

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

1. Appeal No : 010/2019
Date of Acknowledgement : 01.02.2019
Date of Order : 14-02-2020

IN THE MATTER OF:-

M/s Mahalakshmi Packagers Manufacture,
Village-Beherwala, PO- Sainwala, Tehsil- Paonta Sahib,
Distt. Sirmour (HP)

...Appellant

Versus

ACST&E-cum-Proper Officer, Paonta Circle-II, Distt. Sirmour (HP)

...Respondent

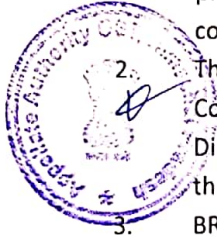
Parties represented by:-

1. Sh. Surender Singh, Advocate for the appellant.
2. Shri. Sandeep Attri, ACST&E-cum-Proper Officer, Paonta Sahib Circle Sirmour.

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 04-12-2018 passed by the Asst. Commissioner State Taxes & Excise (ACST&E)-cum-Proper Officer, Paonta Sahib Circle-II, District Sirmour vide which an additional demand of Rs. 57,708/- was created against the appellant u/s 129 (1) of HPGST & CGST Act 2017.

3. BRIEF FACTS OF THE CASE:

- i) The appellant dealer is registered under HPGST Act, 2017 holding GSTIN 02ACZPB9796R2ZC in the name of Ms. Mahalakshmi Packagers Manufacture Corrugated Box, Village Beherwala, Paonta Sahib H.P. The appellant dealer is importing Paper Board as raw material for manufacturing of Corrugated Boxes.
- ii) The appellant dealer has been imposed CGST and SGST as well as penalty under the HPGST, 2017.
- iii) The respondent ACST&E Circle, Paonta Sahib has intercepted the vehicle for inspection and found silly clerical mistake in the e-way bill and imposed huge tax and penalty for amounting to Rs. 57,708/- under the aforesaid Act for such import.

4. Aggrieved by the order of ACST&E, Paonta Circle-II the Appellant has filed the present appeal on following Grounds:

GROUND OF APPEALS:

- i) The order of the respondent is unjust, unlawful and sketchy.
- ii) The order of the respondent ACST&E is non speaking, in this case the ACST&E has not discharge his duty to conduct themselves as a quasi-judicial authority and pass a speaking order. Because the clerical mistake was at the time of making the Tax Invoice and same was repeated in the e-way bill.
- iii) That Section 81 of the Indian Penal Code lays down the principle of mens rea, which states that an act of a person is not an offence if it has been done without any

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criminal intention to cause harm. Mens rea means guilty mind or criminal intentions. Presence of mens rea essential for treating guilt to be an offence in certain cases. Concept of mensrea can be applied only where he has guilty mind or falsely represents. For imposition of penalty under section 10 (1) of the CST Act, it is necessary to find that the act or omission of the assessee was intentional and whether mens rea was present.

iv) Moreover, the Circular No. 64/34/2018-GST New Delhi, Dated 14th September, 2018 are being enclosed in which it was mentioned that the penalty cannot be imposed in the following situations:-

- (a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
- (b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
- (c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;
- (d) Error in one or two digits of the document number mentioned in the e-way bill
- (e) Error in 4 or 6-digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
- (f) Error in one or two digits/characters of the vehicle number

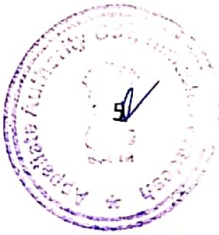
Relief claim: The order of the ACST&E may kindly be quashed. Any other relief the court may deem fit.

Para wise reply from Respondent:

- i) Content in para one is not admitted as order issued by respondent is proper and lawful in nature.
- ii) Speaking order was issued to the Appellant vide order dated 04-12-2018 but he did not receive the order. Appellant in his appeal at page No. "Unnumbered" in heading Grounds of Appeal at Para Sr. No. 2 himself admitted and mentioned that Clerical mistake was committed at the time of making the tax invoice and same was repeated in the e-way bill which is must enough to prove the malafide intention of appellant.
- iii) Para 3 is regarding Section 81 of IPC and principal of mens rea and later correlated with the Section 10 (1) of the CST Act, 1956.
- iv) Section 81 of IPC and mens rea are legal points and not needed to be reply. But legal reply to Section cited in appeal is as under:-

Section 10 A(1) of the CST Act is dealing with the 10(1)[10(a) Imposition of penalty in lieu of prosecution-2[(1)] If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of section 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times 7 [the tax which would have been levied under sub-section (2) of section 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that subsection]: Provided that no prosecution for an offence under section 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section. 8 [(2) The penalty imposed upon any dealer under sub-section (1) shall be collected by the Government of India in the manner provided in sub-section (2) of section 9—

(a) in the case of an offence falling under clause (b) or clause (d) of section 10, in the State in which the person purchasing the goods obtained the form



prescribed for the purposes of 9 [sub-section (4) of section 8] in connection with the purchase of such goods;

(b) in the case of an offence falling under clause (c) of section 10, in the State in which the person purchasing the goods should have registered himself if the offence had not been committed.]

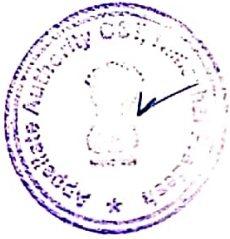
(c) Mentioning section 10 of CST Act 1956, also seems a clerical mistake in grounds of appeal filled by appellant and requires no replay because as on date cause of action of order issued by respondent. GST Act, 2017 is in existence and penalty as well as order was under the GST Act, 2017.

However, by correlating the principle of mens rea with the order passed by the respondent and honoring the law of nature and spirit of appeal. Respondent respectfully wish to submit that:-

This case has not only because of "clerical mistake" mens rea and actus rea are two important terms in criminal law in the western world. The terms are taken from the Latin sentence 'Actus non facit reum nisi mens sit rea' means an act does not make a person guilty unless the mind is also guilty, "mens rea refers to intention, while the actus rea refers to an action.". And this case is of actus rea not of mens rea.

Respondent also wish to submit following to prove the actus rea in this case which will prove that this case is a clear cut case of tax evasion and misleading the tax authorities. It was a planned game of the appellant and same is proven as:-

- i) If vehicle number was written wrong in E-way bill and rightly on invoice issued by the appellant, such case might fall under the category of clerical mistake. But it was a planned case, as appellant cleverly mentioned wrong vehicle in Invoice as well as in E-way bill. Same fact was admitted by the appellant in para 1 of appeal.
- ii) It may kindly be noted that E-way bill was issued on 02-12-2018 and validity of e-way bill is up to 06-12-2018, distance between Rohini Delhi and destination of Goods Behrewala Paonta Sahib, is not more than 260 Kms although distance shown in Eway bill is 400 Kms. Distance was shown just double so that validity of e-way bill can be increased so that after the unloading of vehicle said e-way bill can be increased so that after the unloading of vehicle said e-way bill can be removed from the system of e-way bill or can be modified. It is pertinent to mention that e-way bill can be modified within the validity period. It is provided in the e-way bill system that validity period of e-way bill is determined by the distance shown in e-way bill.
- iii) It may also be taken into consideration that Vehicle No. HP17B4290 is also in the name of Shri Anil Kumar and same person is acting owner Ms. Mahalakshmi Packagers Behrewala. So it would be easy game for tax evasion if said consignment was not detected in time.
- iv) Further at para 4 of grounds of appeal is legal and contents of para 4 is not denied but its worth to mention here that:-
 - a) It is settled law that circulars are intended to be informative in nature and not regulatory or can say not a law.
 - b) Mentioned circular may only help dealer to put wrong vehicle no in e-way bill but nowhere is mentioned that dealer can also use wrong vehicle number in Invoice too.
 - c) Mentioned circular was not incorporated under the HPGST Act 2017 and there is not circular of similar nature in HPGST Act 2017 as the appeal falls under the preview of HPGST Act.
 - d) Such circulars are issued to help dealers and tax payers and essence of such circulars is be intended to save innocent and honest tax payers not to help

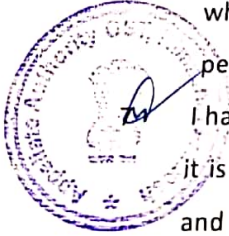


tax evaders who misuse such circulars for fulfillment of ill intentions and evasion of tax.

Therefore, your good self is prayed that said appeal may kindly be dismissed.

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- 6 After hearing both appellant and respondent in detail the common facts in the instant case in brief are that the appellant M/s Maha lakshmi Packagers Manufacturer, Paonta Sahib Sirmour, HP is a registered dealer vide GSTIN 02ACZPB9796R2ZC under GST Act, 2017. The appellant is a manufacturer of corrugated boxes and import paper board outside the state. The appellant has imported paper boards from M/s B S J Papers Pvt. Ltd, Rohini Delhi vide tax invoice no. BSJ/2018-19/6329 dated 02.12.2018 under the cover of e-way bill no 761043333897 generated on 3:16 p.m. dated 02.12.2018 valid up to 6.12.2018. On dated 4.12.2018 the vehicle no. HP17B-4290 was intercepted at Behral by the Proper Officer and driver was asked to produce documents related to goods loaded in the vehicle. The Proper Officer found that the vehicle no HP17B-1790 as mentioned in the invoice and e-way bill does not match with vehicle no HP17B-4290 which was intercepted, therefore, he started proceedings u/s 129(1) and imposed a tax/penalty of Rs. 57,708/- under section 129(3) of the CGST/HPGST Act 2017.



I have heard both the parties and also have perused the record available of the case and it is revealed that due to a typographic error by the consignee while issuing tax invoice and generating E-way bill, the vehicle no HP-17B-1790 has been mentioned instead of the vehicle no HP 17B-4290 on both tax invoice and as well as in E way Bill. Apart from this there is no dispute on quantity /quality of goods in question and validity of E Way Bill. The consignment was intercepted on dated 04th Dec, 2018 and thereby a tax/penalty has been imposed under section 129(3) of HPGST/CGST Act, 2017 for contravention of HP GST Rule 138.

8. The petitioner has placed reliance on the **CBIC Circular No. 64/38/2018-GST, dated 14th Sep 2018**.and State government vide circular No 12-25/2018-19-EXN-GST-(575)-6009-6026 dated 13.03.2019 effective w.e.f 14.09.2018, in *para 5 provides that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated inter-alia in the following situations:*

- a) *Spelling mistakes in the name of the consigner or the consignee but the GSTIN, wherever applicable, is correct;*
- b) *Error in the pincode but the address of the consigner and the consignee mentioned is correct, subject to the condition that the error in pincode should not have the effect of increasing the validity period of the e-way bill;*
- c) *Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;*
- d) *Error in one or two digits of the document no. mentioned in the e-way bill;*

e) Error in four or six digits level of HSN where the first two digits of HSN are correct and the rate of tax is correct;

f) Error in one or two digits/character of the vehicle no.

In case of the above situations, penalty to the tune of Rs. 500 each u/s 125 of CGST/HPGST Act should be imposed (Rs. 1,000 under the IGST Act) in FORM GST DR-07 for every consignment. A record of all such consignment where proceedings u/s 129 of the CGST/HPGST Act have not been invoked in view of the situation listed in paragraph-5 above shall be sent by the Proper Officer to his controlling officer on a weekly basis.

9 The Ld. Respondent argued that the vehicle number HP 17B-4290, HP17B-1790, are in the name of Shri Anil Kumar and same person is acting owner M/s. Maha lakshmi Packagers Behrewala. Paonta Sirmour but he failed to establish with substantial evidences that the appellant has changed the vehicle or has intention of evading the tax. In my opinion it appears that there was no intention to evade tax and the proper officer has imposed penalty in a mechanical manner and has ignored the guidelines issued vide the above mentioned circular, Therefore, the tax/penalty under section 129(3) of the CGST/HPGST Act, 2017 imposed is unsustainable.

10. As per the facts in hand it appears that the mistake of two digits while entering vehicle no in invoice and E-way bill is a typographic error and may be treated as a minor one. Therefore, the appeal of the appellant is accepted and the order of the Assistant Commissioner State Taxes & Excise –Cum proper officer Paonta Circle-II is set aside. The additional demand of Rs 57708/-deposited by the appellant may be refunded and the penalty of Rs. 500/- under SGST and Rs. 500/- under CGST u/s 125 of CGST/HPGST Act, 2017 is imposed on the Appellant in accordance to CBIC Circular No. 64/38/2018-GST, dated 14th Sep 2018 and the State Circular no. 12-25/2018-19-EXN-GST-(575)-6009-6026 dated 13th March 2019. The judgment in this case was reserved on 21-01-2020 and is released today.

Parties be informed accordingly.



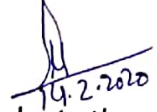

(Rohit Chauhan)
Addl. Commissioner State Taxes & Excise(Gr-I)
-cum-Appellate Authority GST (Appeals),
Himachal Pradesh

Endst. No EXN-010/2019-AA/GST Shimla HP- 3147-52, Dated 14-02-2020,

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla for information.
2. The Commissioner CGST, Shimla, H.P. for information.

3. Addl. Commissioner State Taxes and Excise (G-2) (IT/TAU) with the request to upload the orders on the departmental website.
4. M/s Mahalakshmi Packagers Manufacture, Village-Beherwala, PO-Sainwala, Tehsil-Paonta Sahib, Distt. Sirmour (HP) Through Sh. Surender Singh, Advocate for the appellant.
5. ACST&E-cum-Proper Officer, Paonta Circle-II, Distt. Sirmour (HP) for necessary action and compliance.
6. Guard file.


14.2.2020

**Reader to the
Appellate Authority, GST
Himachal Pradesh**