reasons only known to the 1st respondent, he has chosen to pass orders as per Ext.P-7 on 13-1-2020, without affording any opportunity of being heard to the petitioner and even before the date fixed by him for the petitioner's personal hearing. It is indeed very startling that in a case of this nature, a responsible taxation officer like the 1st respondent violates the elementary cannons of fairness and natural justice by not even affording a reasonable opportunity of being heard to the affected party. It is all the more surprising as none other than the 1st respondent has issued Ext.P-5(b) notice dated

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6-1-20020 directing the petitioner to attend for a personally hearing in the matter on 14-1-2020. Even now, the 1st respondent has not chosen to give specific factual instructions to the learned Government Pleader as to whether he had afforded reasonable opportunity of being heard to the petitioner. The abovesaid facts asserted by the petitioner have not been controverted by the respondents. Therefore, it is only to be held that the 1st respondent has not granted personal hearing to the petitioner before taking a decision as per Ext.P-7 order dated 13-1-2020, even though he had invited the petitioner for a personal hearing to be conducted on 14-1-2020 as per Ext.P-5(d) notice dated 6-1-2020. Hence it is only to be held that the impugned order at Ext.P-7 is illegal and ultra vires and the same has been issued in patent violation of the elementary cannons of natural justice and fairness and the said order is liable to be quashed. It is all the more so, Ext.P-7 order has been rendered on 13-1-2020 by the 1st respondent at a point of time, the previous writ proceedings as per W.P.(C).No. 674/2020 was pending on the file of this Court, which fact was also very much known to the 1st respondent. Accordingly, it is so ordered and declared. Consequently, it is ordered that Ext.P-7 order will stand set aside and the matter in relation to the proposed penalty thereto shall stand remitted to the 1st respondent to take a decision afresh. The petitioner will immediately furnish his written submission in the matter before the 1st respondent along with a certified copy of this judgment and this may be done within a period of 10 days from the date of receipt of a certified copy of this judgment. Thereafter the 1st respondent shall issue notice of hearing to the petitioner by registered post with acknowledgement due and thereafter the 1st respondent will grant reasonable opportunity of personal hearing to the petitioner through his authorised representative/counsel, if any and then will take a considered decision thereon in accordance with law."

xvi. That the same view was taken by the Honorable Allahabad High Court in the matter of **Jaitron Communication (P.) Ltd. v. State Of UP, WRIT TAX NO. 231 OF 2020, SEPTEMBER 24, 2020** where Competent Authority detained a drilling machine of assessee under transport and passed order under section 129(3) without examining specific defence of assessee that machine was being transported for performance of job work and not for any other work, impugned order deserved to be quashed with direction to Competent Authority to examine defence of assessee and thereafter determine liability. The Honourable High Court observed that Penalty order was passed without granting opportunity of hearing to the assesse and the said authority was directed to decide the matter afresh.

xvii. That impugned order imposing Tax and Penalty is bad and not tenable in law and Ultra Vires the prevailing provisions of GST Law.

xviii. That on the facts, in circumstances and judicial pronouncements, the order of penalty passed by the Proper Officer is arbitrary, unjustified and liable to be quashed.

xix. That the impugned order is passed in isolation without considering the prescribed procedures and is ultra vires liable to be quashed.

ALMOST IMPOSSIBLE TO UPDATE E WAY BILL WITHIN THE PRESCRIBED TIME WINDOW

xx. That E way Bill can be extended only within the short window of 8 Hours before and 8 hours after the expiry of the validity. The E way bill expired on 28/11/2021 at 00:00 HRS.

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xxi. That the time window within which E way Bill portal allows updating E way bill in the present case is from **4:00 PM on 28/11/2021 (Sun) to 8:00 AM on 29/11/2021 (Mon)**. Practically 'No working hour' is availableto the transporter to get the E way bill extended.

xxii. That E way bill expires in the midnight and the option to update E way bill is exhausted before start of the working hours. Practically it is almost impossible for the transporter to get the E way bill extended.

xxiii. That despite various industry representations on the issue still there is no practical solution provided under the GST Law for E way bills that expire during the movement of goods.

xxiv. That the conditions imposed by the E way Bill portal for extending an Expired E way bill are unrealistic, illogical and completely absurd.

xxv. That there is no option available with the trade or industry if E way bill expires during the movement of goods due to any unforeseen circumstances like in the present case.

xxvi. That the goods in movement had already suffered IGST as is evident from the invoices. Invoking harsh provisions of Section 129, completely ignoring the factual positions is arbitrary, clear misuse of power and authority. The Proper officer has failed to perform the duties entrusted to him under the GST Law.

xxvii. **That the disputed tax amount had already been declaredin E invoice and GTSR1 by the Appellant on 25Nov 2021. Screenshot of GSTR1 is also attached for your kind perusal.**

xxviii. That based on above stated facts of the case there is only a procedural lapse on the part of transporter and the situation not at all warrant invoking provisions of Section 129.

xxix. That the impugned order has been passed in mechanical manner without appreciating the factual position and genuineness of the transaction.

IMPUGNED ORDER IS CONTRARY TO THE CIRCULAR NO. 64/38/2018-GST ISSUED BY CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (CBIC) ON 14 SEP 2018

xxx. That various representations were received by the CBIC regarding imposition of penalty in case of minor discrepancies in the details mentioned in the e way bill although there are no major lapses in the invoices accompanying the goods in movement. In order to clarify this issue and to bring uniformity in implementation of GST provisions, Board, has issued Circular no. 64/38/2018-GST; Dated: 14 Sep 2018modifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods.

xxxi. It was clarified in the circular that "proceedings under Section 129 of the CGST Act may not be initiated for every mistake in the documents carried with the vehicle. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e way bill, proceedings under section 129 of GST Act may be initiated.

xxxii. **Further, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e way bill, proceedings under**

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Section 129 of the GST Act, may not be initiated for minor discrepancies. That in such cases General Penalty to the tune of Rs 500/- (Rupees five hundred only) each shall be imposed under section 125".

xxxiii. That Para 5 of the circular also provides illustrative list of 6 situations wherein proceedings under section 129 may not be invoked. The list is only illustrative and not exhaustive.

xxxiv. That Para 2 of the circular clearly states that Section 129 may not be invoked in case of minor discrepancies/ procedural lapses in the details mentioned in e way bill if there are no major lapses in the invoices accompanying the goods in movement.

xxxv. **Thus it is very clear from the above CBIC Circular that Section 129 need not be invoked in every mistake. Rather Proper Officer needs to frame an opinion that Section 129 may be imposed. Such opinion has to be objective opinion based on hard evidences and not merely on conjecture, surmises and presumptions. If the proceedings are automatic and compulsory no such opinion is required. Proper officer is required to frame an opinion that the contravention may, at least remotely, result in evasion of tax.**

xxxvi. In the present case there are no valid groundsfor framing opinion to invoke Section 129, nor any reasons are provided in Notice or Order for invoking Section 129.

xxxvii. Holistic reading of the statutory provisions and the Circulars noted above, indicates that department does not paint all violations with the same brush and makes a distinction between serious and substantive violations and those that are minor/ procedural in nature.

xxxviii. Mistake committed by the Appellant is a mere technical breach and are apparent from the face of records and does not warrant invoking stringent provisions of Section 129.

xxxix. It is worthwhile to note that the proper officer has nowhere in the order provided any reasons for framing the opinion that the contraventions in the present case are of so serious nature that it requires invoking Section 129.

xl. That the impugned order is passed in isolation without considering the prescribed procedures and is ultra vires liable to be quashed.

xli. In light of the clarification issued by the Board on the abovesaid matter, proper officer is grossly wrong in invoking proceedings under section 129. Proceedings under Section 129 shall be initiated where movement of goods is not accompanied by E Way bill/ Invoice/ any other specified document. Detention proceedings should not be initiated in case of minor discrepancies in generation of E Way Bill.

xlii. The Ld. Officer should have taken lenient view in the case of appellant as per the principles set by the **Hon'ble Supreme Court in case of Hindustan Steel Ltd. v. State of Orissa [1972]** 83 ITR 26 where it was observed as under:

xliii. "The discretion to impose penalty must be exercised judicially. A penalty will ordinarily imposed in case where the party acts deliberately in defiance of the law, but not in case where is a technically or venial breach of the provisions of the Act or where breach flows from a bona fide belief that the attender is not liable under the Act. Penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of the law or was guilty of conduct

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contumacious or dishonest or acted in conscious disregard to into obligation. Even if a minimum penalty is prescribed, the Authority will be justified in refusing to impose penalty, when there is a technical or venial breach of Act".

xliv. In the present case Invoice No.,Invoice date, Vehicle No., Invoice Amount, Invoice Quantity, Product Description and Product HSN are correctly mentioned in E Way Bill.

xlv. That the delay in completion of journey was caused due to reasons beyond the control of appellant.

xlvi. **Section 129 contains anti-tax evasion provisions. Intentions of the lawmakers are very clear in framing Section 129 i.e. to curb evasion of tax. That Tax Invoice duly charging the applicable tax has been issued by the appellant and also E Way bill has been generated. It is very clearly evident that there is no intention to evade payment of tax. Thus invoking Section 129 by the learned officer is wrong, harsh and against the intention of GST Law.**

xlvii. That the impugned order is bad in law and is liable to be quashed.

REASONED ORDER NOT GIVEN BY THE ASSESSING AUTHORITY

xlviii. At this juncture reference may be made to the decision of the Supreme Court in Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496, wherein the court in the context of necessity to give reasons, has held thus:

"47.Summarising the above discussion, this Court holds:

a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it mustalso appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial oreven administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoneddecisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason isthe soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. Allthese decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectivelyconsidered. This is important for sustaining the litigants' faith in the justice delivery

(j) Insistence on reason is a requirement for both judicial accountability and

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible toknow whether the person

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deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency indecision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broaderscrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the saidrequirement is now virtually a component of human rights and was considered part of Strasbourg See Ruiz Torija v. Spain,(1994) 19 EHRR 553 and Anya v. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 ofthe European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicialdecisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."

xlix. A perusal of the impugned order reveals that the proper officer has directly invoked Section 129 without providing any reasons for framing the opinion that the mistake is a fit case for Section 129.

l. In CCT v. Shukla& Bros.,(2010) 4 SCC 785, the Supreme Court held thus:

"14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the actionof the authorities should be given notice to show causethereof and granted an opportunity of hearing and secondly, the ordersso passed by theauthorities should give reason for arriving at any conclusion showing proper application of mind. Violation ofeither of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to theadministrative authorities certainly requires that the judgment of the court should meet with this requirement with higherdegree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must besupported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicialauthority has practically extinguished and both are required to pass reasoned orders."

li. There is nothing in the order that reveals application of mind to the quantum of fine.

lii. Viewed in light of the principles of enunciated in the decisions referred to herein above, the impugned order is in breach of principles of natural justice on account of not providing reason as to why proper officer has come to conclusion that a mere technical breach in E way bill is sufficient for invoking Section 129

liii. That on the facts, in circumstances and judicial pronouncements, the order of penalty passed by the Proper Officer is not a reasoned order and is Non Speaking and is liable to be quashed.

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IMPUGNED ORDER CONTRARY TO SETTLED LAW

liv. That in the latest judgment of the **Honorable Telangana High Court in the case of M/s StayamShivam Papers (P) Ltd. Vs Asst. Commissioner ST Dated 2 June 2021,** the Court has made following observations in case of Expired E way Bill:

"Why the 2nd respondent has not chosen to refer to these two explanations offered by petitioner is nowhere mentioned in the counter-affidavit filed by 2nd respondent. It was the duty of 2nd respondent to consider the explanation offered by petitioner as to why the goods could not have been delivered during the validity of the e-way bill, and instead he is harping on the fact that the e-way bill is not extended even four (04) hours before the expiry or four (04) hours after the expiry, which is untenable.

The 2nd respondent merely states in the counter affidavit that there is clear evasion of tax and so he did not consider the said explanations. This is plainly arbitrary and illegal and violates Article 14 of the Constitution of India, because there is no denial by the 2nd respondent of the traffic blockage at Basher Bagh due to the anti CAA and NRC agitation on 4.1.2020 up to 8.30 pm preventing the movement of auto trolley for otherwise the goods would have been delivered on that day itself. He also does not dispute that 04.01.2020 was a Saturday, 05.01.2020 was a Sunday and the next working day was only 06.01.2020. .

42. How the 2nd respondent could have drawn an inference that petitioner is evading tax merely because the e-way bill has expired is also nowhere explained in the counter-affidavit."

lv. That in the above case Telangana High Court quashed the impugned Order and directed for refund with interest at 6% p.a. The ratio decidendiin the above case is squarely applicable in the present case as well.

lvi. That in the matter of **Caterpillar India (P) Ltd. Vs. State Tax Officer [2019]**, the Honorable Madras High Court answered the question 'Whether Section 129 shall be invoked for movement of goods of the consignments with expired E way bill or not ?'Relevant extracts of the decision of the Court is reproduced below:

" 20. As far as the determination of penalty is concerned, it is the Assessing Officer/State Tax Officer who is the competent and proper person for such determination/quantification. However, a holistic reading of the statutory provisions and the Circular noted above, indicates to me that the Department does not paint all violations/transgressions with the same brush and makes a distinction between serious and substantive violations and those that are minor/procedural in nature. Though the petitioners have been issued notices in terms of Section 129(4) of the Act calling upon them to appear for adjudication, they have not responded to the same. The petitioners are thus directed to appear before the first respondent on 06.03.2019 at the first instance, for commencement of proceedings for adjudication. **The question of whether the movement of the consignments sans valid E-way bills constitutes a substantive error or a mere technical breach shall be considered by the Assessing Officer, having regard to the provisions of Sections 122, 125 and 126 of the Act as well all relevant Instructions and Circulars issued by the Board, including the Circular extracted above. Let the officer also bear in mind that E-way bills, though stale, had, in fact, accompanied the consignments.** The assessees/petitioners have offered explanations in regard to the circumstances that caused the documents to expire and

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such explanations will be taken into consideration by the officer in determining the quantum of penalty to be levied."

lvii. That the present case of appellant is squarely covered by the above judgment of the Honorable Madras High Court.

lviii. That the same view was taken by Himachal Pradesh Appellate Authority in the case of **Bhushan Power and Steel Limited vs. Assistant Commissioner State Taxes and Excise Appeal No.- 007/2019 to 009/2019 Dated : 11-02-2020**. Relevant extract of the judgment has been reproduced hereunder:

" Rule 138(10) says that validity of e-way bill may be extended within 8 hours from the time of its expiry but in the instant cases the vehicle was practically apprehended in almost 08 to 09 hours of the expiry of the e-way bill, primafacie it appears that, the appellant has been not given reasonable opportunity to update the Part-A of e-way bill. It was noted that Part-B of the e-way bill was duly filled which puts to rest on any doubts about the intention of the appellant to evade tax. Secondly, Circular No. 64/38/2018-GST dated 14th of September, 2018 issued by the Central Board of Indirect Taxes and Customs and the circular of Government of Himachal Pradesh dated 13.03.2019 valid from 14.09.2018 clearly states in para no.3 as under;-

16. that Section 68 of the CGST/HPGST Act read with rule 138-A of the Central Goods and Services Tax Rules, 2017 (hererafter referred to as 'the CGST/HPGST Rules) required that the person incharge of a conveyance carrying any consignment of goods of value exceeding Rs. 50,000 should carry a copy of documents viz, invoice/ bill of supply/ delivery challan/ bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt a contravention of the provision of the law takes place and the provisions of Section 129 and Section 130 of the CGST/HPGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part-B of FORM GST EWB-01 amounts to the e-way bill becoming not a valid documents for the movements of goods by road as per explanation (2) to rule 138 (3) of CGST/HPGST Rules, except in the case where the goods are transported for a distance of up to 50 kilometers within the state or Union territory to or from the place of business of the transporter to the place of business of the consigner or the consignee, as the case may be.

17. Therefore, it has been specifically mentioned that the non-furnishing of information in Part-B 01 of FORM GST EWB-01 amounts to the e-way bill becoming the not a valid document. It appears that e-way bill is invalid only if Part-B of E-way bill is not filled or a considerable time to update the Part —A of e-way bill has gone by.

18. Similarly, the para no. 5 of the circular says in case a consignment of goods is accompanied with an invoice or any other specify document and also an e-way bill, proceeding u/s 129 of the GST Act may not be initiated. Therefore, in my opinion imposition of tax/ penalty by the respondent is harsh and unsustainable.

19 In the view of above circumstances the instant appeals are accepted and the order passed by Asst. Commissioner State Taxes & Excise-cum-Proper Officer, the Mall Road Circle, Shimla are set aside. Since the appellant has made minor procedural laps as required to follow under rule 138(10) therefore a penalty of Rs One thousand only (Rs- 1000/- IGST Act) in each case is imposed on the tax payer under section 125 under the CGST/ HPGST Act 2017 in accordance to CBIC

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Circular No. 64/38/2018-GST, dated 14th Sep 2018 and the State Circular no. 12-25/2018-19-EXN-GST-(575)-6009-6026 dated 13th March 2019 and may be recovered accordingly. The judgment in these cases was reserved on 18.12.2019 which is released today.

Parties be informed accordingly."

lix. That the above consignment is properly accounted in books of accounts, being maintained in the ordinary course of our business.

lx. That the Appellant is regularly filling GST Return and discharging its tax liability. The appellant is paying GST to the tune of Rs 50 Lakh in cash on monthly basis to the government. We are providing a copy of latest GSTR3B in Annexure for your kind perusal.

lxi. That there is only a technical breach in E way bill apparent from the face of the records and Section 129 cannot be invoked in case of minor discrepancies in E Way bill if there are no major lapses in the Invoices accompanying the goods in movement.

lxii. That Proper officer failed to afford an opportunity of being heard to the Appellant. That the Proper Officer in the penalty ordernowhereprovided any reasons for imposing Penalty under Section 129 considering the facts of the case. Therefore such penalty order is not sustainableand liable to be quashed.

अपीलकर्ता द्वारा वाद की सुनवाई के समय अपने समर्थन में एकाउन्ट स्टेटमेंट, स्टॉक रजिस्टर, पर्चेज ऑर्डर, जी0एस0टी0आर0–1 इत्यादि की प्रतियां दाखिल की गयी हैं।

अतः अपीलकर्ता द्वारा उपरोक्त आधारों एवं तर्को पर दायर अपील स्वीकार करने एवं कर और शास्ति की मांग का आदेश जी0एस0टी0 एम0ओ0वी–9 समाप्त किए जाने की प्रार्थना की गयी।

मेरे द्वारा अपीलकर्ता द्वारा अपील मैमों जी0एस0टी ए0पी0एल0–01 में दिये गए तथ्यों एवं आधारों तथा सुनवाई के समय दिए गये तर्को पर विचार किया गया एवं पारित आदेश जी0एस0टी0 एम0ओ0वी0–9 का अवलोकन किया गया तथा अभिलेखों का परिशीलन किया गया।

अतः अवधारण का बिन्दु है कि–क्या प्रश्नगत वाद के तथ्यों एवं परिस्थितियों में उचित अधिकारी / जांच अधिकारी द्वारा धारा 129(3) के अन्तर्गत कर एवं अर्थदण्ड आरोपित किया जाना उचित है?

यहां पर UKGST Act,2017/CGST Act,2017 की धारा 129 का उल्लेख करना आवश्यक है, जो निम्न प्रकार है:–

"(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 percent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two percent 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 percent 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 percent 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;

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

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.
(2) The provisions of sub-section (6) of section 67 shall, **mutatis mutandis**, apply for detention and seizure of goods and conveyances.
(3) **The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).**
(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.
(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.
(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

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

अतः उपरोक्त धारा 129(1) का अवलोकन करने से स्पष्ट है कि यदि माल का परिवहन अधिनियम/अधिनियम के अधीन बनाए गये नियमों का उल्लंघन करते हुए किया जा रहा है, तब उस स्थिति में माल एवं माल ले जा रहे वाहन का एवं उनसे सम्बन्धित प्रपत्रों का अभिरक्षण/अभिग्रहण किया जा सकता है एवं देय कर व शास्ति के भुगतान या देय प्रतिभूति को देने के बाद उनको अवमुक्त किया जाएगा।

यहां पर अधिनियम की धारा 68 का उल्लेख करना भी आवश्यक है, जो निम्न प्रकार हैः–

"(1) **The Govemment 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."

अतः धारा 68(1) का अवलोकन करने से स्पष्ट है कि एक निश्चित मूल्य के ऊपर, जैसा कि विनिर्दिष्ट किया जाए, परिवहन किए जा रहे माल से सम्बन्धित वाहन में, विहित (**prescribed**) किए गये प्रपत्रों (**documents**) एवं डिवाईसेज् (**devices**) का होना आवश्यक है।

उक्त विहित प्रपत्र केन्द्रीय माल एवं सेवा कर नियमावली, 2017 (CGST Rules, 2017) के नियम 138 A में निर्धारित किए गये हैं, जिसका उप–नियम (1) निम्न प्रकार से है–

"(1) The person in charge of a conveyance shall carry-

(a) the invoice or bill of supply or delivery challan, as the case may be, and

(b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on the conveyance in such manner as may be notified by the Commissioner:

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Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

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

अतः उपरोक्त नियम 138A(1) का अवलोकन करने से स्पष्ट है कि वाहन द्वारा परिवहन किए जा रहे माल के साथ इनवाईस / बिल ऑफ सप्लाई / डिलीवरी चालान / बिल ऑफ एन्ट्री (आयातित गुड्स के मामलें में) एवं ई–वे बिल की प्रतियां रखना आवश्यक है।

प्रश्नगत सम्व्यवहार में जांच अधिकारी द्वारा जांच के दौरान पाया कि अपीलकर्ता द्वारा परिवहित वाहन संख्या–PB11BA5495 के साथ उपलब्ध ई–वे–बिल को, अपीलकर्ता सर्वश्री देवभूमि कास्टिंग प्रा0लि0, गोविन्दगढ, पंजाब द्वारा सर्वश्री उत्तरांचल ऑटो, इल्डिको इण्डस्ट्रीयल पार्क, उत्तराखण्ड को बिल संख्या–DBCPL-740 दिनांक–25.11.2021, मूल्य रू0–1708780.00 द्वारा किए गये माल की सप्लाई के परिप्रेक्ष्य में, दिनांक–25.11.2021 को 04:41 (P.M.) पर जनरेट किया गया है तथा उक्त ई–वे बिल की वैधता दिनांक–28.11.2021 की मध्य रात्रि 12:00 बजे तक ही थी। दिनांक–29.11.2021 को प्रातः 07:48 बजे वाहन को मय माल जांच अधिकारी द्वारा सितारगंज में रोका गया एवं जांच करने पर पाया गया कि सम्व्यवहार से सम्बन्धित ई–वे बिल की वैधता अवधि समाप्त हो गयी है। अतः ई–वे बिल की वैधता अवधि समाप्त होने के आधार पर जांच अधिकारी द्वारा जांचोपरांत माल एवं वाहन के अभिग्रहण से सम्बन्धित समस्त औपचारिकताएं कर धारा–129(3) के अन्तर्गत रू0–307580.00 कर एवं रू0–307580.00 अर्थदण्ड आरोपित किया गया।

प्रश्नगत सम्व्यवहार के संदर्भ में सचल दल अधिकारी से जांच आख्या मंगाई गयी, जिसमें अपीलकर्ता के उचित द्वारा पत्रांक–336 दिनांक–15.03.2022 द्वारा आख्या प्रेषित करते हुए स्पष्ट किया गया है कि–"वाहन संख्या PB11BA5495 को दिनांक 29.11.2021 को भौतिक सत्यापन हेतु आर0के0 ढ़ाबा किच्छा रोड, सितारगंज (हाईवे) के समीप रोका गया। भौतिक सत्यापन करने पर वाहन में परिवहित माल से सम्बन्धित प्रपत्रों की जांच में पाया गया कि बिल संख्या–DBCPL–740 दिनांक 25.11.2021 धनराशि 17,08,780.00 विक्रेता व्यापारी, सर्वश्री Devbhoomi Casting Private Limited Mandi Gobindgarh, Punjab जी0एस0टी0एन0–03AAGCD0542F2Z9 के द्वारा क्रेता व्यापारी सर्वश्री Uttranchal Auto D-42, Phase-II Eldeco Sidcul Industrial Park Uttarakhand, GSTN-05AACFU5604N1Z1 के नाम पर बनाया गया था। बिल संख्या–DBCPL-740 दिनांक 25.11.2021 का ई–वे बिल संख्य–331384087067 Expire पाया गया। वाहन में उक्त बिल में अंकित माल Alloy Steel Billets का परिवहन किया जा रहा था।

विक्रेता व्यापारी सर्वश्री Devbhoomi Casting Private Limited Mandi Gobindgarh, Punjab जी0एस0टी0एन0–03AAGCD0542F2Z9 पर उत्तराखझउ माल एवं सेवा कर अधिनियम–2017 की धारा–129 के अन्तर्गत कार्यवाही करते हुए, माल की कुल कीमत रू0 17,08,780.00 पर IGST के अन्तर्गत 18 प्रतिशत की दर से रू0 3,07,581.00 कर राशि एवं रू0 3,07,581.00 अर्थदण्ड राशि वसूल की गयी। इस प्रकार कुल धनराशि रू0 6,15,162.00 को नियमानुसार राजकीय राजकोष में जमा कराया गया।"

प्रश्नगत मामलें में यह निर्विवाद है कि जिस समय वाहन संख्या–PB11BA5495 को जांच हेतु रोका गया था, उस समय परिवहन किए जा रहे माल के साथ टैक्स इनवाईस एवं ई–वे–बिल उपलब्ध थे तथा परिवहन किया जा रहा माल लौरी रिसीप्ट संख्या–200 दिनांक–25.11.2021 से आच्छादित था।

उल्लेखनीय है कि जांच अधिकारी द्वारा धारा–129(1) के अन्तर्गत माल एवं वाहन का अभिग्रहण ई–वे–बिल संख्या–331384087067 की वैधता अवधि समाप्त हो जाने के कारण किया गया है एवं IGST

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टंकक / लिपिक
संयुक्त आयुक्त (अपील)
राज्य कर

Act,2017 की धारा–20 सपठित CGST Act, 2017 की धारा 129(3) के अन्तर्गत कर एवं अर्थदण्ड आरोपित किया गया है।

इसके अतिरिक्त यह भी स्पष्ट है कि प्रश्नगत सम्व्यवहार से सम्बन्धित सभी ऑनलाईन औपचारिकताओं का अपीलकर्ता द्वारा पालन किया गया था तथा माल की घोषणा नियमानुसार ऑनलाईन जी0एस0टी0एन0 पोर्टल पर की गयी थी, जो कि विभाग के संज्ञान में थी।

उल्लेखनीय है कि प्रश्नगत माल का आयात उत्तराखण्ड राज्य में पर्चेज ऑर्डर के क्रम में किया जा रहा था तथा सम्व्यवहार की प्रविष्टि जी0एस0टी0आर–1, लेखा–पुस्तकों आदि में विधिवत् रूप से की गयी है अर्थात सम्व्यवहार सत्यापनीय था। दोनों केता एवं विकेता बोनाफाईड पंजीकृत करदाता हैं।

इसके अतिरिक्त, परिवहन किए जा रहे माल के साथ इनवाईस एवं ई–वे बिल के साथ–साथ बिल्टी (Consignment Note) संख्या–200 / दिनांक–25.11.2021 भी उपलब्ध थी, जिस पर कन्साईंनर (supplier) एवं कन्साईंनी (recipient) के नाम तथा जी0एस0टी0एन0, वस्तु का नाम, वस्तु का वजन आदि स्पष्ट रूप से अंकित किए गये थे अर्थात परिवहन किए जा रहे माल की घोषणा विधिवत् रूप से की गयी थी।

ई–वे बिल संख्या–331384087067 पर भी टैक्स इनवाईस संख्या (Document No.)– DBCPL-740 एवं उसका दिनांक–25.11.2021, माल का कुल मूल्य रू0–2016360.00, वाहन संख्या– PB11BA5495, बिल्टी संख्या–200 एवं उसका दिनांक–25.11.2021 तथा अन्य सभी प्रविष्टियां सही–सही अंकित हैं।

अपीलकर्ता द्वारा Statement of Facts में बताया गया है कि वाहन अपने गन्तव्य स्थल पर अपनी वैधता अवधि के अन्दर दिनांक 28.11.2021 को पंहुच गया था, परन्तु दिनांक 28.11.2021 को रविवार होने के कारण प्लांट बन्द था। अतः माल की डिलीवरी नहीं हो पायी। अतः वाहन चालक पास के आर0के0 ढाबे में रूक कर प्लांट खुलने पर माल की डिलीवरी देने का इंतजार करने लगा।

अतः अपीलकर्ता द्वारा ई–वे बिल की वैधता अवधि समाप्त हो जाने के कारण को स्पष्ट कर दिया गया है।

यहां पर सहायक आयुक्त, राज्य कर, सचलदल इकाई, खटीमा द्वारा अपीलकर्ता को प्रेषित पत्रांक दिनांकित 30.11.2021 का उल्लेख करना आवश्यक है, जो अभिलेखों पर उपलब्ध है एवं निम्न प्रकार से है :–

" वाहन संख्या–PB11BA5495 को जांच हेतु दिनांक 29.11.2021 को आर0के0 ढाबा किच्छा रोड सितारगंज (हाईवे) के समीप रोका गया। वाहन में **Alloy STEEL billets** लदा है जो ई–वे बिल **संख्या–331384087067 द्वारा M/S DEVBHOOMI CASTING PRIVATE LIMITED MANDI GOBINDGARH PUNJAB से M/S UTTRANCHAL AUTO D-42. PHASE-II ELDECO SIDCUL INDUSTRIAL PARK SITARGANJ UTTARAKHAND के लिए परिवहित किया जा रहा है। ई–वे बिल की जांच करने पर पाया गया कि ई–वे बिल का नियत समय समाप्त हो चुका है। इस आधार पर वाहन को Detain करते हुए उत्तराखण्ड माल एवं सेवा कर अधिनियम–2017 के सपठित धारा–129 के अन्तर्गत कार्यवाही सुनिश्चित की गयी, वाहन एवं परिवहित माल को सिडकुल से 14 किलोमीटर पहले आर0के0 ढाबा किच्छा रोड सितारगंज पर रोका गया, वाहन को Running Base पर जांच हेतु रोका गया है। अतः करदाता द्वारा दाखिल स्पष्टीकरण को अस्वीकार किया जाता है।"**

अतः उपरोक्त पत्रांक दिनांकित 30.11.2021 का अवलोकन करने से स्पष्ट है कि जांच अधिकारी / उचित अधिकारी द्वारा **स्वंय स्वीकार किया गया है कि –" वाहन संख्या–PB11BA5495 को जांच हेतु दिनांक 29.11.2021 को आर0के0 ढाबा किच्छा रोड सितारगंज (हाईवे) के समीप रोका गया" अर्थात वाहन को मय माल सिडकुल से 14 km पहले आर0के0 ढाबा, किच्छा रोड, सितारगंज पर रोका गया था।**

इस प्रकार स्पष्ट है कि वाहन मय माल अपने गन्तव्य स्थल पर ई–वे बिल की validity के अन्दर दिनांक 28.11.2021 को पहुंच गया था एवं दिनांक 28.11.2021 को रविवार की छुट्टी होने के

क्रमशः पेज– 14 पर

सत्य प्रतिलिपि
टंकक/लिपिक
संयुक्त आयुक्त (अपील)
राज्य कर, हल्द्वानी।

कारण माल की डिलीवरी नहीं हो पायी थी। अतः पास के ढाबे पर वाहन चालक प्लांट खुलने का इंतजार कर रहा था एवं अगले दिन दिनांक 29.11.2021 को प्रातः 7:48 AM पर वाहन को अपने गन्तव्य स्थल जाते हुए intercept कर लिया गया।

इस प्रकार स्पष्ट है कि ई–वे बिल की समय–सीमा (validity period) समाप्त (expire) होने का कारण reasonable एवं genuine है एवं जो अपीलकर्ता के नियंत्रण से बाहर (beyond the control) था अर्थात ई–वे बिल की वैधता अवधि (validity period) के अन्दर माल का अपने गन्तव्य स्थल पर न पहुंचने का कारण परिस्थितिजनक एवं inadvertent है। दूसरे शब्दों में ई–वे बिल की वैधता अवधि के दौरान माल की डिलीवरी न होना एक बोनाफाईड विलम्ब है।

यहां यह भी उल्लेखनीय है कि जब वाहन को दिनांक 29.11.2021 को प्रातः 7:48 AM पर जांच हेतु रोका गया था, उस समय भी नियम 138(10) के तृतीय प्रोविजों के अनुसार ई–वे बिल की वैधता अवधि बढ़ाने हेतु समय उपलब्ध था अर्थात विलम्ब केवल 7 घण्टे 48 मिनट का था, जो आठ घंटे के अन्दर था।

केन्द्रीय माल एवं सेवा कर नियमावली, 2017 (CGST Rules,2017) के नियचम 138(10) का तृतीय प्रोविजो निम्न प्रकार है –

" **Provided also that the validity of the e-way bill may be extended within eight hours from the time of its expiry**."

इसके अतिरिक्त, यहां यह भी उल्लेखनीय है कि जांच अधिकारी द्वारा वाहन में लदे माल के भौतिक सत्यापन पर कोई त्रुटि नहीं पायी गयी अर्थात परिवहन किया जा रहा माल इनवाईस के अनुरूप पाया गया था। उल्लेखनीय है कि जांच अधिकारी द्वारा परिवहित वाहन में लदे माल के भौतिक सत्यापन में कोई प्रतिकूल निष्कर्ष नहीं निकाला गया है।

यहां इस बात का उल्लेख करना भी आवश्यक है कि ई–वे बिल की वैधता अवधि समाप्त हो जाने से अपीलकर्ता की करापवंचन की मंशा (intent to evade tax) प्रमाणित नहीं होती है।

उल्लेखनीय है कि प्रश्नगत सम्व्यवहार में करापंवचन की मंशा प्रमाणित नहीं होती है, विशेषकर इन तथ्यों को दृष्टिगत रखते हुए कि सम्व्यवहार से सम्बन्धित सभी विवरणों/विशिष्टताओं की सूचना, ई–वे बिल के माध्यम से, GSTN पोर्टल पर घोषित कर दी गयी थी, जिससे सम्व्यवहार की पूर्ण जानकारी विभाग के संज्ञान में आ गयी थी तथा इसके अतिरिक्त परिवहित किए जा रहे माल से सम्बन्धित बिल की प्रति भी उपलब्ध थी एवं इस तथ्य को भी दृष्टिगत रखते हुए कि सम्व्यवहार की घोषणा लेखापुस्तकों आदि में विधिवत रूप से की गयी है तथा कन्साईनर एवं कन्साईनी बोनाफाईड पंजीकृत करदाता हैं।

इस प्रकार स्पष्ट है कि जब परिवहन किए जा रहे माल के साथ धारा 68(1) सपठित नियम 138A(1) में प्रावधानित किए गये इनवाईस एवं ई–वे बिल उपलब्ध थे तथा सम्व्यवहार की घोषणा ई–वे बिल के माध्यम से, जी0एस0टी0एन0 पोर्टल पर औपचारिक रूप से कर दी गयी थी एवं माल के भौतिक सत्यापन पर माल बिल के अनुरूप पाया गया था तथा ई–वे बिल पर सम्व्यवहार से सम्बन्धित समस्त विवरण सही–सही अंकित किए गये हैं, तब मात्र ई–वे बिल की वैधता अवधि (validity) समाप्त (expire) हो जाने के कारण धारा 129(3) के अन्तर्गत आरोपित किए गये अर्थदण्ड एवं कर को विधिनुकुल एवं न्यायोचित नहीं कहा जा सकता है, विशेषकर तब जब ई–वे बिल एक्सपायर (expire) होने का कारण अपीलकर्ता द्वारा स्पष्ट कर दिया गया है।

प्रश्नगत संदर्भ में माननीय उच्चतम न्यायांलय द्वारा – **Assistant Commissioner (ST) & Ors. vs. M/s. Satyam Shivam Papers Pvt. Limited & Anr.** [Special Leave to Appeal (C) No(s). 21132/2021, Dated 12-01-2022] में पारित किया गया निर्णय उल्लेखनीय है, जिसमें माननीय न्यायालय द्वारा ई–वे बिल की वैधता अवधि समाप्त होने का कारण अपीलकर्ता के नियंत्रण से बाहर होने एवं करापवंचन की मंशा प्रमाणित नहीं होने के कारण, धारा 129(3) के अन्तर्गत आरोपित किए गये अर्थदण्ड एवं कर को न्यायोचित नहीं माना तथा इस सम्बन्ध में माननीय तेलंगाना उच्च न्यायालय द्वारा पारित आदेश की पुष्टि की गयी एवं यह मत प्रतिपादित किया गया कि–

सत्य प्रतिलिपि

क्रमशः पेज– 15 पर

संयुक्त आयुक्त (अपील)

"Upon our having made these obsevations, learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. **The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to distination within time for the reasons beyond the control of the writ petitioner.** "

यहां पर माननीय उच्चतम न्यायालय द्वारा- **Hindustan Steel Ltd. vs. State of Orissa [1970 (25)STC 211]** में पारित किया गया निर्णय भी उल्लेखनीय है, जिसमें माननीय न्यायालय द्वारा स्पष्ट रूप से यह मत प्रतिपादित किया गया है कि– "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. **Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act** or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

अतः माननीय सर्वोच्च न्यायालय द्वारा पारित किए गये उपरोक्त निर्णय से स्पष्ट है कि अर्थदण्ड केवल इस आधार पर आरोपित नहीं करना चाहिए कि अधिनियम में ऐसा प्रावधानित किया गया है, बल्कि अर्थदण्ड आरोपित करना प्राधिकारी का विवेकाधिकार है, जिसे न्यायपूर्वक एवं सभी प्रासंगिक परिस्थितियों को दृष्टिगत रखते हुए इस्तेमाल करना चाहिए। अधिनियम के प्राविधानों के 'मामूली' उल्लंघन या 'तकनीकी' उल्लंघन के आधार पर अर्थदण्ड आरोपित करना न्यायोचित नहीं है।

प्रश्नगत संदर्भ में माननीय सर्वोच्च न्यायालय द्वारा पारित किया गया निर्णय– **Price Waterhouse Coopers Pvt. Ltd. vs. Commissioner of Income Tax, Kolkata-I & Anr.** [Civil Appeal No.6924 of 2012; निर्णय दिनांक–25.09.2012] उल्लेखनीय है, जिसमें माननीय न्यायालय द्वारा यह मत प्रतिपादित किया गया है कि–

" The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a **bona fide and inadvertent error**, the assessee while submitting its return, failed to add the provision for gratuity to its total income. **This can only be described as a human error which we are allprone to make. The caliber and expertise of the assessee has little or nothing to do with the inadvertent error.** That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. **We are satisfied that the assessee had committed an inadavertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars."**

अतः माननीय सर्वोच्च न्यायालय द्वारा पारित किए गये उपरोक्त निर्णय से स्पष्ट है कि मानवीय एवं बोना फाईड त्रुटि होने पर अर्थदण्ड आरोपित किया जाना न्यायोचित नहीं है।

क्रमशः पेज– 16 पर

प्रतिलिपि
संयुक्त आयुक्त (अपील)
राज्य कर,

अतः उपरोक्त की गयी विवेचना, वाद के समस्त तथ्यों, परिस्थितियों तथा विधिक प्रावधानों पर विचारोपरांत एवं माननीय सर्वोच्च न्यायालय द्वारा पारित किए गये उपरोक्त निर्णयों के प्रकाश में, IGST Act, 2017 की धारा 20 सपठित CGST Act, 2017 की धारा 129(3) के अन्तर्गत पारित आदेश दिनांक–30.11.2021 का समर्थन नहीं किया जा सकता है। अतः अपील स्वीकार करते हुए विवादित आदेश दिनांक–30.11.2021 अपास्त किया जाता है।

अतः अवधारण का बिन्दु विभाग के विरूद्ध एवं अपीलकर्ता के पक्ष में निर्णीत किया जाता है।

:–आदेशः–

अपीलकर्ता द्वारा फाईल की गयी अपील स्वीकार की जाती है तथा विवादित आदेश दिनांक–30.11.2021 अपास्त किया जाता है तथा इस सम्बन्ध में यदि कोई धनराशि (कर एवं शास्ति) अपीलकर्ता द्वारा जमा की गयी हो, तो उसे नियमानुसार वापसी के निर्देश दिए जाते हैं।

दिनांक–09.06.2022 / राकेश पाण्डेय।

ह0 /
(रोहित श्रीवास्तव)
ज्वाइन्ट कमिश्नर (अपील),
राज्य कर, हल्द्वानी।

सं० 30 दिनांक 9/06/2022
प्रतिलिपि प्रेषण:-
1- अपीलकर्ता
2- कर निर्धारण अधिकारी
3- आयुक्त कर उत्तराखण्ड देहरादून

सत्य प्रतिलिपि
संयुक्त आयुक्त (अपील)
राज्य कर, हल्द्वानी।