

CWP-2490-2019 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**Sr. No.205**CWP-2490-2019 (O&M)****Reserved on : 06.07.2023****Pronounced on: 09.08.2023**

M/s Bright Road Logistics

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Keane Sardhina, Advocate and
Mr. Sumit Saini, Advocate, for the petitioner.

Mr. Arun Beniwal, DAG, Haryana.

HARPREET KAUR JEEWAN, J.

The present writ petition under Article 226/227 of the Constitution of India has been filed impugning the order dated 26.11.2018 (Annexure P-1) passed by the First Appellate Authority, State-GST, Haryana, whereby the order dated 12.06.2018 (Annexure P-34) passed by the Assistant Excise & Taxation Officer (Enforcement)-cum-Proper Officer of State Tax, Gurugram (North), under Section 130 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'GST Act, 2017') read with relevant provisions of the Haryana Goods and Services Tax Act, 2017 (HGST Act in short) and Integrated Goods & Services Tax Act, 2017 (IGST Act in short) was upheld.

2. The brief facts of the case are that the appellant is engaged in the business of transportation of goods by road and holding GSTIN 29AGSPB7424K2ZW. The appellant's consignment loaded in vehicle No.RJ-14GF-8592 was intercepted and detained by Sh. Rajbir Mahant, Asstt. Excise & Taxation Officer (Enforcement)-cum-Proper Officer of State Tax, Gurugram (North) on dated 20.05.2018 at 11.10 P.M. at Gurugram under Section 68 (3) of the CGST Act, 2017 read with Section 68 (3) of the HGST Act, 2017 and Section 20 of the IGST Act by issuing seizure memo No.0095 Sr. No.47 (Annexure P-18). The vehicle was carrying goods of mixed scrap i.e. copper, aluminium and bead scrap. On demand, the driver-cum-person incharge of the goods produced Invoice Nos.32, 33, 34, 35 and e-way bill Nos.531030092131 and 561030091616 dated 26.04.2018 issued by M/s Hari Om Enterprises, Krishnagiri (Tamilnadu) GSTIN-33GHWPS3181R1Z3 alongwith GR No.164, 165, 166, 167 dated 26.04.2018 issued by M/s Bright Road Logistics, Salem, showing description of goods mixed metal scrap i.e. copper, aluminium and bead scrap.

2.1 The petitioner filed reply dated 23.05.2018 (Annexure P-19) to the said seizure memo. Another show cause notice dated 20.05.2018 (Annexure P-20) was issued to the petitioner for detention of the vehicle which was received on 23.05.2018 and the petitioner filed reply to the said notice on 25.05.2018 (Annexure P-21). Order dated 29.05.2018 (Annexure P-23) was passed under Section 129(1)(a) of the GST Act, 2017, whereby, the truck and the goods were ordered to be confiscated

and further ordered to be released subject to payment of total amount of Rs.35,36,000/- which includes tax as Rs.9,36,000/- and penalty under Section 129 (1)(b) of CGST Act, 2017 as Rs.26,00,000/-.

2.2 The Asstt. Excise & Taxation Officer-cum-Proper Officer, State Tax, Gurugram issued a show cause notice dated 06.06.2018 under Section 130 of the CGST Act, 2017 and the IGST Act, 2017 for imposition of tax and penalty (Annexure P-32). The appellant filed reply dated 07.06.2018 (Annexure P-33) to the said notice. The Proper Officer of State Tax, Gurugram passed the order dated 12.06.2018 (Annexure P-34), whereby the goods and conveyances were ordered to be released on payment which was calculated as under:-

- (i) Integrated tax-Rs.93,6000/-
- (ii) Penalty amount-Rs.93,6000/-
- (iii) Fine in lieu of confiscation of goods-Rs.20,80,000/-
- (iv) Fine in lieu of confiscation of conveyance-Rs.9,36,000/-

2.3 The appellant filed an appeal before the First Appellate Authority under Section 107(2) of GST Act, 2017 (Annexure P-39) against the order dated 12.06.2018. The appellant also filed CWP-16633-2018 with a prayer that no appellate authority was appointed, therefore, the appeal could not be heard. The said petition was disposed of and a direction was issued to the department not to take any coercive steps for recovery of the amount of penalty till the appellate authority is appointed.

3. The appellate authority dismissed the appeal vide order dated 26.11.2018 (Annexure P-1).

4. The Proper Officer while passing the order dated 29.05.2018 (Annexure P-23) under Section 129 (1) of the GST Act, 2017 took into consideration the contradiction in the reply filed by the appellant-M/s Bright Road Logistic, Bangalore and the stand taken by the owner of the vehicle, namely, Sh. Jagdish Kumar Sood, Director of M/s Jupiter Express Carrier Pvt. Ltd.-respondent No.7 regarding the allegations of break down of the vehicle. The Proper Officer observed that an attempt to evade the tax was made.

4.1 The Proper Officer while passing the order dated 12.06.2018 (Annexure P-24) under Section 130 of the GST Act, 2017 observed that driver-cum-person incharge of the vehicle produced old documents dated 26.04.2018 showing transaction Tamil Nadu to Delhi, whereas, the driver stated that he has loaded the goods in question from Bengaluru, Karnataka on 14.05.2018. It was also observed that vide order dated 29.05.2018, the applicable tax and penalty were demanded. However, neither the owner of the goods nor the person incharge of the transport came forward to make the payment of the said amount. Therefore, notice was issued on 06.06.2018 proposing to confiscate the goods. The reply filed by the petitioner was considered while passing the order for payment of tax, penalty and fine in lieu of confiscation of goods and conveyance and further confiscating the goods and conveyance of goods, payment of the said amount.

5. The appellate authority considered the preliminary objections raised by the counsel for the appellant regarding the competency of the

Haryana State Tax Officer to seize the goods, demand tax and impose penalty under the CGST Act and IGST Act, 2017. The said objection was overruled by making the following observations:-

“A process for initiation of a new indirect taxation regime was put into motion by the Constitution (101st Amendment) Act, 2016 dated September 8 2016 by which articles 246A, 260, 270A and other provisions of the Constitution were amended. As per the amended article 269A, which pertains to levy and collection of goods and services tax in the course of inter-State trade or commerce such tax 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 recommendations of the goods and services tax council. Import within the territory of India was included within the meaning of the term "inter-State trade or commerce" and in respect of it tax as aforesaid, would be levied and collected by the Government of India.

In pursuance to the aforesaid 101st Amendment of the Constitution three enactments were passed by the Parliament, i.e., the Integrated Goods and Services Tax Act, 2017; the Central Goods and Services Tax Act, 2017; the Union Territory Goods and Services Tax Act, 2017. In addition to the aforesaid three enactments, the Legislature of the State of Haryana on 08.06.2017 passed an enactment known as the Haryana Goods and Services Tax Act, 2017 [HGST Act].

In matters of inter-State trade and commerce including import into the territory of India and out of it, the IGST Act, 2017 applies, whereas, in matters of intra-State trade and commerce "the CGST Act, 2017" and the State Goods and Services Tax Acts, apply.

Section 3 of the IGST Act, 2017 provides that the Board may appoint such Central Tax Officers as it thinks fit for exercising powers under this Act. By virtue of Section 4 of the IGST Act, 2017 the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorized to be the proper officers for the purposes of the said Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council by notification, specify. Similarly for enforcement of the CGST Act, 2017 by virtue of Section 6 thereof State Authorities under HGST Act, 2017 are also empowered to enforce the CGST Act, 2017.

By virtue of Section 20(xv) of the IGST Act, 2017, the provisions of the CGST Act, 2017 apply in respect of matters covered by the IGST Act, 2017 on the subject of inspection, search, seizure and arrest. Chapter XIV of the CGST Act, 2017 deals with inspection, search, seizure and arrest. Section 67 of the CGST Act, 2017 deals with the power of inspection, search and seizure, and Section 68 of the CGST Act, 2017 deals with inspection of goods in movement.

In this view of the matter, I am of the considered opinion that cross-empowerment under Section 4 of the IGST Act, 2017 and Section 6 of the CGST Act 2017 means that State Authorities empowered under the HGST Act, 2017 can also enforce the provisions of the CGST Act, 2017 or IGST Act, 2017. My viewpoint finds support from the judicial pronouncements of Hon'ble High Court of Madhya Pradesh in the case of M/s Advantage India Logistics Pvt. Ltd. Vs. The Union of India and others dated 23.08.2018 in Writ Petition No. 16266 of 2018 reported as (2018) 58 GSTR 247 (MP), and Hon'ble Allahabad High Court in the case of M/s Satyondre Goods Transport Corp. Vs. State of U.P. and

Others dated 13.04.2018 reported as (2018) 54 GSTR 3 (All).”

5.1 While dealing with the provisions of Section 129 and 130 of the CGST Act, 2017, the appellate authority observed that it is a case of reuse of documents with mala-fide intention to evade tax with legitimate due tax to the Government. The goods were not covered with genuine documents.

5.2 The impugned order passed by the Proper Officer demanding the tax and imposing the penalty was held legal by the appellate authority while observing ‘Hiding the truth and tendering falsehood are as per se existence of mens rea to evade the tax due to the State’. This fact was noticed that as per the record, the petitioner is habitual tax offender. Another vehicle of the petitioner bearing No.RJ-14GF-9449 was also penalized by another AETO (Enf.) Gurugram, wherein, the tax amounting to Rs.14,74,595 and penalty under Section Section 129(1) of the CGST Act was imposed.

6. The appellant has filed the present writ petition challenging the order dated 26.11.2018 (Annexure P1) passed by the first appellate authority. Respondent No.1 to 5 filed written statement.

7. During the pendency of the writ petition, an application under Section 151 CPC was filed by the petitioner for release of the seized vehicle alleging that the petitioner is merely provider of the lorry/truck which is owned by respondent No.7-M/s Juipster Express Carriers Pvt. Ltd. for transporting the goods belonging to respondent No.6-M/s Naman

Trading Company. It was alleged that owner of the goods has not come forward for seeking the release of the confiscated goods. The respondents submitted that they have no objection for release of the confiscated lorry/truck on payment of the required tax amounting to Rs.9,36,000/- as per the order dated 12.06.2018 (Annexure P-34). The applicant-petitioner showed his willingness for payment of the said charges. As per order dated 13.12.2019, the application was disposed of having been infructuous with a direction that the truck be released as soon as the payment of the required amount is made. However, subsequently an application for recalling of the aforesaid order dated 13.12.2019 was filed which was dismissed vide order dated 07.02.2020 and the same was assailed in the Hon'ble Supreme Court by way of filing SLP. The said SLP was disposed of vide order dated 17.06.2020, whereby, the Hon'ble Apex Court observed that since the proceedings are still pending before High Court, therefore, the SLP was entertained and the matter was required to be listed at an early date.

8. We have heard the counsel for the parties.

9. Learned counsel for the petitioner submitted that on 26.04.2018, the petitioner booked a consignment mixed scrap, weighing approximately 15,500 kg from Salem, located in the State of Tamil Nadu, to be delivered to GST dealer(s) of Delhi and for the said purpose, he hired the vehicles of respondent No.7-M/s Jupiter Express Carriers Private Limited. The goods were loaded from the State of Tamil Nadu on 26.04.2018 for inter-State transaction and all the documents prescribed

under Section 68 of the GST Act, 2017/IGST Act, 2017 were carried. The vehicle reached at Bangalore on the same day. The said truck bearing No.RJ-14-GF-8592 owned by respondent No.7 got another tender for urgent delivery of coconuts as such, the said truck loaded the coconuts from KR Pet at Bangalore on 27.04.2018 and reached Delhi on 30.04.2018. On 01.05.2018, some parcels alongwith other goods were transported from Delhi to Bangalore in the same truck. The said truck reached Bangalore on 05.05.2018. Thereafter, on the next day, it transported goods from Bangalore to Delhi and reached Delhi on 10.05.2018. The said truck loaded consignment of the petitioner's good from Delhi on 10.05.2018 and ultimately, reached Bangalore on 14.05.2018. The mix scrap (in question) was ultimately carried in the said truck on 14.05.2018 from Bangalore for delivery to Delhi, but it was wrongly intercepted and detained at Gurugram on 20.05.2018.

9.1 Learned counsel for the petitioner further submitted that the impugned order for demanding tax and imposition of penalty passed by the Proper Officer has been wrongly upheld by the appellate authority. The learned counsel for the appellant made following submissions:

- a. that that the vehicle was transporting inter-State goods. The vehicle was not found loading or unloading the goods in the State of Haryana as such the officers of the State were not empowered or authorized to impound the vehicle. They have not been delegated all the powers of GST 2017. They have been only delegated the power to refund under

Sections 54 or 55 of the CGST Act and for registration as per Notification No.39/2017 Central Tax, New Delhi, dated 13.10.2017.

b. the vehicle was moving alongwith invoices and e-way bills issued by the dealer as per the GST rules and no deficiency was found in the documents as such the detention and confiscation of the vehicle and the material was illegal.

Raising the aforesaid submissions, it was contended that the order of demanding tax and imposition of penalty are illegal. The appellate authority has not considered the submissions of the petitioner while dismissing the appeal. There was no violation of any of the provisions of the GST Act or Rules framed thereunder as such the impugned order passed by the appellate authority is liable to be set aside.

10. On the other hand, learned counsel for the respondents submitted that all the submissions made on behalf of the appellant have been considered by the appellate authority and a reasoned order has been passed.

11. The following questions require consideration in the present case:-

1. Whether the Asstt. Excise and Taxation Officer (Enf.) Gurugram was a 'Proper Officer' and was authorized to inspect and detain the vehicle which was carrying goods for inter-State transportation from Tamil Nadu to Delhi and was further authorized to pass an order under Section 129 and 130 of GST Act, 2017 read with provisions of IGST Act, 2017.

2. Whether the impugned order dated 26.11.2018 (Annexure P-1) is liable to be quashed.

Question No.1

12. The appellate authority while passing the impugned order (Annexure P-1) has dealt with a preliminary objection by discussing the history of new direct taxation regime including the applicability of IGST Act, 2017 for inter-State trade and commerce and held that in view of the provisions of Section 4 of the IGST Act, 2017 and Section 6 of the GST Act, 2017, the State authorities are empowered under the HGST Act, 2017 and they can also enforce the provisions of the CGST Act, 2017 and IGST Act, 2017.

13. In the written statement, the respondents have taken a specific stand in a reply to para Nos.32 (xvi) and (xvii) that AETO (Enf.)-cum-Proper Officer of State Tax is duly empowered to check the goods and vehicle in inter-State transactions as per the provisions of Section 6 (1) of the CGST Act, 2017 and as per powers delegated under Section 4 of the IGST Act, 2017. It has also been submitted in the written statement that cross-empowerment and delegation of powers to State Tax Officers appointed under MPGST Act has been upheld as per the decision dated 27.08.2018 by the High Court of Madhya Pradesh Bench at Indore in writ petition No.16266-2018 in the matter of Advantage India Logistic Pvt. Ltd. Vs. Union of India and others.

14. We have considered the observations made by the appellate authority in view of the provisions of IGST Act, 2017, CGST Act, 2017, The Haryana Goods and Services Tax Act, 2017 (for short HGST Act,

2017) and the various notifications and orders made by the Government of India, Ministry of Finance.

15. The preamble of the IGST Act, 2017 clearly specify the applicability of the said Act provides for levy and collection of tax for inter-State supply of goods. The preamble reads as under:-

‘An Act to make a provision for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto’

16. The CGST Act, 2017 makes provisions for levy and collection of the tax for intra-State supply of goods. The preamble of the said Act makes it clear which reads as follow:-

‘An Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto’.

17. Section 20 of the IGST Act, 2017 provides that the provisions of CGST Act, 2017 relating to various matters including inspection, search, seizure and arrest etc. are applicable to the IGST Act, 2017 subject to the provisions of CGST, 2017. The same reads as under:-

“Section 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 percent 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 percent, 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.

Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively.”

18. Since the vehicle was transporting the goods inter-State, therefore, the provisions of IGST Act, 2017 as well the provisions of GST Act, 2017 in so far applicable in view of the provisions of Section 20 of the IGST Act, are applicable to the facts of the present case. In view of the said enabling provisions under Section 20 of the IGST Act, 2017, the provisions of Chapter XIV of GST Act, 2017 which deals with inspection, search, seizure and arrest and power of inspection, search and seizure (Section 67 and 68 of CGST Act, 2017) are applicable to the inter-State supply of goods.

19. As per the provisions of Section 4 of IGST Act, 2017, the officers who are appointed under the State Goods and Services Tax Act or Union Territory Goods & Services Act are authorized to be the Proper Officers in the process of IGST Act, 2017. The said Section is reproduced as under:-

‘4. Authorization 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 authorized 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.’

20. Apart from the enabling provisions under the IGST Act, 2017, the Commissioner of State Tax, Haryana had issued the order dated 07.12.2017 (Annexure P-46) exercising the powers conferred under sub-section 1 of Section 5 read with clause 91 of section 2 of Haryana Goods and Services Tax Act, 2017 assigning the functions to be performed under the said Act by a Proper Officer. As per entry of Sr. No.51, 52 and 53 of the said order, the Asstt. Excise and Taxation Officer of State Tax has been assigned the functions to be performed under Section 129 (1) and (3); 129 (6); and Section 130 of the Haryana Goods and Services Tax Act, 2017. Section 129 and 130 of the said Act is having the similar provisions as under the said sections of IGST Act, 2017.

21. As such, in view of the enabling provisions of Sections 20 and Section 4 of the IGST Act; as well as the order dated 07.12.2017 (Annexure P-46) passed by the Excise & Taxation Commissioner, Haryana, assigning the functions to the Proper Officer under the Haryana Goods & Services Tax Act, 2017, we are of the considered opinion that

the Asstt. Excise and Taxation Officer of State Tax is competent and authorized to exercise the powers under Section 129 and 130 of the IGST Act, 2017.

22. As such the first point for determination is accordingly, answered that the Asstt. Excise & Taxation Officer of State Tax was authorized to Act as a Proper Officer and was having the authority to act under Section 129 and 130 of the IGST Act. The decision of the appellate authority in this regard requires no interference.

Question No.2

23. As per the version of the petitioner, the petitioner firm is dealing with transport business, booking of goods of the dealer and transporting the goods by hiring transport from the market. On 26.04.2018, mixed scrap was booked from Tamil Nadu. Respondent No.7 provided the transportation but it was temporarily unloaded at Bangalore on the same day and finally, when it was being transported from Bangalore to Delhi and started from Bangalore on 14.05.2018 the vehicle and goods were detained at Gurugram on 20.05.2018. At that time the vehicle was moving alongwith invoices and e-way bills issued by the supplier as per GST Rules.

24. On the other hand, respondents No.1 to 5 have taken a plea in the written statement that on 20.05.2018 at 11:00 p.m. during the roadside checking vehicle No. RJ-14-GF-8592 alongwith goods had been checked on suspicion and found carrying copper, alluminium and bead scrap. On demand, the driver-cum-person incharge of the goods produced invoices

No.32, 33, 34, 35 and e-way bill Nos.531030092131 and 561030091616 dated 26.04.2018 issued by M/s Hari Om Enterprises, Krishnagiri, Tamil Nadu alongwith GR No.164, 165, 166 and 167 dated 26.04.2018 issued by M/s Bright Road Logistics. On examinations of the papers, many discrepancies were found. The submitted documents showed origin of the transaction from Krishnagiri, Tamil Nadu whereas the driver-cum-person incharge of the goods stated that he had loaded the goods in question from Bengaluru, Karnataka on 14.05.2018. On search of the vehicle, weightment receipt dated 05.05.2018 issued by M/s Swamy Weighers, Madanayakanahlli, Bangalore (weight-25755 kg.) was found in the vehicle which proved that the goods in question were loaded from Bangalore, Karnataka. On search of the vehicle, another weighment slip dated 01.05.2018 issued by M/s Radha Govind Dharam Kanta, Burari Road, Delhi was found showing the gross weight 23890 kg which confirmed the movement of vehicle in question on 01.05.2018. M/s Hari Om Enterprises, Krishnagiri supplied the goods worth Rs.72,570/- by issuing two invoices Nos.34 and 35 dated 26.04.2018 without issuing e-way bill pertaining to the present transaction. The weight of goods was mentioned as 15500 kg in the invoices whereas the actual weight of loaded goods is 14000 kg as per the 'kanta' slip. So it was concluded that the goods were not accompanied with genuine and proper documents and these were rightly confiscated on finding the aforesaid discrepancies.

25. The appellate authority while passing the impugned order dated 22.10.2018 (Annexure P-1) has considered the reasons recorded by

the Proper Officer and the enquiry conducted by the Proper Officer while passing the order dated 12.06.2018 (Annexure P-34) and concluded that it is a case of reuse of documents with a mala-fide intention to evade the legitimate due tax to the Government of Coffers.

26. Before appreciating the factual aspects concluded by the Proper Officer and upheld by the appellate authority, some of the pros & cons under the GST Act, 2017 and IGST Act, 2017 are required to be considered which have been dealt with by a Coordinate Bench of this Court in CWP-18392-2021 titled as M/s Shiv Enterprises Vs. State of Punjab and others decided on 04.02.2022 and the same are reproduced as under:-

‘14. Enactment of CGST Act 2017 has marked arrival of new tax regime. The 2017 Act is said to be an Act to make provision for levy and collection of tax on inter-state supply of goods and services or both by the Central Government and for matters connected therewith or incidental thereto. For the case in hand, we are concerned with the provisions related to goods in transit and those related to input tax credit.

Input Tax:

15. As per Section 12 of the 2017 Act, the liability to pay tax on goods arises at the time of supply as determined in accordance with the provisions. Section 7 determines scope of supply. The Act further talks of inward supply and outward supply. Corresponding to the aforesaid expressions, i.e. the inwards supply as defined under Section 2(67) and outward supply as defined under Section 2(83) are the expression-'recipient of supply' as defined under Section 2(93) and 'supplier' as defined under Section 2(105). Section 9 provides for levy and collection of CGST. A conjoint reading of aforesaid provisions reveals that, the incidence to pay tax on goods arises at

the time of supply. The value of taxable supply as per Section 15 includes the following components:-

“The value of supply shall include- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.”

Thus incidence lays on the recipient of supply.

16. Like every taxation enactment, 2017 Act also has a mechanism on which operates, which is 'input tax credit' defined under Section 2(63). It means credit of 'Input tax' defined under Section 2(62). Section 16, Sections 41, 42 and Section 43A provide for eligibility and conditions for taking input tax credit, claim of input tax credit and provisional acceptance thereof, matching reversal and reclaim of input tax credit and procedure for furnishing return and availing input tax credit respectively. Thus, input tax credit to be claimed by registered person not only depends upon eligibility conditions, but also is subject to close scrutiny in form of matching, reversal etc. and furnishing returns. At the time of supply, the person receiving inward supply pays value of such supply which includes GST. As per Section 12 of 2017 Act, the liability to pay tax on goods shall arise at the time of supply. The person receiving

inward supply discharges the incidence of GST and becomes eligible to claim credit of the input tax paid. But his claim is subject to adjudication.

17. Section 31 provides that a registered person supplying taxable goods shall, before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed. Section 43A provides procedure for furnishing return and availing input tax credit. It provides that notwithstanding anything contained in Section 16(2), Section 37 or Section 38, every registered person shall in the return furnished under sub-Section (1) of Section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers. It further provides that the procedure for furnishing the details of outward supply by supplier on the common portal for the purposes of availing input tax credit by the recipient shall be such as may be prescribed. As per Section 43A(6), the supplier and recipient of the supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed as the case may be in relation to outward supplies for which the details have been furnished under sub-Section(3) of sub-Section(4), but return thereof to be furnished. Thus, as per the Act availing of input tax credit by a registered person under the Act is subject to assessment.

Goods in Transit:

18. The 2017 Act and Rules framed thereunder contain specific provisions enlisting requirements and prescriptions for goods in transition. Section 68 deals with inspection of goods in movement. Sub-section 1 thereof stipulates that the person in charge of a conveyance carrying goods shall carry with him the documents and devices prescribed in this behalf. Section 68(2) further provides that the details of documents required to be carried by the person in charge of the conveyance shall be validated in the manner as may be prescribed. Section 68(3) empowers Proper Officer to require the person in charge of conveyance carrying goods to produce the documents for verification. It casts a duty upon the said person to produce the documents and allow the inspection of goods when

asked by the Proper Officer. In exercise of the power conferred by Section 164 of the CGST Act, the Central Government notified the Central Goods and Service Tax Rules, 2017. Rule 138 of 2017 Rules govern e-way bills. In case of transportation of goods by road, e-way bill is required to be generated before the commencement of the movement of the consignment. Rule 138A of CGST prescribes the documents and devices to be carried by the person in charge of the conveyance. As per the said provision, person in charge of a conveyance is required to carry the invoice or bill of supply or delivery challan, as the case may be and in case of transportation of goods by road, he is also required to carry copy of e-way bill in physical form or the e-way bill number in electronic form or mapped to a radio frequency identification device embedded on to the conveyance in such manner as may be notified by the Commissioner. Thus, as per Section 68 of the 2017 Act read with Rules 138 to 138D of the 2017 Rules, a person carrying consignment of goods in conveyance by road is required to carry invoice or bill of supply or delivery challan and a copy of e-way bill in physical form or electronic form. These documents are required to be produced when the goods are intercepted by Proper Officer.’

27. Rule 138 of the CGST Act, 2017 provides that every registered person who causes movement of goods and consignment value of exceeding Rs.50,000/- shall before commencement of said movement, generate e-way bill by way of furnishing information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal alongwith such other information as may be required on the common portal. The said rule further provides that a transporter on receiving an authorization from the registered person may furnish information on Part A of Form GST EWB-01 electronically on the

common portal. The relevant portion of the said Rule is reproduced as under:-

“CHAPTER XVI, E-WAY RULES

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

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

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

PROVIDED 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 -----”

28. As per the aforesaid rule, if value of the goods is more than Rs.50,000/-, it is mandatory for a registered person to upload the information on the common portal and generate a unique number and even, the transporter can generate the said unique number from the said portal by uploading the information when the transporter receives an authorization from a registered person. Generation of the said unique number by way of generating e-way bill provides authenticity to the

movement of the goods and also provides the information as to whether, the registered person had included the taxes in the 'value of supply'.

29. The petitioner had taken a stand before the Proper Officer and even alleged in the present writ petition that though, he received the order for transporting the mixed scrap on 26.04.2018 and even the vehicle loaded scrap from Tamil Nadu on 26.04.2018, but the scrap was unloaded at Bangalore on 26.04.2018 as the transporter had some other urgent assessment to do. Regarding that, the petitioner has alleged that the same vehicle i.e. RJ-14GF-8592 has transported the coconuts from Bangalore to Delhi from 27.04.2018 to 30.04.2018. It transported some parcels Delhi to Bangalore from 01.05.2018 to 05.05.2018 and again transported the goods from Bangalore to Delhi and then from Delhi to Bangalore w.e.f. 06.05.2018 to 10.05.2018, 10.05.2018 to 14.05.2018, respectively and ultimately, the goods of the petitioner i.e. mixed scrap was loaded from Bangalore on 14.05.2018 for delivery to Delhi when it was intercepted in Gurugram on 20.05.2018. In this regard, the petitioner had relied upon some invoices. We have perused the said annexures. Annexures P-2 to P-4 are copies of the invoice dated 27.04.2018. Annexure P-6 is also copy of a cash bill dated 06.05.2018. None of these documents is an e-way bill which would ensure that the information was uploaded on the central portal. In pursuance of the aforesaid rule, e-way bill was not generated for any of these alleged transactions despite the fact that the value of the supply alleged in Annexure P-3 is more than Rs.50,000/-.

30. Since, the documents relied upon by the petitioner in support of his contention that the scrap was unloaded at Bangalore and remained stationed there from 26.04.2018 to 14.05.2018 due to use of the said vehicle for the purpose of carrying/transporting the other goods are not authentic documents nor any e-way bill has been produced to show the movement of the said vehicle as such these documents have been rightly ignored by the Proper Officer. More so, when it was observed that the quantity of the scrap mentioned in the documents produced by the driver vary from the quantity of the documents which was being carried at the time of interception of the vehicle, as such keeping in view a long delay in between the date of issuance of the e-way bills to the date of interception of the vehicle, the appellate authority has rightly held that it was a case of reuse of the documents.

31. We have also observed that proper opportunity has been given to the appellant before passing the order by the Proper Officer which was under challenge before the appellate authority. After detention of the vehicle show cause notice dated 20.05.2018 (Annexure P-20) under Section 129 (3)(4) of GST Act, 2017 read with IGST Act, 2017 was issued to the petitioner mentioning the amount of tax and the penalty proposed to be levied to the petitioner. The reply dated 25.05.2018 (Annexure P-21) was filed by the petitioner. Order dated 29.05.2018 (Annexure P-23) was passed pursuant to the said notice. A show cause notice dated 06.06.2018 (Annexure P-32) was issued proposing to confiscate the goods and the conveyance under the provisions of Section

130 of the CGST Act, 2017 read with SGST Act, 2017 and IGST Act, 2017. After considering the reply of the petitioner, the final order dated 12.06.2018 (Annexure P-34) was passed by the Proper Officer.

32. Now, the question arises, as to whether, the provisions of Sections 129 and 130 of the CGST Act, 2017 are attracted. Section 129 of the CGST Act, 2017 provides for detention, seizure and release of the goods, whereas, Section 130 of the said Act provides for confiscation of the goods or conveyance and levy of penalty. The said sections are reproduced as under:-

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

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

(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner

of the goods does not come forward for payment of such tax and penalty;

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

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

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

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

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

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

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.

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

130. Confiscation of goods or conveyances and levy of penalty (1) Notwithstanding anything contained in this Act, if any person-

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

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

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

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

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

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

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

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

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

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1),

shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

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

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

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

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

33. Perusal of sub-section 5 of section 129 reveals that if, a person comes forward for making the payment of the amount as determined under sub-section 1 of section 129, proceedings in support of the notice issued under sub-section 3 of section 129 of CGST Act, 2017 stands concluded.

34. Sub-section 6 of section 129 of CGST Act, 2017 provides that where a person transporting any goods or owner of the goods fails to pay amount of tax and penalty as provided in sub-section 1 of section 129 within a period of 14 days of the detention and seizure of the vehicle, the proceedings under section 130 of CGST Act, 2017 shall be initiated. In the present case, the payment was not made, as such the Proper Officer was authorized to initiate the proceedings under section 130 of the Act for

confiscation of the goods or conveyance and for levy of penalty. Apart from this, the provisions of section 130 of the Act provides that where any person supplies any goods in contravention of any provisions of the Act or the Rule made therein with an intention to evade the tax, he is liable to be proceeded under section 130 of the CGST Act, 2017. ‘Intention to evade payment of tax’ is an essential ingredient, for initiating proceedings against a person under section 130 of the said Act. In the present case, the petitioner had tried to reuse the e-way bills and the tax invoices, as such the intention to evade the payment of tax is impliedly proved on record. Hence, the order passed by the Proper Officer under Section 129 as well as under Section 130 of the CGST Act, 2017 read with the provisions of IGST Act, 2017 is legal and valid and has been rightly upheld by the appellate authority.

35. In view of the aforesaid reasons, we are of the considered opinion that the appellate authority has properly dealt with all the submissions made by the appellant and has passed a well reasoned order. There is no scope for interference and to invoke the extra-ordinary writ jurisdiction.

36. The present writ petition is devoid of any merit and is, accordingly, dismissed.

37. Pending miscellaneous application(s), if any, also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

09.08.2023
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No