

GIB/GJ/INDIA LOGISTICS /24-09-2019/HC-85

High Court Category : E-way Bill

State : Gujarat

Order No.: GIB/GJ/INDIA LOGISTICS /24-09-2019/HC-85

Name of Entry :
INDIA LOGISTICS AND CARGO MOVERS

Date : 24-09-2019

Breif Issue :

Facts & Issue of the case :

The petitioner INDIA LOGISTICS AND CARGO MOVERS a sole proprietorship firm, which is engaged in the business of transport, files a petition under Article 226 of the Constitution of India, challenging the notice issued in Form GST MOV-10 as well as the detention/confiscation order issued in Form GST MOV-11 and seeks a direction to forthwith release truck No.GJ-27-X-3752 along with the goods contained therein.

While goods were in transit in vehicle No.GJ-27-X-3752, goods were stopped by Mobile Squad and it was found that E-Way bill of 3 parties out of 61 Parties of which goods were being transported was not generated. The goods for which valid E-way bills presented were released and the vehicle with goods of the 3 invoices came to be detained on the spot by issuing notice in Form GST MOV 10 under section 130 of CGST Act, 2017 as well as GGST Act, 2017. The petitioner claimed that despite having agreed to pay tax and penalty as stipulated under section 129 there is continued detention /seizure of goods and vehicle and the same is wholly without jurisdiction, arbitrary and illegal. It was further submitted that the confiscation notice has directly been issued in under section 130 of the GST Acts without completing the procedure under section 129.

Opposing the petition, authority stated that the vehicle in question was confiscated in exercise of powers under section 130 of the Goods and Services Tax Act, 2017. The ground for confiscation was that E-Way bill was not traceable of 3 Invoices. It is further submitted by the authorities that out of 61 Invoices 14 invoices were not properly authorized. The authorities have, therefore, presumed that the said invoices are fake and are drawn with an intention to evade tax as neither the purchaser nor the suppliers have given any explanation in respect of the 14 invoices which do not bear any signature. So, on this basis the value of the goods has been increased by 20% for calculation of tax, penalty and fine u/s130.

Decision of Advance Ruling Authority :

Decision

The court held that authority has mechanically passed the impugned order without assigning any reasons worth the name for confiscating the goods and Conveyance. However, a perusal of the details of the 14 invoices as reflected in the impugned order shows that none of them relate to the three parties whose goods are sought to be confiscated. Due to the fact that 14 invoices are not properly signed, the authorities have exercised powers under section 130 of the CGST Act and calculated tax, penalty and fine thereunder. If that be so, since none of the 14 invoices relate to the parties whose goods are confiscated, under the circumstances, the goods belonging to them could not have been confiscated by the respondent authorities. The court quashed the impugned order on the ground that it is **non-speaking order**. So, the petition succeeds and is, accordingly, allowed. Authority is directed to forthwith release the conveyance, truck No.GJ-27-X-3752 along with the goods contained therein. Rule is made absolute accordingly.