

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 22073 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

=====		
Approved for Reporting	Yes	No
=====		

TRACTORS AND FARM EQUIPMENT LTD. & ANR.

Versus

UNION OF INDIA & ORS.

=====

Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2

MS. SHRUNJAL SHAH, ASSISTANT GOVERNMENT PLEADER/PP for the

Respondent(s) No. 2

ADVOCATE NOTICE NOT RECD BACK for the Respondent(s) No. 1

MR CB GUPTA(1685) for the Respondent(s) No. 3,4,5

NOTICE SERVED for the Respondent(s) No. 2

=====

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 03/07/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1 Heard learned advocate Mr.Uchit Sheth for
the petitioner and learned advocate
Mr.C.B.Gupta for respondent Nos. 3,4 & 5 and
learned Assistant Government Pleader

Ms.Shrunjal Shah for respondent No.2.

2 Having considered the issue arising in this petition in a narrow compass, with the consent of the learned advocates, the same is taken up for hearing.

3 Rule returnable forthwith. Learned advocates for the respondents, waives notice of service of rule for the respective respondents.

4 By this petition under Article 227 of the Constitution of India, the petitioner has prayed for the following reliefs:

"A. This Hon'ble Court may be pleased to strike down and declare Section 129 of the GST Acts as being manifestly arbitrary, disproportionate and violating Article 14 and 301 of the Constitution of India;

B. This Hon'ble Court may be pleased to issue a writ of certiorari or writ in the

nature of certiorari or any other appropriate writ or order quashing and setting aside order dated 4.10.2018 (annexed at Annexure F) and order dated 2.8.2019 (annexed at Annexure I);

C. Without prejudice to the above and in the alternative it may please be held that Section 129 of the GST Acts only provides for mechanism for provisional release of goods and does not result in final adjudication of liability unde the GST Acts;

D. This Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order directing the learned Respondents to refund the amount of tax and penalty collected and retained pursuant to the impugned orders under Section 129 of the GST Acts;"

5 At the outset, learned advocate Mr. Uchit Sheth submits that the petitioner, under instructions, does not press the relief in para A regarding the challenge to the vires of Sec.129 of the Central/ State Goods & Service Tax Act, 2017 (for short 'the GST Act').

6 The brief facts of the case are as under:

6.1 The petitioners are engaged in the business of manufacturing and sale of tractors, having their Head Office situated in the State of TamilNadu at Chennai.

6.2 In the course of business, the petitioners were supplying two tractors from its depot in Gujarat to a customer located in Bhavnagar after generating tax invoices in its online SAP software and also generated the e-way bill with part A only.

6.3 It is the case of the petitioners that the petitioners had directed their transporter to generate Part B of the e-way bill, but the transporter faced technical glitches in the system and hence could not generate the same.

6.4 It is not in dispute that the goods started movement on 03.10.2018 at night along

with tax invoices and e-way bill having part A only. The respondent No.5 intercepted the conveyance with the goods in early hours of 04.10.2018 for physical verification on the ground that the e-way bill was not having part B comprising the details of the conveyance in which the goods are being transported.

6.5 The respondent No.5 immediately carried out the requisite process as prescribed in Rule 138 of the Central / State Goods & Service Tax Act, 2017 (for short 'the GST Rules'), by issuing Form GST MOV-1, GST MOV-2, GST MOV-4 for physical verification, and thereafter, issued the detention order in Form GST MOV-6 on the very same ground i.e. on 04.10.2018.

6.6 The respondent No.5 also issued the Form GST MOV-7 in form of a show-cause notice

calling upon the petitioner to immediately attend the proceedings on 04.10.2018, and thereafter, passed an ex-parte order on the very same day on 04.10.2018 in Form GST MOV-09 demanding payment of tax and penalty under Sec.129(1) of the GST Act.

6.7 It is the case of the petitioners that as the petitioners had urgency in getting the goods released, the tax and penalty as demanded in Form GST MOV-09 was deposited on 06.10.2018 and on payment of such demand, the goods were released by the respondent No.5 in Form GST MOV-05.

6.8 The petitioners, thereafter, preferred an appeal before the First Appellate Authority for challenging the order in Form GST MOV-09 contending that there was no intention on the part of the petitioners for evading the

payment of tax and hence demand of tax and 100% penalty for release of goods was not justified.

6.9 The First Appellate Authority, however, by its order dated 02.08.2019 rejected the first appeal on the ground that the e-way bill is a mandatory document and in absence of complete e-way bill, containing both part A & B, the provisions of Sec.129(1) of the GST Act would be attracted and the petitioner would be liable to pay the tax and penalty as per the order passed in Form GST MOV-09.

6.10 Being aggrieved, the petitioners have preferred this petition.

7 This Court in the present case, by an order dated 12.12.2019 issued the notice and as the constitutional validity of Sec.129 of

the Central Goods and Services Tax Act, 2017, as well as the Gujarat Goods and Services Tax Act, 2017 was also challenged by the petitioner at the relevant time, notice was also issued to the learned Attorney General and the learned Advocate General of the State. Thereafter, the matter was being adjourned from time to time.

8 Learned advocate Mr.Uchit Sheth, submitted that the respondent No.5 has passed the impugned orders in Form GST MOV-06 and in Form GST MOV-09 on the same day and no time was granted to the petitioner to comply with the show-cause notice in Form GST MOV-07 which was also issued on the same day i.e. on 04.10.2018. It was therefore submitted that the action taken by the respondent authorities is in clear breach of principles of natural justice as no opportunity is granted to the

petitioners to explain as to why the e-way bill was not having part B and there was no intention or fault on the part of the petitioners to evade any tax and the goods were being moved in movement as per the valid documents in form of tax invoices etc., in compliance of Rule 138 of the GST Rules.

8.1 It was further submitted that the Appellate Authority has also failed to consider the submissions made which are reproduced in the appellate order in para 3 and without considering such submissions as well as the decisions of the Hon'ble Allahabad High Court in case of ***M/s.Raj Iron & Building Materials.***, rendered in ***Writ Tax No. 826 of 2017***, and in case of ***M/s.Bhumika Enterprises.***, reported in ***(2018) 53 GSTR 356*** and in the case of ***M/s.VSL Alloys (India) Pvt Ltd***, reported in ***53 GSTR 248 (ALL)***.

8.2 It was pointed out by learned advocate Mr.Uchit Sheth that the Appellate Authority has in coming to the conclusion, the Appellate Authority has only referred to Rule 138 read with Sec.68 of the GST Act, and has come to the conclusion that no interference was required to be made in the order passed by the respondent authority ignoring that the contentions raised on behalf of the petitioner that the order of imposing penalty was not in consonance with the principles of natural justice, equity and good conscience together with the explanation that the transporter of the goods did not furnish the details in part B of the e-way bill because of technical glitches on the common portal. However, details of the transporter in part B was updated on common portal on 04.10.2018 at 11:02 a.m. when the goods were under detention

of respondent No.5, and therefore, there was no malafide intentions to evade payment of tax.

8.3 Learned advocate Mr.Uchit Sheth further submitted that it is true that at the time of interception of the goods by the respondent No.5, in the early hours on 04.10.2018, the e-way bill did not contain part B, and therefore, there is a rectifiable technical breach of the goods in not carrying the valid e-way bill, and therefore, the petitioners could not have been saddled with such penalty as provided under Sec.129 of the GST Act, as it existed at the relevant point of time by levying 100% of the penalty together with the tax leviable.

8.4 It was submitted that the respondent authorities, without giving an opportunity of

hearing, has passed the impugned order which is confirmed by the Appellate Authority, and therefore, there is no point in remanding the matter back to the respondent authority to reconsider the same and the issue may be considered by this Court in this petition as in absence of the formation of the GST Tribunal, the only remedy available to the petitioners is to prefer the petition under Article 227 of the Constitution of India to challenge the order passed by the Appellate Authority. In support of his submissions, reliance was placed on the decision of this Court in the case of **Landmark Cars Pvt Ltd vs. Union of India & Anr.**, dated 14.06.2024 rendered in **Special Civil Application No. 1487 of 2020.**

8.5 It was submitted that in similar facts when the goods were being transported, this

Court, in absence of e-way bill, quashed and set aside the levy of penalty and the order passed by the respondent authority and the Form GST MOV-09 which was held to be without jurisdiction and vehicle could not have been detained only on the ground of invalid e-way bill. It was pointed out that after considering the Circular No.64/38/2018 dated 14.09.2018, this Court came to the conclusion that for minor errors, of which some examples were given in para 5 of the said Circular, to be dealt with imposing the penalty of Rs.500 under Sec.125 of the GST Act and Rs.1000 under IGST Act. It is pointed out that in the facts of the present case also the respondents did not dispute the chasis number of the tractor which was being transported was different as stated in the invoice because the invoice number was already mentioned in the e-way

bill.

8.6 It was submitted that the facts of the present case being identical with that of the decision in the case of **Landmark Cars Pvt Ltd (supra)**, the impugned orders of levy of penalty is liable to be quashed and set aside.

9 On the other hand, learned advocate for the respondents submitted that the petitioner has not denied that there was no part B of the e-way bill when the goods were intercepted on 04.10.2018, and therefore, there is a clear breach of Rule 138 of the GST Rules as the vehicle conveyance was not having valid e-way bill as required under the GST Rules. It was further submitted that Sec.129(1) of the Act does not give any discretion to the respondent authorities for levy of the penalty because once there is a breach of Rule 138 and there

is no valid e-way bill accompanying transportation movement of the goods, the penalty as prescribed under Sec.129(1) is required to be imposed and the same cannot be reduced as Sec.129 of the GST Act is a provision which relates to the irregularity in the transportation of the goods affecting the levy of GST on such supply.

9.1 It was further submitted that the respondent authorities had no option but to levy the penalty and therefore there was no point in waiting for the petitioner to give any explanation. It was pointed out that the petitioner was given time on the same date i.e. 04.10.2018 to explain for not having the valid e-way bill but the petitioner did not file any objection. But on the contrary, the petitioner had shown willingness to pay the amount of tax and penalty and hence the order

was passed on the same day i.e. 04.10.2018.

9.2 It was further submitted that now the petitioner has already deposited the tax and penalty as per the order in Form GST MOV-9 and the goods is released, and therefore, the petitioner could not have agitated the issue before the Appellate Authority challenging the order of levy of tax and penalty as required under Sec.129(3) of the GST Act.

9.3 It was submitted that the petitioner had an option to set the goods released as prescribed under Sec.129(1) on receipt of the detention order in Form GST MOV-06. But the petitioner did not avail such opportunity, and therefore, the impugned order was passed for levy of tax and penalty under Sec.129(3) of the Act. In support of his submissions, reliance is placed on the averments made in

the affidavit-in-reply filed on behalf of respondents Nos. 4 and 5, which reads as under:

"3.1 The petitioner were supplying two tractors from its depot located at Aslali Gujarat, India to their Bhavnagar based Customer through two Invoices No. 1830504086 and 1830504087 both dated 27.09.2018 (Page No. 1 to 2) through vehicle Truck No. GJ-03-BV-0121 During the course of E-way bill verification by the team of Respondent No. 5 on 04-10-2018, the driver of the Vehicle could not provide complete and valid E-way Bill (Page No. 3). Therefore, statement of the Driver was recorded on 04-10-2018 in Form GST MOV-01 (Page No. 4 to 5) and after physical verification / inspection of the conveyance, goods and documents through Form GST MOV-04 (Page No. 7 to 8), an order for detention under Section 129(1) of the CGST Act, 2017 (Page No. 9) issued to the Driver of the Vehicle through Form GST MOV-06 (Page No. 10 to 11). Subsequently, Demand Notice under Section 129 (3) of the CGST Act, 2017 was also issued to Driver in Form GST MOV-07 (Page No. 12 to 15) wherein the calculation of proposed tax amount of Central GST of Rs. 55084/- and State GST of Rs. 55084/ along with proposed penalty amount of CGST of Rs. 55084/- and Penalty of State GST of Rs. 55084/- was conveyed with request to appear for hearing at 16:30 Hrs. of 04-10-2018 through Form GST MOV-07 (Page No.

15). It was also requested to show cause within seven days from the receipt of the Notice. The petitioner after receipt of the Demand Notice, immediately deposited an amount of Central GST of Rs. 55084/-, State GST of Rs. 55084/- along with penalty amount of CGST of Rs. 55084/- and Penalty amount of State GST of Rs. 55084/- and thus, totally amount of Rs. 220336/- deposited vide Challan No. 18102400049794 at 13:25:12 Hours of 06-10-2018 (Page No. 25), which was subsequently transferred into the Government Exchequer on 08-10-2018 (Page No. 26). Therefore, on 08-10-2018, the vehicle No. Truck No. GJ-03-BV-0121 was released by the respondent No. 5 vide Form GST MOV-05 (Page No. 16 to 17).

3.2 Rule 138 i.e. E-Way Rules of Central Goods and Service Tax Rules, 2017 have been notified by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes (Page No. 27 to 33) and Customs vide Notification No. 12/2018 Central Tax dated 07.03.2018 (Page No. 34 to 48). The said Notification has come into force w.e.f 01.04.2018 as notified by the Notification No. 15/2018 Central Tax dated 23.03.2018 (Page No. 49). Procedure for interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances are specified in Circular No. 41/15/2018-GST dated 13.04.2018 (Page No. 50 to 54) issued by Government of India, Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs.

3.3 As per Notification No. 12/2018 Central Tax dated 07.03.2018, 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.

3.4 The E-Way Bills are generated by the consignor/consignee/transporter on the government portal <https://ewaybillgst.gov.in/>. If the Part-B of the E-Way Bill is not entered then the portal itself highlights that the conveyance "Not Valid for movement as Part B is not entered" (Page No. 55).

3.5 The Respondent No. 5 served the Show Cause Notice/Demand Notice in FORM GST MOV-07 (Page No. 12 to 15) under Section 129(3) of the CGST Act, 2017 and Order of Demand of Tax and Penalty in Form GST MOV-09 on 04.10.2018 (Page No. 18 to 24) to the driver of the conveyance, as per para 2(g) of the Circular No. 41/15/2018-GST dated 13th April, 2018 of Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (Page No. 50 to 54). The petitioner was specifically requested to appear for hearing at 16:30 Hrs. of 04-10-2018 by the Respondent No. 5 through FORM GST MOV-07 (Page No. 15).

3.6 The petitioner did not come forward on the specified time and date and no request for adjournment or any objection was made by the Petitioner before the Respondent No. 5. The Petitioner, without any protest, voluntarily deposited the amount of tax along with 100% penalty in his Cash Ledger vide Challan bearing CPIN: 18102400049794 on 06.10.2018 (Page No. 25). The said amount was also voluntarily debited by the Petitioner from their cash ledger on 08.10.2018 (Page No. 26) and after deposited the amount in Government Exchequer, the consignment was immediately released on 08.10.2018.

3.7 The transporter providing conveyance to the Petitioner for carrying goods in the instant case is M/s. Khurana Transport having Identification GST Number 24ARAPK8448D1ZY. On going through the government portal for E-way bill verification viz. <https://mis.ewaybillgst.gov.in/>, it is found that M/s. Khurana Transport has not generated any E-Way Bill from the date of its registration on the portal till date (Page No.56). The Petitioner is misleading the facts that the transporter faced technical glitches while logging on to the GST Portal."

9.4 Referring to the above averments, it was submitted that the petitioner could not have raised the issue of not granting the

opportunity of hearing as in the facts of the case, there was a clear violation of Rule 138 of the GST Rules attracting the provisions of Sec.129(1) of the GST Act. With regard to the applicability of Circular No.64 dated 14.09.2018 is concerned, it was submitted that the minor defaults stated in the said circular will not be applicable in the facts of the case, on the contrary, the said Circular clearly stipulates that if the e-way bill is not valid, the tax and penalty as required under Sec.129 is to be imposed.

10 Having heard the learned advocates for the respective parties and having considered the facts of the case, it is not in dispute that the respondent authorities have passed the impugned order under Sec.129(3) of the GST Act in flagrant breach of the principles of

natural justice.

10.1 It is pertinent to note that interception of the goods in question happened on 04.10.2018 which has resulted into passing of the impugned order on the same day i.e. 04.10.2018. The impugned order of levy of tax and penalty under Sec.129(3) was passed on 04.10.2018.

10.2 The provision of Sec.129 clearly provides the time limit of seven days for passing the order of levy of penalty and interest. However, the respondent authorities appears to have taken a very harsh view of not granting any further time to the petitioner, by calling upon the petitioner to give reply to the show-cause notice in Form GST MOV-07 on the same day i.e. 04.10.2018 and by recording that the petitioner failed to raise any

objections, has passed the impugned order of levy of tax and penalty.

11 Therefore, without going into the merits as to whether such order is justified or not, we quash and set aside the same only on the ground that such order is not sustainable in the eyes of law due to flagrant breach of principles of natural justice.

We are conscious that the matter could have been remanded to the respondent authorities for reconsidering for giving an opportunity of hearing to the petitioner. However, the petitioner has already filed an appeal challenging the order before the Appellate Authority, who in turn, has also not taken into consideration the issue of breach of principles of natural justice and confirmed the order for levy of tax and penalty passed by respondent No.5, in such circumstances and

in the facts of the case, instead of remanding the matter, we are quashing and setting aside the levy of penalty upon the petitioner in lieu of breach of principles of natural justice by the respondent authorities. All the other contentions raised by the petitioner are kept open to be considered in appropriate case. Rule is made absolute with no orders as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

BIMAL