

BEFORE THE APPELLATE AUTHORITY, GST, HIMACHAL PRADESH, AT BLOCK NO. 30, SDA COMPLEX,
KASUMPTI, SHIMLA-09 (HP).

1. Appeal No : 018/2019
Date of Acknowledgement : 21-02-2019
Date of Order : 14-02-2020

IN THE MATTER OF:-

M/s Integrated Constructive Solutions
Ner Chowk Mandi-1750002 (HP)

...Appellant

Versus

ACST&E-cum-Proper Officer Chamba Circle

...Respondent

Parties represented by:-

1. Sh. Ramesh Juneja, Advocate for the appellant.
2. Shri. Nutan Majahan, ACST&E-cum- Proper Officer for the Department.

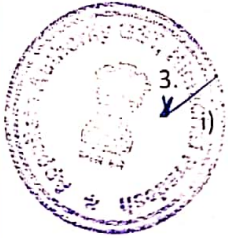
Appeal under Section 107 of CGST Act, 2017 and HPGST Act, 2017 read with rule-108 of Himachal Pradesh Goods & Services Tax Rules, 2017.

ORDER

1. At the outset, I would like to make it clear that the provisions of both the Himachal Pradesh Goods and Service Tax Act, 2017 and Central Goods & Service Act, 2017 (hereinafter referred to as HPGST and CGST Act respectively) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the HPGST Act would also mean a reference to the corresponding similar provisions under the CGST Act.
2. This appeal has been filed against the order dated 09-11-2018 passed by the Asst. Commissioner State Taxes & Excise (ACST&E)-cum-Proper Officer, Chamba vide which an additional demand of Rs.16,28,237/- was created against the appellant under Rule 138 of HPGST & CGST Rule 2017.

BRIEF FACTS OF THE CASE:

- i) The dealer is trader and trading in Earth Moving machinery/ goods having various offices across North India in the state of Himachal Pradesh, Punjab and part of Haryana. The dealer procures materials from various locations across India and sales to the various buyers differently located and at times the machinery is shipped to different place than the billed to address. It means the Billed to and Shipped to address can be different and the same was the case at present in Appeal.
- ii) That the Firm M/s Integrated Constructive Solutions, Zirak Pur, Mohali GST No 03AADF19072M1Z4 has purchased the materials from M/S Hyundai Construction Equipments Private Limited, Pune GST no 27AABCH8756QIZQ vide proper Invoice and E way Bill no 231053571933 dated 27/10/2018 clearly mentioning the machine no on the Invoice as these type of heavy machines are sold by specific no. and are under warranty. These goods were further supplied to M/s Raj Singh Thakur Government Contractor & General order Supplier, Chamba GSTIN 02AEYPS7384D1ZY vide Tax Invoice Number 54 dated 01/11/2018 which was Shipped to Chamba and for which the required E-way bill no 331061097912 dated 01/11/2018 was generated by the supplier. The Invoice generated by the M/s Integrated Constructive Solutions, Zirak Pur, Mohali GST No 03AADF19072M1Z4 clearly mentioned the equipment no N635D01290 and Engine no 84808987 (copy attached) on the Invoice as these equipments are sold by equipment no and helps in identifying the material. That this e way bill no 331061097912 dated 01/11/2018 was further updated on 05/11/2018 at 6.38 PM with the vehicle no PB35Q8464 with consignment note no 479 dated 05/11/2018 for transportation from Pathankot to Chamba.



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iii) That these facts are in order and there is no dispute to this effect. That after the same equipment which originally started from Pune was on its way to final destination in Chamba at night of 05/11/2018 the mentioned vehicle in the e way bill from Pathankot to Chamba vehicle no PB35Q8464 broke down on the way at mid night in dark with no help creating the Traffic problem on the Road and in public creating panic like situation the equipment was shifted to the new vehicle no.PBIOCT6249 for a small distance to destination. The vehicle broke down during night is well established with the fact that the vehicle was arranged/changed including loading & unloading and the vehicle crossed at 7.30 am on 06/11/2018 as mentioned in the GST MOV 09. It may once again be noted that all the way machine no and engine no remained the same.

iv) That since the vehicle broke down at mid night and was towed away for which the Invoice is attached as Page no 1 and the vehicle no PB35Q8464 was replaced by vehicle no PBIOCT6249 to deliver the machine at final destination however, the e way bill was not updated as the

- Mobile Net work was a problem.
- It was mid night and the public was creating problem due to Road Block.
- The Invoice and e-way bill was issued well in advance.
- That there was no tax evasion possible as being alleged by the inspecting officials

That the E-Way bill was generated well in advance and therefore not possible to cancel the e way bill to evade tax and the transaction in any case was reported and therefore tax cannot be saved/evaded as alleged and under the circumstances no tax/penalty can be levied reliance can be placed on

Tvl. R K Motors Vs. State Tax Officer, (Madras High Court)

- That the small and technical error does not warrant penalty

v) That the only reason for the detaining of the goods as per the GST 07 is **"the vehicle at the time of checking is PBIOCT6249 whereas in e way bill no 331061097912 dated 01/11/2018 the vehicle no is PB35Q8464. Moreover, no documents regarding name of transporter in e way bill Interstate logistics has been produced by the person in-charge of the goods"**

That there are two parts of the allegation in the above para

- Vehicle no was not what was mentioned on the e way
- Document of interstate logistics was not produced.
- That the allegation of the Inspecting officials is not correct as the E-way bill no **331061097912 dated 01/11/2018** was available. It is also a fact that the vehicle was intercepted on 06/11/2018 and e way bill/GR is dated 01/11/2018 and the partner of the firm replied on 09/11/2018.

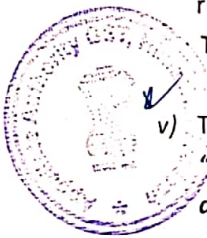
vi) We fail to understand the allegation of the Inspecting officials that the same was not produced for verification. This also remains a fact that the machine and equipment no. remain the same in e way bill and also in Invoice, which means that no tax can be evaded. In addition we have also explained that these machines are sold under warrant cover and are generally assets for the buyer and the same are insured.

That with regard to the vehicle no we have already explained *supra* the reasons for the same

The documents attached establish one thing beyond doubt that the documents were generated and were available and there was **no intention for tax evasion**

In Satyendra Goods Tarnsport(2018-30-GSTJ-387)

In this case, the Hon. High Court had **"held that the assertion that the IGST has already been paid, has also not been denied by the opposite party nor that both the consignor and consignee are registered dealers. Moreover, the requisite details having been mentioned in the Invoice etc. the same would be verified at the point of destination. The Hon High**



Court held that there was no intention to evade tax" accordingly the hon. High Court quashed the order levying penalty.

Ramdev Trading Company (2018-32-GSTJ-197)

The Hon. Allahabad High Court in the instant case observed that at the stage of seizure detaining authority has not formed any opinion as to intention to evade tax. **"The only allegation made in the seizure order is about non-availability of transit declaration and mis-description of goods. There is no allegation as to intention to evade tax. While in the penalty order, it is recorded that the petitioner had intention to evade tax. Under these circumstances, the Ho. High Court had held that the observation made in the penalty order is only an afterthought. The same cannot be relied upon to justify the imposition of Penalty."**

It is very hard to believe that when the person has generated Invoice/E way bill will not produce the same before the authorities as alleged by the Inspecting officials even after the Show Cause Notice issued to them.

If we sum up it is established that:-

- the dealer has all the documents at the time of interception of the vehicle.**
- the E way bill/Invoice with full tax was generated much before the interception where the vehicle no. , machine no etc. was same.**
- that there was no intention of tax evasion as the full tax was paid.**
- that the e way bill generated on 01/11/2018, not possible to be cancelled and the same could not have been misused by any means for tax evasion**
- that both the parties were registered and having GSTIN no and even otherwise.**
- the goods were on its way to the destination and at no other places.**
- that these types of machine/equipments are sold under warranty with specific equipments no. and therefore can never be sold with intended tax evasion**

It is very hard to believe that when the person has generated Invoice/E way bill with correct address machine no which are sold with warranty etc. will intentionally mention/fills wrong Vehicle no

That it is also unimaginable that how this minor error will help in tax evasion as alleged
If we sum up it is established that:

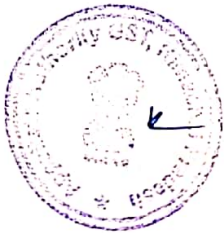
- that the Circular no 64/38/2018 GST/14.09.2018 clearly speaks of minor errors and this case falls in that only.**
- the dealer has all the documents at the time of interception of the vehicle.**
- the E way bill/Invoice with full tax was generated much before the interception where the vehicle no. , machine no etc. was same.**
- that there was no intention of tax evasion as the full tax was paid. (Tvl.R K Motors Vs. State Tax Officer,(Madras High Court)**
- that the goods were not off loaded and were still in the vehicle**

- that the e way bill generated, was not possible to be cancelled and the same could not have been misused by any means for tax evasion**

- that both the parties were registered and having GSTIN no and even otherwise.**

- that these types of machine/equipments are sold under warranty with specific equipments no. and therefore can never be sold with intended tax evasion.**

- That it is a human error and can be seen with naked eyes is detected such human errors cannot be capitalized for penalization (Rai Pre exim India Private Limited vs. State of Kerala)**



-that the GST regime is new and for small and minor errors that penalty may not be levied.

Reliance can be placed on the following cases which duly cover the facts similar to our case

Tvl. R K Motors Vs. State Tax Officer, (Madras High Court)

"It is not in dispute that the writ petitioner is an authorised dealer of Bajaj Auto Limited. It is also not in dispute that the goods are covered by appropriate documents. The tax payable has also been paid by the writ petitioner's principal. Thus, it is not a case of any evasion of tax. It is not in dispute that the writ petitioner is carrying on the business of dealing in two wheelers for the past several years. The driver, who drove the vehicle in question is not a Tamilian. His name is Badrinath Bhandari. He hails from Maharashtra

I am of the view that even if by mistake, a wrong instruction had been given to the driver of the vehicle to head towards Sivakasi. Still it would not really matter. The only question that the respondent ought to have posed is whether there is any attempt at evasion. It is not as if the goods had already been offloaded. The vehicle was intercepted when it was in transit. The respondent ought to have directed the driver of the vehicle to move back towards Virudhunagar. Instead adopting such a procedure, the respondent had chosen to be harsh and vindictive.

As rightly pointed out by the learned counsel appearing for the writ petitioner, the goods in question are two wheelers. They cannot be sold without proper registration with the Motor Vehicle Authorities. That would require proper documentation. Therefore, in a case of this nature, the writ petitioner could not have evaded his statutory obligations in any manner. This aspect of the matter ought to have been taken note by the respondent."

Similarity with our case

-that we cannot sell the material without warranty and registration

-Goods were still in the vehicle

-there is no attempt to evade tax s full tax was charged and paid.

-that the appellant is a dealer of Hyundai a big giant where the sale cannot happen without -Invoice and after sale warrant is also given

Sabitha Riyaz Vs. Union of India, (Kerala High Court) where it has been held

"Indeed, the Central Board of Indirect Taxes and Customs has come across many minor discrepancies in the e-way bills, resulting in summary detention of the goods. Then, it has issued this circular.

I reckon the distance between Kerala and Uttarakhand is a matter of record and thus verifiable. As I have already noted, the e-way bill showed the distance as 280 Kms, instead of 2800 Kms --one zero missing. This cannot be anything other than a typographical error, and a minor at that."

In the above case the distance was filled wrong due to clerical error from 280 to 2800 kms still court felt it is a clerical error and in our case the error was auto populated and even not filled by us.

Which means our case is more fit than the above for deletion of penalty.

Other cases to be relied upon where the penalty has been deleted

Express Logistics India (P.) Ltd. Vs Union of India (Allahabad High Court)

Singh Tyres Vs State Of U.P. And Another (High Court Allahabad)

Bhumika Enterprises vs State of UP & others

Surinder Steel Supply company Vs. State of UP & others

MODERN TRADERS Vs. STATE OF UP AND ORS.

We find substance in the submission of the learned counsel for the petitioner. Once the E-way bill is produced and other documents clearly indicates that the goods are belongs to the registered dealer and the IGST has been charged there remains no justification in detaining and seizing the goods and asking the penalty.

Now we come to the provision of penalty as per sections 126 of the CGST Act, which is as under:-

(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation.—For the purpose of this sub-section,—

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

The section in the beginning speaks that no penalty shall be levied for

"any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence."

If we see and critically analyze this with regard to the case in hand where only error is - vehicle no. whereas the address etc. is correct

-the error is easily rectifiable

-there is apparently no fraudulent intent as the tax has been paid in full and proper Invoice has been issued along with E way Bill and there is no evasion of tax.

It is also a fact that without any motive/gain/advantage there can be no fraudulent intent.

As fraudulent intent means

Fraudulent Intent:-Law and Legal Definition.

A person is said to act with **fraudulent intent** when she/he either with a view to benefit himself/herself or with a view to mislead other makes any statement or representation which s/he knows to be false.

As we see there is no benefit to the appellant since entire tax has been paid well before inspection and e way bill is there with the Invoice generated days before the interception

Gross negligence

"Gross negligence is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both. It is conduct that is extreme when compared with ordinary **Negligence**, which is a mere failure to exercise reasonable care.

The act does not even qualify as gross negligence as per the definition above and therefore the penalty is not warranted.

And reliance can be placed on

Apex Court "Hindustan Steels Limited vs State of Orissa

"The discretion to impose penalty must be exercised judicially .A penalty will ordinarily be imposed where party acted deliberately in defiance of law but not in cases where there is technical or venial breach of the provision of the act....."

Penalty would not be ordinarily imposed unless the part obliged either acted deliberately in defiance of law"

In an another case where it has been held that even if a minimum penalty is prescribed the authority will be justified in refusing to impose penalty when there is technical or venial

breach of provision act.....Cement Marketing Company of India vs. Asst. Commissioner of Sales Tax(1980) SC

In another case the Hon. Apex Court D Navinchandra Vs.UOI where it has been held thatBonafide must be considered while imposing penalty and followed in various judgments Like Akbar Badrudin Jiwani vs CC(SC)

In another case where it has been held that

"....Even if minimum penalty is prescribed the authority will be justified in refusing to impose penalty, when there is a technical or venial breach of the act"

Shiv Dutt Fateh Chand vs UOI, AIR 1984 SC 1194

If we go in detail even the Apex Court has taken lenient view with regard to imposition of penalty.

There being no allegation of tax evasion by the Inspecting officials and therefore in view of the facts and submissions above tax and penalty levied be deleted/refunded.

4. **Written Reply from the Respondent:**

The Part-B of the 331061097912 was updated at Pathankot as the goods were loaded in vehicle no. PB-35Q-5464. In the said EWB, there is mention of transporter as Interstate logistics GSTIN-27BSHPS6798F1ZZ (consignment note 479) but the same was not available with the driver of the vehicle at the time of checking. Shri Anil Sharma, the partner of M/s Integrated constructive Solutions, submitted a letter dated 06-11-2018, issued by M/s Balaji Construction Co., Shree Balaji Trailer on 09-11-2018, which was updated in EWB by the consigner of the goods at 11:52am on 06-11-2018 after the detection of the case. Moreover, at the time of inspection the driver produced photocopy of the Tax invoice and EWB 331061099712 and he was not having the document relating to the updation of transporter M/s Balaji Construction Co.

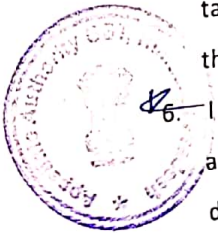
The validity of EWB was up to 26-11-2018 and in the EWB 331061099712, the vehicle no PB 35Q-8464 was updated on 05-11-2018 by the consigner and it shows that the consignor was well conversant with the provisions of GST Act and EWB rules. As mentioned earlier, the validity of EWB was up to 26-11-2018 and the vehicle No. PB-10CT-6249 was checked at 10:10am which shows that there was enough time for transportation of the goods. By not updating the vehicle no in the Part B of the EWB and transporting the goods hurryingly in contravention of rule 138 (5) of CGST/SGST Rules, 2017 clearly shows mala fide intention of part of the consignor.

Moreover, circular no.-64/38/2018 dated 14-09-2018 of CBIC clearly mentions that the proceedings u/s 129 may not be initiated in case there is error in one or two digits/characters of vehicle no. But in the present case, the goods had been transferred from one conveyance to another and movement should had been effected after updation of EWB. Therefore, the tax and penalty orders passed under section 20 of IGST Act read with section 129 of HPGST/CGST Act, 2017 are justified and reasonable.

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5. After hearing both appellant and respondent in detail the common facts in the instant case in brief are that the appellant is a register dealer in the name of M/s Integrated Constructive Solution, Girakpur, Mohali having GSTIN 03AADF19072M1Z4 has purchased material from M/s Hundai Construction Equipment Pvt. Ltd. Puna having GSTIN 27AABCH8756Q1ZQ under the proper cover of documents i.e tax invoice, GR and e-way bill. These goods were further supplied to M/s Raj Singh Thakur Govt. Contractor & General Order Supplier, Chamba, HP having GSTIN 02AEYPS7384D1ZY vide tax invoice no. 054 dated 01.11.2018 and e-way bill no. 331061097912 dated 01.11.2018 was

generated by the supplier. On dated 05.11.2018 the transshipment took place at Pathankot and consignment was loaded into another vehicle no. PB35Q-8464 and updation in e-way bill was duly made at 06:38 p.m. with the validity up to 26.11.2018. the vehicle no. PB35Q-8464 got break down on the way towards Chamba at midnight and new vehicle no. PB10CT-6249 was arranged and transshipment took place before resuming the journey towards Chamba. The vehicle carrying material was intercepted in between pathankot and Chamba by the checking team of the department on 06.11.2018 around 10:10 a.m. The driver of the vehicle was asked to furnish the document of the consignment. He produced the tax invoice issued by the M/s Integrated Constructive Solution, Girakpur, Mohali to M/s Raj Singh Thakur Govt. Contractor & General Order Supplier, Chamba, HP which indicates value and all relevant details as equipment no., engine no. including GST itself. He produced e-way bill also on which vehicle no. mentioned does not match. The appellant explained that due to break down of the vehicle no. PB35Q-8464 the goods have been shifted to new vehicle no. PB10CT-6249 and the updation of new vehicle in the already generated e-way bill could not be done due to weak internet connectivity. The Ld. respondent detained the intercepted vehicle and starts proceeding under section 129(1) of CGST/HPGST Act, 2017 and imposed a tax/penalty amounting to Rs. 16,28,237;28/-. In between the appellant has also updated the part -B of e-way bill at 11:52 a.m. dated 06.11.2018.

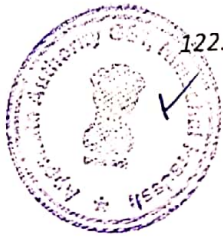


6. I have heard both the parties and have perused the record available of the case. It appears that there is no dispute regarding quantity of goods and further all concerns documents were placed before the proper officer. It is a fact that the E Way bill for the material in question was generated at 05:52 pm on 01-11-2018 and further updated on 05-11-2018 at 06:38 pm in which all relevant detail were entered. Due to break down of material carrying vehicle the material were transhipped to another vehicle. The e-way bill of the consignment which was produced before the proper officer pertains to the previous vehicle. The only mistake the e-way bill part-B was that the number of the vehicle in which the material was transhipped had not been entered at the time of inspection of the vehicle. The appellant updated the e-way bill and the number of the second vehicle was updated in the part-B of the e-way bill at 11:52am dated 06-11-2018. Despite the updation of the part-B of EWB the Ld. Respondent detained the vehicle and imposed tax/penalty to the tune of Rs. 16,28,237;28/-.

7. The appellant has declared the consignment on 01.11.2018 at 05:52 p.m and further updated on 05-11-2018 at 06:38 pm. which makes it clear that there was no intention to evade tax. The Ld. Respondent also failed to prove that the appellant changed the vehicle to evade tax. In my opinion the proper officer has acted in haste and levied tax/penalty without giving proper opportunity of being heard as mentioned in Section 129(4) read as under-

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

8. The Ld respondent has imposed penalty in a mechanical manner and has ignored the corrected and updated e-way bill as produced by the appellant within two hours of the detaining of the vehicle. Therefore, the tax/penalty under section 129(3) of the CGST/HPGST Act, 2017 imposed is unsustainable.
9. As there is no doubt that the taxpayer has made procedural lapse and violated the provisions of the CGST/HPGST Act, 2017 and HPGST Rules 138(10) which says as *"Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within validity period of e-way bill, the transporter may extend the validity period after uploading the detail in part B of the FORM GST EWB-01, if required"*. Therefore appellant should have updated the part B of EWB before resuming his journey further. So keeping in view the above facts the appellant is liable to pay minor penalty. In this regard, attention is invited toward section 122 of the CGST/HPGST Act which provides:



122. (1) Where a taxable person who—

- (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

10. In the view of the above facts, the instant appeal is accepted and the order passed by Assistant Commissioner State Taxes & Excise-cum- Proper Officer, Chamba Circle Himachal Pradesh dated 09.11.2018 is set aside. The tax and penalty deposited by the appellant under section 129(3) may be refunded and a penalty of Rs Ten Thousand only (Rs 10,000/-) is imposed on the taxpayer under section 122(xiv) of the Act. The judgment in this case was reserved on 20.01.2020 which is released today.

Inform the parties accordingly.


(Rohit Chauhan)


Addl. Commissioner State Taxes & Excise(Gr-I)
-cum-Appellate Authority GST (Appeals),

Endst. No EXN-018/2019-AA/GST Shimla HP- 3159-64

Dated 14-02-2020.

Copy to:-

1. The Commissioner of State Taxes & Excise, Himachal Pradesh, Shimla for information.
2. The Commissioner CGST, Shimla, H.P. for information.
3. M/s Integrated Constructive Solutions, Ner Chowk Mandi-1750002 (HP) through Sh. Ramesh Juneja, Advocate for the Appellant.
4. ACST&E-cum-Proper Officer Chamba Circle, Distt. Chamba (HP) for necessary action and compliance.
- ✓ 5. Addl. Commissioner State Taxes and Excise G-2 (IT/TAU) with the request to upload the orders on the departmental website.
6. Guard File


Reader to the
GST Appellate Authority
Himachal Pradesh