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W.P.(MD) Nos.22371 of 2023 etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	16.07.2024
Pronounced on	24.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.22371, 22372, 22933, 23473, 23474, 23475, 23927, 23928,
23929, 22955, 22956, 22935, 22934, 22957, 23489, 23490, 23491, 23476,
23477 and 23478 of 2023

and

W.M.P.(MD) Nos.18649, 18650, 20100, 20101, 20103, 20102, 19161, 19163,
19176, 19178, 19180, 19691, 19692, 19694, 19681, 19685, 19684, 19682,
19683 and 19687 of 2023

W.P.(MD) No.22371 of 2023

M/s.Devi Traders,
Represented by its Proprietor
Ayyappan

... Petitioner

Vs.

The State Tax Officer (Inspection) 5,
Investigation Wing,
Tirunelveli,
Sivakasi, Virudhunagar District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN 33AQIPA4612Q1ZU/2017-2018 dated 25.05.2023 and to quash the same as illegal, arbitrary, wholly without



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jurisdiction and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after the initiation of recovery action against the other end suppliers namely Mr.Charies Abraham, M/s.Kensington Agency, Vellamadam (GSTN 33BPJPA9176C2Z1) and by issuing fresh notice to the petitioner within such time as may be directed by this Court.

- For Petitioner : Mr.N.Sudalaimuthu
(In all W.Ps except
W.P.(MD) Nos.23476 to 23478 of 2023)
- For Petitioner : Mr.B.Brijesh Kishore
(In W.P.(MD) Nos.23476 to 23478 of 2023)
- For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader
(In W.P.(MD) Nos.22934, 22935, 22933,
22371, 22372, 23473 to 23475, 23476
to 23478 of 2023)
- For Respondents : Mr.J.K.Jayaseelan
Government Advocate
(In W.P.(MD) Nos.22955 to 22957,
23489 to 23491 and
23927 to 23929 of 2023)

COMMON ORDER

In these Writ Petitions, the respective petitioners have challenged the



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Impugned Assessment Orders passed on the dates mentioned below pursuant to Remand Orders passed by this Court in the earlier round of litigations. The details of the Writ Petitions filed by the respective petitioners are as under:-

Sl. No	W.P.(MD) No.	Petitioner	Assessment Year	Date of Impugned Order	Tax * (In Rs.)	Penalty * (In Rs.)	Interest (In Rs.)
1	22371/23	Devi Traders	2017-18	25.5.23	8179930	8179930	-
2	22372/23	Devi Traders	2018-19	25.5.23	136906	136906	-
3	22933/23	Thapasi Rubbers	2017-18	24.5.23	2035004	1017502	-
4	22934/23	Thapasi Rubbers	2018-19	24.5.23	3906326	1953163	-
5	22935/23	Thapasi Rubbers	2019-20	24.5.23	561126	280564	-
6	22955/23	J.K.Global Traders	2017-18	2.12.22	649750	649750	-
7	22956/23	J.K.Global Traders	2018-19	2.12.22	267000	267000	-
8	22957/23	J.K.Global Traders	2019-20	30.12.22	1257212	1257212	-
9	23473/23	Alban Rubbers	2017-18	10.5.23	12895762	12895762	12451179
10	23474/23	Alban Rubbers	2018-19	10.5.23	16669208	16669208	13498209
11	23475/23	Alban Rubbers	2019-20	10.5.23	6427918	6427918	4168042
12	23476/23	Sree Maruthi Traders	2017-18	31.5.23	2753654	2779596	-
13	23477/23	Sree Maruthi Traders	2018-19	31.5.23	5957218	5957218	-
14	23478/23	Sree Maruthi Traders	2019-20	31.5.23	2129226	2129226	-
15	23489/23	Baby Trading Company	2017-18	10.5.23	167114	167114	154122
16	23490/23	Baby Trading Company	2018-19	10.5.23	485236	485236	361796
17	23491/23	Baby Trading Company	2019-20	10.5.23	5143140	5143140	3401584
18	23927/23	D.Y.Beathel Enterprises	2017-18	13.9.22	605142	605142	-
19	23928/23	D.Y.Beathel Enterprises	2018-19	13.9.22	927280	927280	-
20	23929/23	D.Y.Beathel Enterprises	2019-20	13.9.22	343674	343674	-

* CGST + SGST



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2. Pursuant to statement obtained from one Charles, the Proprietor of Tvl.Kensington Agency and Star Agency on 05.11.2019, the said supplier had undertaken to pay a sum of Rs.30,00,000/- on the dates mentioned therein. The said statement of Charles, Proprietor of Tvl.Kensington Agency reads as under:-

மாஜிஸ்திரேட்டின் அலுவலகம் (Survey Unit), திருச்செல்வம் அலுவலக முன்பாக
Tvl.Kensington Agency 2-94, CMC நகர், வெள்ளையம், தாக்கோவில் என்ற
நிறுவனத்தின் உரிமையாளரும் Star Agency, 5-71, மெயின்ரோடு, குலச்சேரம் என்ற
நிறுவனத்தின் உரிமையாளருமான திரு.சார்லஸ் அவர்கள் அளித்த வாக்குமூலம்,
இன்று தீர்ப்புகள் 12.30 மணிப்போது Tvl.Kensington Agency
மற்றும் Tvl.Star Agency என்ற நிறுவனங்கள் செலுத்த வேண்டிய வரித்தொகை
தொடர்பாக தாஜம், மேற்கண்ட நிறுவனங்களிடமிருந்து கேள்விமுதல் செய்த
வசூலிக்கும் தேரில் ஆதாரமேனம் தாய்கள் மேற்கண்ட நிறுவனங்கள் செலுத்த
வேண்டிய வரிபாக்கித் தொகையினை செலுத்தி அறிவுறுத்தினார்கள். அதனை
ஒற்றுக்கொண்டு வரிபாக்கித் தொகையில் ரூ.10,00,000/-வீதம் கிழக்கண்ட நாட்களில்
செலுத்துகிறேன் என உறுதியளிக்கிறேன்.

1. 08.11.2019	அன்று ரூ.10,00,000/-
2. 15.11.2019	அன்று ரூ.10,00,000/-
3. 20.11.2019	அன்று ரூ.10,00,000/-

மீதித் தொகையினை விரைவில் செலுத்தி விடுகிறேன் என்பதை இதன்மூலம்
தெரிவித்துக்கொள்கிறேன்.

படித்த பரந்தோன் சார்
Charles - A Charles - 05/11/2019
7598534504

Tvl.Kensington Agency மற்றும் Tvl.Star Agency என்ற நிறுவனங்களின்
உரிமையாளர் திரு.சார்லஸ் என்பவர் நவம்பர் 2019 மாதத்தில் ரூ.10,00,000/- வீதம்
மூன்று தவணைகளாக ரூ.30,00,000/-யினை செலுத்துவதாக எங்கள் முன்பாக
தெரிவித்துள்ளதைத் தெரிந்து கொண்டோம்.

எங்கள்:

1. SAVADAR . Devi Pradees - 9443273954
2. S. Suresh, Jee Manute Pradees - 9443281814
3. Y. Chinnappa Bethu Entapay - 9486943001
4. P. Sundar, Sunda Sista, Thepsi Rubba - 9443992364
5. Alban Alban Rubba - 9598538715
6. Baby Halang - 9942003306
7. S. MURUGAN - 9444780264

2 மாதங்களுக்கு முன்பு
அங்கு இருந்த அலுவலகம்
அப்போது அங்கு
சுமார் 10-12
6 to (Survey)
Tamilnadar

The above statement was recorded in the presence of the respective petitioners.

3. It is also noticed that the following orders have been passed against



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Tvl.Kensington Agency and Tvl.Vajra Agency of the husband and wife namely, Charles and Shanthi, for the following Assessment Years.

Name	Assessment Year	Date	Amount (In Rs.)
Tvl.Kensington Agency	2017-2018	27.10.2020	2,61,39,880
	2018-2019	28.10.2020	2,53,76,534
Tvl.Vajra Agency	2018-2019	28.10.2020	1,80,75,068
	2019-2020	28.10.2020	1,07,70,740

4. The common ground of attack in these Writ Petitions is that the petitioners have not been allowed to cross examine either the said Charles or his wife Shanthi, the Proprietors of the above named suppliers namely, Tvl.Kensington Agency, Tvl.Vajra Agency and Tvl.Star Agency.

5. It is further submitted that the assessment orders have also been passed against these suppliers and therefore, there cannot be a recovery of the input tax credit that was availed by the petitioners on the strength of the supplies made by them to the respective petitioners.

6. It is submitted that confirmation of the demand without cross-examination of the suppliers amounts to violation of principles of natural justice. It is further submitted that the demand confirmed against the petitioners would also amount to double taxation.



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7. As far as the movement of goods are concerned, it is submitted that the supplier had utilized their own vehicle to supply the goods to these petitioners and there are documents to substantiate that there was indeed delivery of goods to the respective petitioners.

8. On the other hand, the learned Additional Government Pleader for the respondent would submit that pursuant to the orders passed by this Court in W.P.(MD)No.2500 of 2021 etc. batch. On 24.02.2021, summons were issued to the said Charles, which was returned with an endorsement "Expired" and that the Department is therefore unable to comply with the order dated 24.02.2021 and therefore, benefit of the cross examination of Charles could not be extended to the respective petitioners.

9. It is submitted that burden of proof is on the petitioners to establish that the credit that was availed by them was valid and until such burden of proof is discharged by the respective petitioners, the credit availed by them is provisional and is liable to be reversed/recovered, if not paid, in the absence of any documents to substantiate the delivery of the goods.



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10. It is submitted that admittedly, the suppliers have also not paid the tax and therefore, on this count also, the petitioners were not entitled to avail input tax credit, as there was no tax payment by the suppliers.

11. It is submitted that mere filing of returns in Form - GSTR - 1 and the auto generated Form - GSTR - 2A communicated to the respective petitioners *ipso facto* would not entitle the respective petitioners input tax credit, if indeed there was no delivery of the goods and the transactions were fictitious with a view to utilize ineligible Input tax Credit. It is therefore submitted that the Writ Petitions are devoid of merits and are therefore liable to be dismissed.

12. That apart, it is submitted that under Notification No.9/2018 of the Principal Secretary / Commissioner of State Tax, dated 31.05.2018, only under certain circumstances exemptions were prescribed from issuance of e-Way Bill. It is submitted that in these cases, the suppliers do not have the benefit of the aforesaid Notification on the so-called supplies made by them to these petitioners. It is submitted that there is no proof of supply of goods to the respective Petitioners. Hence, it is prayed that the Writ Petitions are liable to be dismissed.



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13. That apart, it is submitted that the petitioners have an alternate remedy and therefore, if at all for the petitioners may have to work out their remedy before the Appellate Authority under Section 107 of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017 as made applicable for demands confirmed both under the provisions of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017, Integrated Goods and Services Tax (IGST) Act, 2017 and Central Goods and Services Tax (CGST) Act, 2017 etc., and hence, prayed for dismissal of the Writ Petitions.

14. I have considered the arguments advanced by the learned counsels for the petitioners, the learned Additional Government Pleader and the learned Government Advocate for the respondents.

15. This is the second round of litigation at the behest of the petitioners except the petitioner in W.P.(MD) Nos. 23476 to 23478 of 2023.

16. Earlier, these petitioners except the petitioner in W.P.(MD) Nos. 23476 to 23478 of 2023 had approached this Court in W.P.(MD) Nos.2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177, 2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 of 2021.



17. There, these writ petitioners had challenged the respective orders passed against them. The Writ Court by its order dated 24.02.2021 quashed the Impugned Orders and had remitted the case back to the respondent to pass a fresh order with a specific direction to extend the benefit of cross-examination of the said Charles and his wife Shanthi. Operative portion of the said order in Paragraph No.16 reads as under:-

“16. Therefore, the impugned orders are quashed and the matters are remitted back to the file of the respondent. The stage upto the reception of reply from the petitioners herein will hold good. Enquiry alone will have to be held afresh. In the said enquiry, Charles and his wife Shanthi will have to be examined as witnesses. Parallely, the respondent will also initiate recovery action against Charles and his wife Shanthi.”

18. In Paragraph No.15, the Writ Court did indicate that it was imperative that the respondent allowed cross-examination of the said Charles and his wife Shanthi by the respective petitioners, if it was the case of the respondent that there was no movement of goods to the petitioners from the three concerns of the said Charles and his wife Shanthi.

19. Paragraph No.15 from the decision of this Court rendered in the



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above writ petitions on 24.2.2021 is reproduced below:-

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“15. According to the respondent, there was no movement of the goods. Hence, examination of Charles and his wife has become the more necessary and imperative. When the petitioners have insisted on this, I do not understand as to why the respondent did ensure the presence of Charles and his wife Shanthi, in the inquiry. Thus, the impugned orders suffers from certain fundamental enquiry. It has to be quashed for more than one reasons.

- Non-examination of Charles in the enquiry.
- Non-initiation of recovery action against Charles in the first place.”

20. The Impugned Orders herein in W.P.(MD) No.22595 to 22597 of 2023 records that summons were indeed issued to the said Charles and his wife Shanthi and in response the petitioner in W.P.(MD) No.22595 to 22597 of 2023 one T.Jeya Singh, the proprietor of JK Global Traders, presented before the respondent and submitted in absence of cross-examination of the above named persons, proceedings cannot be continued.

21. Similar observations were recorded in other Impugned Orders in the rest of the Writ Petitions except W.P.Nos.22933 to 22935 of 2023 and W.P.Nos.23476 to 23478 of 2023 wherein the summons issued to Mr.Charles and his wife Mrs.Shanthi were returned, as they were not found in the address and that the said Charles had expired.



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22. It appears that the summons issued to the said Charles and his wife Shanthi was returned with an endorsement that both Charles and his wife Shanthi had left. During the hearing, it was informed that the said Charles has expired. However, there are no records to substantiate the same.

23. A reading of the Impugned Orders reveal that the registration of M/s.Star Agencies had been cancelled with retrospective effect **from 01.07.2017 vide order dated 14.11.2019.**

24. This is a case where the Department is seeking to fasten the tax liability on the respective petitioners by way of reversal of the Input Tax Credit availed by them on account of purported non-supply of “goods” namely “rubber” and “rubber sheets” to the respective petitioners by the three proprietary concerns registered in the name of the couples namely the said Charles and his wife Shanthi. It is the case of the respondents that there are no documents to substantiate supply and movement of goods to the petitioners.



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25. It has to be borne in mind that the decision in W.P.(MD) Nos.2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177, 2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 of 2021 was rendered by the Court on 24.02.2020 in the earlier round of litigation. There, a reference was made to the decision of this Court rendered in **Shri Vinayaka Agencies Vs. The Asst Commissioner, CT Vadapalani, 2013 60 VST 283**, wherein, this Court had earlier held that the Commercial Tax Department does not have jurisdiction to reverse the input tax credit availed by on the ground that the selling dealer had not paid tax. In Paragraph No.8, the Writ Court in its order dated 24.02.2021 in the case of these petitioners had rightly concluded that the said decision in **Shri Vinayaka Agencies Vs. The Asst Commissioner, CT Vadapalani, 2013 60 VST 283** may not apply to the facts of the case as it was rendered under the previous regime namely Tamil Nadu Value Added Tax Act, 2006.

26. It has to be also borne in mind that the Division Bench of this Court in a batch of Tax Cases, Writ Appeals in **Tvl.Sahyadri Industries Limited Et cetera Vs. The State of Tamil Nadu Et cetera, 2023 (4) TMI 912; [2023] 115 GSTR 320 (Mad)** has substantially watered down the ratio of the Writ Court in **Shri Vinayaka Agencies Vs. The Asst Commissioner, CT Vadapalani, 2013**



60 VST 283 (*cited supra*) with the following observations:-

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- “98. As mentioned in the beginning of the discussion in this order, a registered dealer selling goods merely passes on the incidence of tax to the buyer. The buyer merely bears the incidence of tax charged and reflected in the sales invoice. The buyer never pays tax to the exchequer unless the buyer is liable to pay purchase tax under Section 12 of the TN VAV Act, 2006 otherwise. It is the seller who pays the tax.
99. The learned Single Judge however observed that it is another matter if the selling dealer has not paid the collected tax and that liability has to be fastened on the selling dealer. Liability cannot be however mulcted on the purchasing dealer who had shown proof of payment of tax on the purchases made.
100. To an extent we are in agreement with the view of the learned single judge in **Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and Another, MANU/TN/1386/2013 : (2013) 60 VST 283 (Mad)**. However, the view cannot be applied universally where the selling dealer continued to exist where there was no transaction of "sale" or that the registration was obtained only for the purpose of facilitating credit of tax being availed without a transaction of sale. We cannot uphold the view in **Sri Vinayaga Agencies Vs. Assistant commissioner (CT), Vadapalani-I Assessment Circle, Chennai and Another, MANU/TN/1386/2013 : (2013) 60 VST 283 (Mad)** in all cases merely because the registration of the selling dealer was not cancelled if indeed the registration was obtained to create paper transaction without actual sale. The burden to prove that there was indeed a transaction of sales is with the registered dealer availing credit. Till such burden is proved, the credit availed under the proviso to Section 19(1) of the TN VAT Act, 2006 can be denied.
101. We have to state that ratio of this Court both in **Jinsasan Distributors vs. Commercial Tax Officer, Chennai, MANU/TN/1771/2012 : (2013) 59 VST 256** and **Sri Vinayaga**



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Agencies vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and Another, MANU/TN/1386/2013 : (2013) 60 VST 283 (Mad) are no longer a good law in the light of the recent decision of the Court in The State of Karnataka vs. M/s.Ecom Gill Coffee Trading Private Limited, dated 13.03.2023 in Civil Appeal. No. 230 of 2023. We shall deal with the same in due course of discussion.

- 102. The ratio in Sri Vinayaga Agencies vs. Assistant commissioner (CT), Vadapalani-I Assessment Circle, Chennai and Another, MANU/TN/1386/2013 : (2013) 60 VST 283 (Mad) cannot be applied in all cases. Likewise, the ratio in Jinsasan Distributors Vs. Commercial Tax Officer, Chennai, MANU/TN/1771/2012 : (2013) 59 VST 256, cannot be applied any longer in view of the recent decision of the Hon'ble Supreme Court in The State of Karnataka vs. M/s.Ecom Gill Coffee Trading Private Limited, dated 13.03.2023 in Civil Appeal. No. 230 of 2023.*
- 103. While placing reliance on the aforesaid decision of the Hon'ble Supreme Court in State of Maharashtra Vs. Suresh Trading Company, MANU/SC/1740/1997 : (1997) 11 SCC 378, the Court in Jinsasan Distributors vs. Commercial Tax Officer, Chennai, MANU/TN/1771/2012 : (2013) 59 VST 256, failed to note the expression in Section 19(15) of the TNVAT Act, 2006 which specifically deals with the situation. Section 19(15) in the TN VAT Act, 2006 is an innovation which was not contemplated under Section 70 of the Karnataka Value Added Tax, 2003. The said decision of a learned Single Judge of this Court, has been followed in the past.*
- 104. If there is a cancellation of registration, the assessing officer can call upon the dealer to repay to the input tax credit availed and utilized if indeed there was no evidence of sale. It may result in denial in the credit. However, it cannot be helped, where registration itself was obtained by such dealer to facilitate input tax credit being availed on such bogus invoice without a corresponding transaction of sale.*



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105. Therefore, the decision of the learned Single Judge in *Jinsasan Distributors Vs. Commercial Tax Officer, Chennai*, placing reliance on *State of Maharashtra vs. Suresh Trading Company*, MANU/SC/1740/1997 : (1997) 11 SCC 378 cannot be held to have an universal application in all cases of cancellation of VAT registration of the selling dealer with retrospective date, if registration itself was obtained only to facilitate bogus input tax credit being claimed availed and utilized without actual transaction of "sale" and supply of goods to cheat the revenue as is contemplated under Section 19(13) of the TN VAT Act, 2006.

106. Therefore a registered dealer claiming input tax credit has to discharge the burden of proof required to be discharged under Section 17(2) of the TN VAT Act, 2006 by showing documents to prove that indeed there was a transaction of sale and payment of amount was made for supply made to the dealer who supplied the goods.

107. Thus, it was incumbent on the part of a registered dealer like petitioner/appellants availing input tax credit to prove that indeed a transaction of "sale" had taken place. They should not only preserve but also produce collateral evidence in the form of transport documents, such lorry receipts or consignment note, etc. when called upon failing which it cannot be said they have discharged the burden of proof required to be discharged under Section 17(2) of the TN VAT Act, 2006."

27. The said decision was rendered in the context of Section 19 of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 and Rule 10 of the Tamil Nadu Value Added Tax (TNVAT) Rules, 2007.



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28. The details of the transactions of the respective petitioners were undertaken to be furnished by the respective counsels. However, they were not furnished by the respective counsels, despite sufficient lapse of time, since the case was reserved “for orders”.

29. As far as generation of e-Way Bills are concerned, Notification No. 9/2018 dated 31.05.2018 reads as under:-

"In exercise of the powers conferred by clause (d) of sub-rule 14 of Rule 138 of the Tamil Nadu Goods and Services Tax Rules, 2017, Commissioner of State Tax, Tamil Nadu, hereby notifies that no e-way bill is required to be generated for the transport of following goods, for the values mentioned therein for intra-State movement i.e., within the State of Tamil Nadu:

- (a) Consignment with value of goods not exceeding Rupees One lakh.*
 - (b) The consignment of goods as listed out in the Annexure (serial No.1 to 100), irrespective of value of the consignment.*
2. *This notification shall come into effect from 02nd June, 2018."*

30. The relevant provisions for availing Input Tax Credit under the provisions of the respective GST Enactments and the Rules made thereunder are under Section 16(2) of the Tamil Nadu Goods and Services Tax (TNGST)



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Act, 2017 and Section 16(2) of the Central Goods and Services Tax (CGST)

Act, 2017.

31. Section 16(2) of the Tamil Nadu Goods and Services Tax (TNGST)

Act, 2017 and Section 16(2) of the Central Goods and Services Tax (CGST)

Act, 2017 read as under:-

Section 16(2) of TNGST Act	Section 16(2) of CGST Act
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(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any **supply of goods** or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37;

(b) he has received the goods or services or both.

Explanation:

For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services -

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation:

For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:



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32. To avail Input Tax Credit validly, a recipient of goods has to satisfy the condition under Section 16(2) of the respective GST enactments. It is a *sine qua non* for availing Input Tax Credit validly. The recipient has to be in possession of not only tax invoice or debit note issued by the registered supplier or such other taxpaying documents as may be prescribed but also documents to establish physical supply of goods and receipt of goods.

33. The expression “Supply” is defined in Section 7 of the respective GST enactments. For the sake of clarity, Section 7 of the Central Goods and Services Tax (CGST) Act, 2017 is reproduced below:-

“7. Scope of supply.

(1) For the purposes of this Act, the expression “supply” includes--

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- (b) import of services for a consideration whether or not in the course or furtherance of business;1[and];*
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration.*

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub



section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),--

*(a) activities or transactions specified in Schedule III;
or*

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as--

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.”

34. Though the definition of supply in Section 7 of the respective GST enactments is wide and includes not only actual supply but also supply agreed to be made in future for consideration yet to validly avail and utilize “Input Tax Credit”, the mandate of Section 16(2)(b) of the respective GST enactments has to be satisfied by the recipient of goods or service. It has to be proved, in the manner recognized under the respective GST enactments, Input Tax Credit cannot be availed, even if the consideration for the proposed supply of goods or service has not been paid as the case may be.



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35. As per 2nd proviso to Section 16(2) of the respective GST enactments, if the recipient fails to pay the supplier the consideration within 180 days of invoice, for the goods and services supplied, other than supplies where tax is payable on reverse charge basis, the recipient will not be entitled to claim Input Tax Credit on the payment made towards the value of Supply.

36. This is also made clear in Rule 37 of the respective GST Rules of 2017. As per Rule 37 of the respective GST Rules of 2017, in case no consideration is paid to the supplier, no Input Tax Credit can be availed. Rule 37 of the respective GST Rules of 2017 read as under:-

“Rule 37 : Reversal of input tax credit in the case of non-payment of consideration:-

- (1) *A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of issue of invoice. Provided that the value of supplies made without consideration as*



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specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

- (2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.*
- (3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.*
- (4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter that had been reversed earlier.”*

37. That apart, the supplier of the goods or the service as the case may be should have actually paid the tax to the Government either in cash or through utilisation of Input Tax Credit admissible in respect of the said supply. The provision mandates that the supplier should have also furnished his returns under Section 39 of the respective GST enactments [i.e Form GSTR -1, Form GSTR-3B]

38. Thus, the recipient should have not only be in possession of invoice for supply of goods or services, but also should be in possession of such



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documents to establish supply by the supplier and receipt by the recipient.

Additionally, the recipient should also have paid the consideration including the tax to the supplier, failing which Input Tax Credit availed is to be paid back to Government with interest.

39. Section 16(2) of the respective GST enactments of 2017 will also have been read along with Rule 138 of the respective GST Rules of 2017. Rule 138 of the respective GST Rules of 2017 deals with the provision relating to movement of goods.

40. Further requirements are also mandated in Rule 36 & Rule 46 of the respective GST Rules of 2017. Rule 36 & Rule 46 of the respective GST Rules of 2017 are reproduced below:-



Rule 36	Rule 46
36. Documentary requirements and conditions for claiming input tax credit.- (1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31; (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax; (c) a debit note issued by a supplier in accordance with the provisions of section 34; (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports; (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.	46. Tax invoice.- Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,- (a) name, address and Goods and Services Tax Identification Number of the supplier; (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as --? and -/? respectively, and any combination thereof, unique for a financial year; (c) date of its issue; (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient; (e) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more; (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-



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41. Rule 55-A of the respective GST Rules of 2017 were inserted vide Notification No 03/03/2018-Central Tax dated 23.1.2018 and vide Notification No.SRO A-1 (A/2018) dated 23.01.2018 to the respective GST Rules, 2017. Rule 55-A of the respective GST Rules of 2017 contemplates that the person in charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of Rule 46, Rule 46 A or Rule 49 in a case where such person is not required to carry an E-way bill under these Rules.

42. Section 68 (1) of the respective GST enactments contemplates that the Government may require the person in charge of the conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry and such documents of such devices as may be prescribed.

43. 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 document and also allow the inspection of the goods.



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44. As per Section 68(2) of the respective GST enactments, the details of the documents required to be carried under Sub-Section (1) shall be validated in such manner as may be prescribed.

45. To implement the above requirements of Section 68 of the respective GST enactments, Chapter XVI has been provided under the respective GST Rules.

46. As per Rule 138(1) of the respective GST Rules, before the movement of goods, every registered person who causes the movement of goods with a consignment value exceeding fifty thousand rupees whether related to a supply, for reasons other than supply, or due to inward supply from an unregistered person must electronically provide the required information about the goods as specified in Part A of Form GST EWB-01 on the common portal. Additionally, any other necessary information should also be submitted on the portal, and a unique number will be generated.

47. As per Rule 138(2) of the respective GST Rules, if the goods are being transported by the registered person, either as consignor or consignee, whether using their own vehicle, a hired one, or a public transport vehicle, by



road, they must generate the e-way bill electronically in FORM GST EWB-01 on the common portal after providing the necessary details in Part B of the form.

48. Rule 138 of the respective GST Rules has undergone minor changes during the period in dispute which is reproduced below:-

“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:



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Provided further that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in **Part A** of **FORM GST EWB-01** may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

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

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

[Explanation 1. - For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, Notification No 56/2018-Central Tax, dated the 23rd October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E), dated the 23rd October, 2018 as amended from time to time.]

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



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where the invoice is issued in respect of both exempt and taxable supply of goods.

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

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

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

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

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

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate



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the e-way bill in **FORM GST EWB-01** on the common portal in the manner specified in this rule:

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

Provided also that an unregistered person required to generate e-way bill in FORM GST EWB-01 in terms of the fourth proviso to sub-rule (1) or an unregistered person opting to generate e-way bill in Form GST EWB-01, on the common portal, shall submit the details electronically on the common portal in FORM GST ENR-03 either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person.

Explanation 1.- For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

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

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



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

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

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

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

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

(7) Where the consignor or the consignee has Not generated the e-way bill in **FORM GST EWB-01** and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand



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rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in **FORM GST EWB-01** on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in **FORM GST EWB-02** on the common portal prior to the movement of goods:

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

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

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

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

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

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

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period



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as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

Sl.No.	Distance	Validity Period
(1)	(2)	(3)
1	Up to [200 km.]	One day in cases other than Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
2	For every [200 km.] or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
3	Up to 20 km	One day in case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]



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Sl.No.	Distance	Validity Period
4	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]:

Provided that the Commissioner may, on the recommendations of the Council, by Notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

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

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

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

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



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

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

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

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

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

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

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

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

(c) *where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;*

(d) *in respect of movement of goods within such areas as are Notified under clause (d) of sub-rule (14) of **rule 138** of the State or Union territory Goods and*



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Services Tax Rules in that particular State or Union territory;

(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to [Notification No 2/2017- Central tax \(Rate\)](#) dated the 28th June,

2017 published in the Gazette of India, Extraordinary, Part II, [Section 3](#), Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;

(g) where the supply of goods being transported is treated as No supply under [Schedule III](#) of the Act;

(h) where the goods are being transported-

(i) under customs bond from an inland container depot or a container freight station to a custom sport, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal;

(i) where the goods being transported are transit cargo from or to Nepal or Bhutan;

(j) where the goods being transported are exempt from tax under [Notification No 7/2017-Central Tax\(Rate\)](#), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, [Section 3](#), Sub-section (i), vide number G.S.R 679(E) dated the 28th June, 2017 as amended from time to time and [Notification No 26/2017 Central Tax \(Rate\)](#), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, [Section 3](#), Sub-section (i), vide number G.S.R 1181(E) dated the 21st September, 2017 as amended from time to time;



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(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;

(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;

(m) where empty cargo containers are being transported; and

(n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with [rule 55](#).

(o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.

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

49. Any person transporting goods for a value exceeding Rs.50,000/- has to generate e-way Bills. The e-way Bills were to be generated by the consignor or the consignee himself even if the transportation was being done in their own/hired conveyance or by the railways, or by air. If the goods are to be handed over to a transporter for transportation by road, e-Way Bills were to be generated by the transporter inasmuch as details of Part B was done by the



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transporter. Part A details must be filled out by the registered person.

However, it has been clarified that the transporter can generate Part A after obtaining authorization from the Consignor or consignee, as applicable, on the common portal for the e-way Bill.

50. In exercise of powers conferred under Clause (d) of Sub-Rule 14 to Rule 138 of the Tamil Nadu Goods and Services Tax (TNGST) Rules, 2017, the Office of the Principal Secretary / Commissioner of Commercial Taxes Tamil Nadu has also issued Notification No.9/2018 dated 31.05.2018. As per the said notification, no e-Way Bill is required to be generated for transportation of the goods specified therein for intra-state movement i.e., within the State of Tamil Nadu.

51. The exemption is confined to transportation of goods not exceeding Rs.1,00,000/- and only for those goods specified in the Annexure to the said notification. A reading of the Annexure to the above notification indicates that “rubber” or “rubber sheets” are not specified in Serial Nos.1-100 to the Annexure to the above notification.

52. Rule 138A of the respective GST Rules of 2017 deal with the documents and devices to be carried by a person-in-charge of the conveyance.



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Rule 138A of the respective GST Rules of 2017 has also undergone few changes. Rule 138A and 55A of the respective GST Rules of 2017 reads as under:-

<i>138A. Documents and devices to be carried by a person-in-charge of a conveyance.-</i>	<i>Rule 55A- Tax Invoice or bill of supply to accompany transport of goods:-</i>
<i>(1) The person in charge of a conveyance shall carry - (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.</i>	<i>The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.</i>

53. Thus, a cumulative reading of Rule 138, 138A and Rule 55A of respective GST Rules of 2017 makes it clear that the goods should accompany e-way Bill for movement of goods where the value of goods exceed Rupees Fifty Thousand. Only where there is exemption from obtaining E-way Bill, it is sufficient that the person in-charge may carry a copy of the tax invoice or



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bill of supply issued as per the provisions of Rule 46, 46A or 49 of the respective GST Rules of 2017.

54. Similarly, Rule 138 B & C of the respective GST Rules of 2017 have been prescribed for “Verification of Documents and Conveyance” and for “Inspection and Verification” of the Goods. Rule 138 B & C are reproduced below:-



Rule 138B. Verification of documents and conveyances	Rule 138C. Inspection and verification of goods
(1) The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra State movement of goods. (2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device. (3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf. Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this	(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within twenty four hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection. Provided that where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days. Explanation.- The period of twenty four hours or, as the case may be, three days shall be counted from the midnight of the date on which the vehicle was intercepted. (2) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or Union territory or in any other State or Union territory, no further



55. If there is a failure to carry the documents, the goods are liable for seizure and confiscation and proceedings under Section 129 of the respective GST enactments can be initiated against such transporter or owner of conveyance. Section 129 of the respective GST enactments reads as under:-

“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 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



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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



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time, the said period of seven days may be reduced by the proper officer.”

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56. Further, Rule 56 in Chapter VII of the respective GST Rules of 2017 contemplates maintenance of accounts by a “registered person”. As per Rule 56 in Chapter VII of the respective GST Rules of 2017, every registered person has to maintain in addition to the particulars specified in Sub-Section (1) of Section 35, a true and up-to date record of goods and services imported or exported, as well as supplies subject to tax under reverse charge. This includes keeping relevant documents such as invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers. The expression “relevant documents” will include “e-way Bills”. Rule 56 in Chapter VII of the respective GST Rules of 2017 will apply to both the supplier and the recipient. Rule 56 in Chapter VII of the respective Rules reads as under:-

“Rule 56 – Maintenance of accounts by registered persons:

- (1) Every registered person shall keep and maintain, in addition to the particulars mentioned in **sub-section (1) of section 35**, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge **along with the relevant documents**, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers,*



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payment vouchers and refund vouchers.

- (2) *Every registered person, other than a person paying tax under [section 10](#), shall maintain the accounts of stock in respect of goods received*

and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

- (3) *Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.*
- (4) *Every registered person, other than a person paying tax under [section 10](#), shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of [section 9](#)), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.*
- (5) *Every registered person shall keep the particulars of*
- (a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;*
 - (b) names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;*
 - (c) the complete addresses of the premises where goods are stored by him, including*



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goods stored during transit along with the particulars of the stock stored therein.

- (6) If any taxable goods are found to be stored at any place(s) other than those declared under sub-rule (5) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.*
- (7) Every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.*
- (8) Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.*
- (9) Each volume of books of account maintained manually by the registered person shall be serially numbered.*
- (10) Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.*
- (11) Every agent referred to in clause (5) of section 2 shall maintain accounts depicting the,
(a) particulars of authorisation received by him from each principal to receive or*



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supply goods or services on behalf of such principal separately;

(b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;

(c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;

(d) details of accounts furnished to every principal; and

(e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

(12) Every registered person manufacturing goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

(13) Every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

(14) Every registered person executing works contract shall keep separate accounts for works contract showing -

(a) the names and addresses of the persons on whose behalf the works contract is executed;

(b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;

(c) description value and quantity



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- (wherever applicable) of goods or services utilized in the execution of works contract;*
- (d) the details of payment received in respect of each works contract; and*
- (e) the names and addresses of suppliers from whom he received goods or services.*
- (15) The records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.*
- (16) Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.*
- (17) Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.*
- (18) Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force."*



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57. Thus, these petitioners as recipients of goods were also required to maintain all documents in addition to invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers, etc., e-Way Bills as well.

58. Both the suppliers and respective petitioners were required to have maintained proper books of account including e-Way Bill to justify availment of credit on the strength of the document prescribed under Section 16(2) of the respective GST Enactments, 2017 read with Rule 138 of the respective GST Rules, 2017.

59. None of the petitioners are in possession of any e-Way Bill as is contemplated under the provisions of the respective GST enactments and the Rules made thereunder.

60. Although cross-examination of the said Charles and his wife Shanthi has not been allowed, it is to be noted that the credit that is claimed under the provisions of the respective GST enactments can be denied if the recipient does not have requisite document that the goods were not received physically by the



recipient from the supplier.

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61. It may be useful to refer to Rule 36 in Chapter V of the respective GST Rules, 2017. It is intended to implement the requirements of Section 16(2) of the respective GST enactments of 2017. As per Rule 36 of the respective GST Rules, 2017 a registered person as a recipient of goods or services or as an Input Service Distributor, as the case may be can avail Input Tax Credit on the basis of any of the documents prescribed.

62. Even in the context of the Tamil Nadu Value Added Tax Act, 2006 and the Rules made thereunder, the burden of proof is on the recipient to show that the goods were indeed received by producing necessary documents.

63. In my view, failure on the part of the Department to facilitate cross-examination of the couples namely Charles and his wife Shanthi is not fatal. Although the statements of these persons have been relied upon, it is to be noted that the statements were recorded in presence of the petitioners. They are signatory to the Statement dated 05.11.2019 of the said Charles.

64. It would have been different if the Statements were obtained behind



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the back of the petitioners and they were unaware of the Statements recorded on the said date and were being relied upon, in which case it may have been necessary to allow cross-examination of said Charles and his wife Shanthi in the light of the decision of the Hon'ble Supreme Court in **Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata, (2016) 15 SCC 785**.

65. Since the Statements were obtained in presence of the petitioners herein, it is not open for the petitioners to insist for cross-examination although such a permission was granted by this Court earlier in its Order dated 24.02.2021.

66. That apart, the adjudication before the quasi-judicial authority like the respondent under the provisions of the respective GST enactments are not governed by the strict rules of evidence. The Department is only required to come to a conclusion on the facts based on records and the preponderance of probabilities and the documents available as held in **M/s.Bharat Steels, Represented by its Proprietor Vs. Commercial Tax Officer, Chennai, (2020) 83 GSTR 379**.



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67. In these cases admittedly, there are no documents to substantiate movement of goods. That apart, it appears that the entire value of tax liability was discharged by the suppliers from and out of ineligible Input Tax Credit to facilitate availing of such ineligible credit by the petitioners to defeat the very purpose of allowing Input Tax Credit under the provisions of the respective GST Enactments of 2017. It was also contrary to Rules.

68. Under the provisions of the respective GST enactments and the Rules made thereunder, burden is on the recipient to show that the goods were indeed received. In these cases, admittedly, there are no documents to show that the goods had been received and accompanied e-Way bill. Without discharging the burden, the credit that was granted has to be treated as provisional and has to be paid back. This is the ratio of the Hon'ble Supreme Court also in **State of Karnataka Vs. Ecom Gill Coffee Trading Private Limited, 2023 SCC OnLine SC 248**. The said decision was rendered in the context of Section 70 of the Karnataka Value Added Tax Act, 2003. In Paragraph No.9.1, the Hon'ble Supreme Court has observed as under:-

"9.1. Thus, the provisions of Section 70, quoted herein above, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and



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sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under Section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per Section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per Section 70 of the Act, 2003."

69. In the light of the above discussion, I find no merits in these Writ Petitions. Therefore, these Writ Petitions are liable to be dismissed.

70. Although the petitioners herein have taken a calibrated risk by challenging the Impugned Assessment Orders before this Court, they now seek liberty to challenge the respective Impugned Assessment Orders before the Appellate Forum under Section 107 of the respective GST enactments. Hence,



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liberty is granted to the petitioners herein to challenge the respective Impugned Assessment Orders by way of filing a Statutory Appeal before the Appellate Authority, within a period of 30 days from the date of receipt of a copy of this order.

71. In the result, these Writ Petitions are dismissed with the above liberty. No costs. Connected Writ Miscellaneous Petitions are closed.

24.01.2025

Neutral Citation : Yes / No

mm/arb

Note: Registry is directed to return the originals of the respective Impugned Orders, if the same are required to the petitioners herein.

To

1.The State Tax Officer-1 (Adjudication),
Investigation Wing,
Tirunelveli.



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- 2.The State Tax Officer-4 (Inspection),
Virudhunagar, Tirunelveli Division,
Commercial Tax Buildings,
Tirunelveli.
- 3.The State Tax Officer-5 (Inspection),
Investigation Wing,
Tirunelveli,
Sivakasi, Virudhunagar District.
- 4.The State Tax Officer (Data Cell),
Investigation Wing,
Commercial Tax Buildings,
Tirunelveli.
- 5.The State Tax Officer (Inspection),
Intelligence Wing,
Commercial Tax Buildings,
Tirunelveli.

C.SARAVANAN, J.

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Common Order in
W.P.(MD) Nos.22371, 22372, 22933, 23473, 23474, 23475, 23927,
23928, 23929, 22955, 22956, 22935, 22934, 22957,
23489, 23490, 23491, 23476, 23477 and 23478 of 2023

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