

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

1. Appeal No : 012/2019
Date of Acknowledgement : 05.02.2019
Date of Order : 14-02-2020

IN THE MATTER OF:-

M/s Om Dutt S/o Shri Bal Krishan
VPO Bass Tehsil Nangal Distt. Ropar (Punjab)

...Appellant

Versus

ACST&E-cum-Proper Officer, Central Enforcement Zone, Una (HP)

...Respondent

Parties represented by:-

1. Sh. Rajeev Prabhakar, Advocate for the appellant.
2. Shri. Sanjay Kumar, ACST&E, 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 passed by the Asst. Commissioner State Taxes & Excise (ACST&E)-cum-Proper Officer, Central Enforcement Zone, dated 06-11-2018 Una vide which an additional demand of Rs. 1,43,432/- was created against the appellant u/s 129 (1) (B) of HPGST & CGST Act, 2017.

3. Brief facts of the Case: That the assessee being unregistered dealer/transporter engaged his vehicle bearing no. PB 12 N 2248 with M/s Motor Heaven, Nangal having GST No. 03ADHPG3505C1ZE for transportation of two wheelers/Activa scooter to M/s Motor Heaven (P) Ltd. Mall Road Hoshiarpur Punjab having GST No. 03AAKCM7274K2Z2 against proper invoice bearing no. 763 dated 05-11-2018 for a sum of Rs. 3,27,842/- including GST of Rs. 71,715/- along with E-way Bill no. 3610-6232-4735 dated 05-11-2018. In the way the vehicle no. PB 12 N 2248 breakdown and the appellant arranged another vehicle PB 12 T 1910 and goods moved in new vehicle to its destination for Hoshiarpur. Due to weak internet connectivity the E-way bill was not updated w.r.t new vehicle no PB 12 T 1910 and the dealer carry on the goods in new vehicle with the old E-way bill generated on 05-11-2018 as the festival season i.e. Deepawali is falling on the next day and the supplier has to delivered the goods in time to recipient who has to further deliver the two wheelers to different customers. During movement the vehicle carrying goods was intercepted at Mehatpur barrier and tax and penalty U/s 129(3) of the CGST Act 2017, equal

to One Hundred Percent of the tax payable on the goods were levied wrongly which was deposited by the supplier; hence this appeal is filed in manual paper Form after taking necessary permission from the Hon'ble Appellate Authority (Appeals) GST HP to this regard. Aggrieved by the order of ACST&E, Central Enforcement Zone, Una appellant has filed the present appeal on following grounds:

4. Grounds of Appeal:

- i) That the order passed by the Ld. ACST&E, Central Enforcement Zone, Una vide which tax and penalty of Rs. 1,43,432/- u/s 129(3) of the CGST Act, 2017 imposed upon the appellant is against the law and facts of the case.
- ii) That the Ld. ACST&E, has erred in levy of tax and penalty of Rs. 1,43,432/- equal to 100% of the tax and penalty payable on goods U/S 129 (3) of the CGST Act, 2017 and same is liable to be deleted/cancelled.
- iii) That the Ld. ACST&E has wrongly invoked the provisions of Section 129 (3) of the CGST Act 2017 for minor mistake in the updation of vehicle no. in E-way bill; for which lessor penalty u/s 126 of the CGST Act 2017 is prescribed w.r.t an omission or mistake in documentation which is easily rectifiable. That there is only minor mistake on the part of the appellant in updation of new vehicle number arranged (after the first one break down in the way) for carriage of goods in the E-way bill challan and that too due to weak internet connectively which is beyond the hands of appellant. The Ld. ACST&E should have taken lenient view in the case of appellant as per the principles set by the Hon'ble Supreme Court in case of Hindustan Steel Ltd. Vs. State of Orissa AIR 1970 SC 25325STC211 where it was observed as under:

"The discretion to impose penalty must be exercised judicially. A penalty will ordinarily imposed in case where the party acts deliberately in defiance of the law, but not in case where is a technically or venial breach of the provisions of the Act or where breach flows from a bonafide belief that the attender is not liable under the Act. Penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of the law or was guilty of conduct contumacious or dishonest or acted in conscious disregard to into obligation. Even if a minimum penalty is prescribed, the Authority will be justified in refusing to impose penalty, when there is a technical or venial breach of Act".

The order dated 06-11-2018 passed by the ACST&E levying tax and penalty of Rs. 1,43,432/- i[pm the appellant is thus liable to be cancelled/deleted.

- iv) That the Ld. ACST&E has wrongly and without any justification passed order dated 06-11-2018 u/s 129 (3) of the CGST Act 2017 and charged tax and penalty equal to 100% of the tax payable on the goods in spite of the Circular No. 64/38/2018-GST issued by CBIC New Delhi dated 14-09-2018 whereby lessor penalty is prescribed for minor mistake/procedural requirement of law which is easily rectifiable; hence the order levy of tax & penalty dated 06-11-2018 is liable to be cancelled/deleted.

v) That there was no mala-fide/fraudulent intention on the part of the appellant is not updating the vehicle no in the E-way bill challan but it was due to weak internet connectivity the same could not be updated and even later on before issuance of show cause notice dated 06-11-2018 in Form GST MOV 06/levy of tax and penalty of Rs. 1,43,432/-; the supplier was able to update the vehicle no. PB12 T1910 in the E-way bill system and apprised the fact of updation of vehicle no. PB 12 T 1910 in the E-way bill system and produced the updated E-way bill challan to the Ld. ACST&E along with all other proper documents including GST tax invoice whereby tax was properly charged before the Proper Officer and also contended that there was no malice in the mind of the appellant to evade tax (nor there was any finding by the ACST&E in the order dated 06-11-2018 neither he is habitual defaulter/offender but in spite of production of all the necessary documents/invoice along with updated E-way bill before issuance of show cause notice the tax and penalty has been levied just for the sake of penalty; hence the tax and penalty levied of Rs. 1,43,432/- vide order dated 06-11-2018 is liable to be deleted/cancelled. The appellant relied upon the following case Laws:-

- a) Bhumika Enterprises (2018) 92 Tamnan.com 343 (Allahabad).
- b) Durga Rai Vijay Kumar Vs. Union of India (2017) 01 CCHGST 0044 (All. HC)
- c) Indus Tower Vs. the Asst. State Tax Officer)a8 (1) TMO 1313 (Kerla HC)
- d) Singh Tyres Vs. State of UP (2018) 56 GSTR All-38.

That the appellant craves leave to amend, alter or argue any other grounds of appeal with the permission of Hon'ble court before the final hearing on merits.

Point wise reply from Respondent:

5. On 06.11.2018 a naka was placed by the team of (CEZ) Una comprising of one ACST&E & two ASTEO near e-validation centre Mehatpur, a Vehicle number PB 12 T 1910 came from Punjab side moving towards Una was directed to stop the vehicle and fled away. Our team intercepted the vehicle near RTO barrier and brought back the vehicle to the original place of the naka. The driver of vehicle was asked to furnish the documents of the consignment, in turn he produced the tax invoice issued by M/s Motor Heaven, Nangal Dam (Punjab) to M/s Motor Heaven Pvt. Ltd. Hoshiarpur vide Invoice No. S/B/D.763 dated 05-11-2018 amounting to Rs. 3,27,842/- No E-way bill was accompanied and neither any EWB No. displayed on the bill. When, the driver of vehicle was asked about EWB, he informed that he forgot the EWB for which he granted time to produce the EWB. After sometime, he furnished the EWB N. 361062324735 Dated 05-11-2018 on which vehicle number mentioned did not match with the vehicle number carrying goods i.e. vehicle no mentioned on EWB is PB12N-2248 & vehicle number carrying Goods is PB 12T 1910. I want to bring your attention to the point that the appellant has not mentioned vehicle number on the concerned invoice.

1. As far as the issue of net connectivity is concerned as the appellant has mentioned in his application, I want to submit that the time span he discussed about poor net connectivity, at the same time a number of vehicles were checked by our team on

EWB App and no such issue of poor net connectivity came to our knowledge. More over the E-way bill which the party produced was generated on 05-11-2018 on 09:43PM, whereas, the vehicle was intercepted on 07:40 AM dated 06-11-2018.

2. Similarly, he also raised the issue that the vehicle showing in E-way bill met with technical fault and the goods were replaced in the new vehicle, but, the owner of the goods and even the driver of the vehicle have not mentioned this point at the time of checking and if they raise this point at that time, we might see faulty vehicle physically as the distance of our Naka and origin place of supply were in the periphery 5-6kms.
 3. The appellant has also discussed section 126 and section 130 of HPGST/CGST Act, 2017 in his ground of appeals and raised the question of imposition of penalty under sub-section (1) (a) of section 129 of Act, ibid as his case might come under the class of minor breach. But, it is important to mention here the section 6 provides the inspection of goods in movement and the procedures inspection of goods in movement are laid down in rule 38 of the Act. In circular No. 41/15/2018-GST dated 13-04-2018-GST dated 13-04-2018, Central Board of Indirect Taxes and Customs, GST Policy Wing of Government of India Ministry of finance Department of Revenue has issued guidelines regarding procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances and any breach of this section and rule mentioned above attracts penal section 129 (1) of the Act and this case was fall under this section as the wrong mention of complete No. of vehicle No. is not a minor mistake. This case also not covers under even circular No. 64 issued for the modification of procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in circular Nos. 41/15/2018-GST dated 13-04-2018 and 49/23/2018 GST dated 21-06-2018, which provides relaxation of proceeding under section 129, if there is error in one or two digits/characters of vehicle number and penalty to the tune of Rs. 500/- each under section 125 of CGST Act and the respective State GST Act should be imposed (Rs. 1000/- under IGST Act) in FORM GST DRC-07 for each consignment.
- As far the question of section 126 of HPGST/CGST Act, 2017 is concerned, this section is related to the General disciplines related to penalty and sub-section (6) of this section says that the provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage. The breaches of rule 138 attracts the penal provisions specified under sub-section (1) (a) of section 129 of the Act.

Similarly, section 130 describes the procedures of confiscation of goods or conveyance and levy of penalty. This section is evoked in case, if the proposed tax and penalty are not paid within seven days from the date of the issue of the order of detention in FORM GST MOV-06, action under section 130 of the CGST Act shall be initiated by serving a notice in FORM GST MOV-10, proposing

confiscation of the goods and conveyance and imposition of penalty. This case also doesn't come under the ambit of the section as the owner of the goods has come forward to pay the amount of proposed tax and penalty and get the goods and vehicle release.

In the light of the points mentioned above, the appeal of the appellant may be dismissed as his mistake of fled way the vehicle from Naka, not producing the E-way on the spot, having wrong vehicle No. on the e-way bill produced later and not mentioning the vehicle No. on invoice/GR No. can't be co-existences. Hence, it is prayed that the appeal of the appellant may be dismissed as the penalty is imposed as per the spirit of the law and ignorance of law is not excuse.

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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 is an unregistered dealer/transporter under GST and used to engage his vehicle bearing no. PB12T-1910, PB12-2248 for carriage of two wheelers of different dealer from Punjab to other states. On dated 05.11.2018 the appellant engaged his vehicle no. PB12N-2248 with M/s Motor Heaven Nangal having GST No. 03ADHPG3505C1ZE for transportation of two wheelers/ Active Scooter to M/s Motor Heaven Pvt. Ltd. Mall Road Hoshiarpur Punjab having GST No. 03AAKCM7274K2Z2 against the proper cover of documents i.e tax invoice, e-way bill generated on 05.11.2018 at 9:43 p.m. in the way vehicle no. PB12N-2248 got break down and appellant arranged the other vehicle No PB12T-1910 and goods were transhipped to another vehicle. The vehicle carrying goods was intercepted near Mehatpur by the checking team of the department on 06.11.2018 early morning. The driver of the vehicle was asked to furnish the document of the consignment. He produced the tax invoice issued by the M/s Motor Heaven Nangal to M/s Motor Heaven Pvt. Ltd. Hoshiarpur Punjab which indicates value including GST itself. The driver asked some time to produce e-way bill and after some time he produced it and on which vehicle no. mentioned does not match. The appellant explained that due to break down of the vehicle no. PB12N-2248 the goods have been shifted to new vehicle no. PB12T-1910 and the updation of new vehicle in the already generated e-way bill could not be done due to weak internet connectivity. The respondent detained the intercepted vehicle and starts proceeding under section 129(3) of CGST/HP GST Act, 2017 and imposed a tax/penalty amounting to Rs. 1,43,432. In between the appellant has also updated the part -B of e-way bill at 09:47 a.m. dated 06.11.2018.
- 7 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 goods in question was generated at 09:43 pm on 05-11-2018 in which all relevant detail were entered. Due to break down of goods carrying vehicle the goods 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 goods were 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. Despite the updation of the part-B of EWB the Ld. Respondent detained the vehicle and imposed tax/penalty to the tune of Rs. 1,43,432/-

8. The appellant has already declared the consignment on 05.11.2018 at 09:43 p.m. 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."

9. 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. Therefore, the tax/penalty under section 129(3) of the CGST/HPGST Act, 2017 imposed is unsustainable.
10. 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.

11. 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, Central Enforcement Zone Una dated 06.11.2018 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)

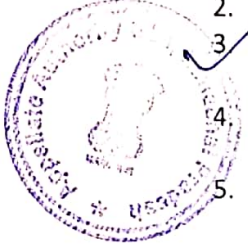
-cum-Appellate Authority GST (Appeals),
Himachal Pradesh

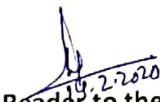
Endst. No EXN-005/2019-AA/GST Shimla HP- 3153 to 58

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-II) (IT/TAU) with the request to upload the orders on the departmental website.
4. M/s M/s Om Dutt S/o Shri Bal Krishan VPO Bass Tehsil Nangal Distt. Ropar (PB.) through Sh. Rajeev Prabhakar, Advocate for the Appellant.
5. ACST&E-cum-Proper Officer, Central Enforcement Zone, Una for necessary action and compliance.
6. Guard file.




14.2.2020
Reader to the
Appellate Authority, GST
Himachal Pradesh