



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN NO. : 20210164SW0000999BCC

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2/GST/59/GNR/19-20/03

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC-02/20-21**

दिनांक Date : **28-12-2020** जारी करने की तारीख Date of Issue : 01-01-2021

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathore, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original No **01/2019 issued from F.NO. IV/16-68/PI/Misc-Eway**

Bill/18-19 दिनांक: **24.05.2019** issued by Assistant Commissioner (Preventive), Central GST, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Vardaan Trading Company,

Block No. 352, Con box Factory Shop

Near Jackson Hydraulics Changodar

Ahmedabad

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL

This appeal has been filed by M/s Vardaan Trading Company, Block No. 352, Con Box Factory Shop, Near Jackson Hydraulics, Changodar, Ahmedabad-382213 [hereinafter referred to as "appellant"] against Order No.01/2019 dated 24.05.2019 issued from F.No. IV/16-68/PI/Misc-Eway Bill/18-19/Gr. III [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner (Preventive) of Central GST Gandhinagar [hereinafter referred to as "adjudicating authority"]

2. Briefly stated, the fact of the case is that the conveyance bearing no. RJ-14 GF-8820 was intercepted by U.P. Rathod, Superintendent(Prev.), CGST, Gandhinagar[hereinafter referred to as "proper officer"] on 26-11-2018 at about 07.15 PM at Jundal Toll Bridge(Place). On inquiry with the driver, he produced the Invoice No.V /006, and L.R.No.06 dated 26.11.2018 relating to the goods loaded in the vehicle. The proper officer recorded the statement of the driver on the spot on 26.11.2018 in Form GST-MOV-01. The proper officer detained the goods under FORM GST MOV-06 with remarks "E-way bill not tendered". The said officers issued the order for physical verification/Inspection of the Conveyance, Goods & Documents in Form GST-MOV-02. The physical verification of the goods was conducted by the officers with that mentioned Taxable Invoice No.V /006,dated 26.11.2018. The details regarding physical verification of the goods carried out by the officers has been noted in the "Physical Verification Report" prepared by the officer on 26.11.2018 under Form-GST-MOV-04 wherein no discrepancy was found.

In view of the above, the goods and the conveyance used for the movement of goods were detained under sub-section (1) of section 129 of the Central Goods and Services Tax Act, 2017 read with sub-section (3) of section 68 of the State/Union Territory Goods and Services Tax Act or under section 20 of the Integrated Goods and Services Tax Act, 2017 by issuing an order of detention dated 26.11.2018 in FORM GST MOV-06. Further, A Notice bearing F.No.IV/16-68/PI/MiscEway Bill/2018-19 /Gr.II, dated 30.11.2018 in FORM GST MOV-07 under Section 129(3) of the CGST Act,2017 was issued to the appellant proposing as to why the tax and penalty total amounting to Rs.66,45,232/- (IGST: Rs. 1057196/- + Cess :Rs. 2265420/-) + IGST Penalty : Rs. 1057196/- + Cess Penalty : Rs. 2265420/- should not be paid and proceedings 'should not be



initiated under the said CGST Act, 2017. Further the said notice has been adjudicated by adjudicating authority vide impugned order.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- The impugned order passed by the adjudicating authority is in utter violation to the principles of natural justice, as the adjudicating authority has failed to consider the submissions made by the them. It was obligatory on the part of the adjudicating authority to have dealt with all the submissions made by them the appellants and in case he did not agree with the submissions, he should have advanced tangible reasons for the same. This was also essential in view of the fact that it is not in dispute that the movement of goods in Truck No.RJ14-GF-8820 was accompanied with valid taxable Invoice and bulity but without having copy of e-waybill at the material time. It was also not disputed that the copy of e-waybill was generated subsequently for the reasons stated in the submissions submitted by the appellant. Therefore, the impugned order being un-reasoned and non-speaking is thus violative of principles of natural justice and therefore is liable to be quashed and set aside.
- The appellant submits that it is not disputed that goods loaded in Truck No.RJ14-GF-8820 were not accounted for and were supplied under invoice showing the applicable taxes charged. The only inadvertent lapse on the part of the appellant that the e-way bill was not accompanied with the said vehicle. The e-way bill was generated the moment the GSTN portal started functioning and the representative of the appellant made the efforts to handover the copy of the e-waybill to the driver of the said vehicle, but by that time, the goods were already detained by the officers of the department. This fact has also been mentioned in the written submissions dated 03.12.2018 submitted to the department. Having produced the copy of eway bill, it was obligatory on the part of the department to have considered the same. Therefore, the impugned order having not been passed in consonance of law and required to be quashed and set aside.



- The appellant submits that the undisputed fact on record was that driver was carrying the proper invoice and Lorry Receipt for transportation of the goods. Even the physical verification of the goods did not yield between the physical stock of the goods loaded in the truck and the documents handed over by the driver. The only inadvertent lapse was that the E-way Bill did not accompany the consignment. As stated above, that due to technical problem in the GSTN portal, the E-way Bill could not be generated and that was the reasons why the driver of the truck was asked for E-way Bill but at no point of time, there was no intention on the part of the appellant to evade payment of tax. The genuineness and veracity of the invoice produced by the driver has not been disputed till date. However, the E-way Bill could not be sent with the driver for the reasons stated hereinabove.

- The appellant submits that on being stopped the vehicle for verification that the driver of the vehicle has produced the Invoice No.V/006, dated 26.11.2018 showing payment of appropriate tax on the goods loaded in the said truck. The order of the Adjudicating Authority imposing a tax on the said goods on the second time could amount to double taxation which is not permissible. The appellant was not required to pay any amount of tax on the said goods as the said goods have already suffered an appropriate tax. A collection of tax at second time is without authority of law and is required to be refunded.

- Appellant has relied on following citations:
 - i. **Modern Traders Vs. State of U. P. & ors. in Writ Tax No. 763 of 2018,**
 - ii. **Steel Authority of India Ltd. v / s Sales Tax Officer, Rourkela-1 Circle and Others 16 VST 181 (S.C.).**
 - iii. **Union Of India Vs Rajasthan Udyog, reported at 2008 (222) ELT 366 (Raj.),**
 - iv. **Hindustan Steel Ltd. Vs. State of Orissa Pradesh reported in AIR 1970 SC (253) (1979 ELT (J402)**
 - v. **Iqra Roadways (India) Thru its Prop. & 3 Ors. Vs. State of U.P, & 3 Others reported in [(2017) 11 TMI 1032 (Allahabad)]**



vi. Kun Motor Co.(P) Ltd., Vs. Assistant State Tax Officer reported in (2018) taxmann.com 271 (Kerala)

3. Personal hearing in the matter was held on 24.12.2020. Shri N.K.Tiwari, Consultant, appeared before me for personal hearing on behalf of the appellant through video conferencing in appeal no. V2/GST/59/GNR/19-20. He has already submitted the written submission & reiterated the same at the time of personal hearing. Further, he requested that he will submit additional submission through E-Mail.

4. I have carefully gone through the facts of the case and submissions made by the appellant in the present appeal and oral submissions made at the time of Personal Hearing. I find that the question to be decided is whether the duty and penalty imposed to the appellant, as E-way bill not tendered/produced, vide the impugned order is erroneous or otherwise.

5. In this context, before moving forward, let me first reproduce the relevant sections of CGST Act, 2017 which is re-produced here below.

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).

SECTION 68. Inspection of goods in movement. — (1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

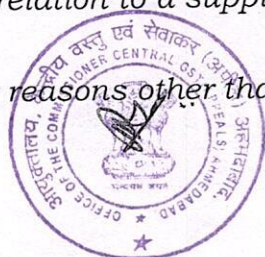
(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Sub-rule (1), Rule 138 of Central Goods and Services Tax Rules, 2017 provides that-

(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

6. It is very crystal clear from the Section 129 of CGST Act, 2017 that 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. Further I find that Rule 138(1) of the CGST Rules, 2017 provide that 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. Further, it is observed that the appellant could not produce the E-way Bill at the time of interception.

7. In the instant case, I find that it is non-disputed fact that the vehicle/conveyance was not carrying the e-way bill while intercepted and detained by the departmental officers. Further, it is also observed that the conveyance/vehicle was intercepted on 26.11.2018 at 07.15 p.m by the departmental officers whereas the e-way bill produced by the appellant has been seen as generated at 08.56 p.m on 26.11.2018 which is after the subject conveyance/vehicle has been intercepted and the said facts also has been confirmed by the appellant.

7.1 I also find that the reasons that the GSTN network was not working as submitted by the appellant for delay in tendering/generating the e-way bill does not supported by any of the evidences produced by the said appellant. Accordingly, I do not find any force in the contention of the appellant that due to technical fault in the GSTN network they could not be able to tender/generate the e-way bill.

7.2 Further, I find that CBIC vide Circular No. 64/38/2018-GST dated 14.09.2018 also clarified at para-4 that "if the conveyance/vehicle is not accompanied by e-way bill, they are liable to proceedings under Section 129 of the CGST Act". The contents thereof are re-produced herebelow:



“4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section 129 of the CGST Act may be initiated.”

7.3 Further, as regards to the judgements of various Courts/Tribunal relied upon by the appellant, it is observed that the same are not relevant to the facts and circumstances of the instant case.

8. In view of the above, I do not find any force in the contentions of the appellant. Accordingly, I find that the impugned order passed by the adjudicating authority is correct as per the provisions of GST law.

9. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority vide “impugned order”.

10. In view of above discussion, I reject the appeal filed by the appellant.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stand disposed off in above terms.

मुकेश राठौर
28/12/2020
(मुकेश राठौर)

संयुक्त आयुक्त(अपील्स)

Date : 28.12.2020

Attested

Sisodiya

(M.P.Sisodiya)

Superintendent (Appeals)

CGST, Ahmedabad.

By R.P.A.D.

To,

M/s Vardaan Trading Company,

Block No. 352, Con box Factory Shop

Near Jackson Hydraulics Changodar, Ahmedabad



Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, Central Tax, Gandhinagar Commissionerate.
4. The Assistant Commissioner(Preventive) of Central GST Gandhinagar Commissionerate.
5. The Assistant Commissioner, System, Central Tax, Gandhinagar Commissionerate.
6. Guard File.
7. P.A.



