

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 23835 of 2022

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SHREE GOVIND ALLOYS PVT. LTD.

Versus
STATE OF GUJARAT

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Appearance:

MR. HEMAL SHAH(6960) for the Petitioner(s) No. 1,2

MS POOJA ASHAR, ASST.GOVERNMENT PLEADER for the Respondent(s)
No. 1,2

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 01/12/2022

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. Petitioner is a Private Limited Company.
Petitioner No.2 is a transport authority, which is the name and style of "Shree Ram Road Carriers".
2. It is before this Court seeking to question and challenge the authority of the respondent demanding the sum of Rs. 7,53,364/- as demand of tax and penalty dated 04.11.2022 under section 129(3) of the Central Goods & Services Tax Act, 2017 ("the Act" for short).
3. It is the grievance on the part of the petitioner

that the truck had remained in non-motorable condition and thus, the goods which were to be delivered on or before 17.10.2022 could not be delivered in time and on 19.10.2022 at the time of inspection, because of the expiration of the e-Way bill number, it came to the notice of the officer that the entire truck along with the impugned goods has been seized. The petitioner has been issued GST Form MOV No.1,2,6 and 7 where he was called upon to remain present and eventually the order of 4.11.2022 was passed demanding the tax and penalty.

4. The petitioner has sought the following reliefs:

“14 PRAYERS:-

The petitioner therefore prays to this Hon'ble Court to:

a) Your lordship may be pleased to issue appropriate writ, order or direction in the nature of certiorari thereby quashing and setting aside the impugned order passed on 4/11/2022 by the respondent authority thereby demanding the sum of Rs.7,53,364/- as tax and penalty u/s 129(3) of the CGST Act, 2017;

b) Your lordship may be pleased to issue appropriate writ, order or direction in the nature of certiorari thereby quashing and setting aside the order of detention under section 129(1) of the GST Act read with section 20 of the IGST Act, 2017, dated

19/10/2022 passed by the respondent authorities.

c) Your Lordship may be pleased to issue appropriate writ, order or direction in the nature of Certiorari thereby quashing and setting aside the notice under section 129(3) of the CGST Act, 2017 and section 20 of the IGST Act, 2017 issued on 19/10/2022 by the respondent authorities.

d) Your Lordship may be pleased to issue appropriate writ, order or direction in the nature of mandamus thereby ordering the release of goods and impugned vehicle bearing no.GJ-12BW-8082;

e) Pending admission, hearing and final disposal of this petition, an ad interim relief may be granted in the favour of the present petitioners, for release of the impugned vehicle and goods with any conditions that the Hon'ble High Court may deem fit.

f) Such other and further relief/s as may be deemed just and necessary in the facts and circumstances of the present case may kindly be granted."

5. We issued notice on 25.11.2022 making it returnable on 30.11.2022. On issuance of notice, learned Assistant Government Pleader appeared for the State, where it is attempted to justify the detaining of the goods bearing invoice value of Rs. 24,69,358/- along with Conveyance No.GJ-12-BW-8082 on the ground that e-Way bill had expired 41 hours before the time of interception. According to him, the period between the expiry of

validity of e-Way bill and time of interception was not substantiated and no justification was offered by conveyance driver. There was no satisfactory reason for non-updation of the e-Way bill which was given.

6. We have heard learned advocates on both the sides and also have considered the material on the record. We notice section 129, which provides as under:

“Detention, seizure and release of goods and conveyances in transit

129(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 penalty equal to two 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 penalty;

(b) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, 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 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) xxx xxx xxx

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1)

(4) No 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 such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3);

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section(3) or one lakh rupees, whichever is less:

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

7. It is not in dispute that in the instant case, e-Way Bill had expired 41 hours before and the release

of goods of conveyance and transit through the authority concerned.

8. We could notice that the detention is also on the ground that the goods are of expiration of the e-Way bill number, which had expired during the transit and the same cannot be the ground for detaining and seizure of M.S. Billet along with the vehicle truck.
9. This Court in ***Govind Tobacco Manufacturing Co. vs. State of U.P.***, [2022] 140 taxmann.com 383 (Ahhahabad) has held that as there is expiry of e-Way bill on transit, the seizure of said vehicle and the goods is not permissible under the law. In the case before the High Court of Madhya Pradesh at Jabalpur in ***M/s. Daya Shaker Singh vs State of Madhya Pradesh*** passed in Writ Petition No.12324 of 2022 on 10.08.2022, where also the Court had intervened considering the fact that the respondent could not establish any element of evasion of tax with fraudulent intent or negligence

on the part of the petitioner. Delay was of almost 4 ½ hours before the e-Way bill could expire. It appeared to be *bona fide* and without establishing any fraudulent intention. Here also what is found is that there is no fraudulent intention for this to happen.

10. Resultantly, present petition stands allowed. The impugned order dated 04.11.2022 demanding the sum of Rs.7,53,364/-is quashed and set aside. The order of detention dated 19.10.2022 as well as the notice issued under section 129(3) of the Act dated 19.10.2022 are also quashed and set aside.

(MS. SONIA GOKANI, J.)

(MAUNA M. BHATT,J)

SUDHIR