



**GST- PRECAUTIONS & SAFETY IN
HANDLING FAKE INVOICE CASE**

**GST- ANALYSIS OF RECENT
IMPORTANT JUDGMENTS**

PRECAUTIONS & SAFETY IN HANDLING FAKE INVOICE CASE

1) What is Fake Invoice ?



- Is this term defined in the GST Law.
- Fake means - a thing that is not genuine; a forgery or sham. – it is in GSTR-2A.
- Is it a Exaggeration.
- Does that means invoice in which no supply has taken place.

2) What section 16 of GST ACT says ?



- a) **he is in possession of a tax invoice** or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- aa) the details of the invoice or debit note referred to in clause (a) has been **furnished by the supplier in the statement of outward supplies** and such details have been **communicated to the recipient** of such invoice or debit note in the manner specified under section 37;]*

2) What section 16 of GST ACT says ?



- b) he has **received the goods or services** or both.

- c) subject to the provisions of [*section 41 or section 43A*], the tax charged in respect of such supply has been **actually paid to the Government**, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

- d) he has **furnished the return** under section 39:

3) Is actual delivery of Goods is necessity ?

[Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

- I. where the goods **are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;***
- II. where the services are provided by the supplier to any person on the direction of and on account of such registered person.]*



3) Is actual delivery of Goods is necessity ?

- Bill to ship model
- High Sea Sales – Transfer of documents
- Actual or Constructive Delivery



4) How to prove the transaction as genuine purchase and movement of Goods?

- Tax Invoice / Debit note
- Payment Proof – Ledgers, Bank Statements
- GSTR-1 of the supplier and corresponding reflection in GSTR-2A/2B
- E-way Bill copy
- Copy of LR Receipts -Consignment note issued by GTA
- Weighment slips
- Goods Receipt note (GRN)
- Toll Receipts & Fastag Data
- CCTV -Footage



THE ECONOMIC TIMES | News

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E-way bill integrated with FasTag, RFID; GST authorities to get real-time data of commercial vehicles

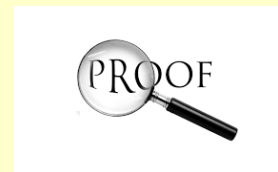
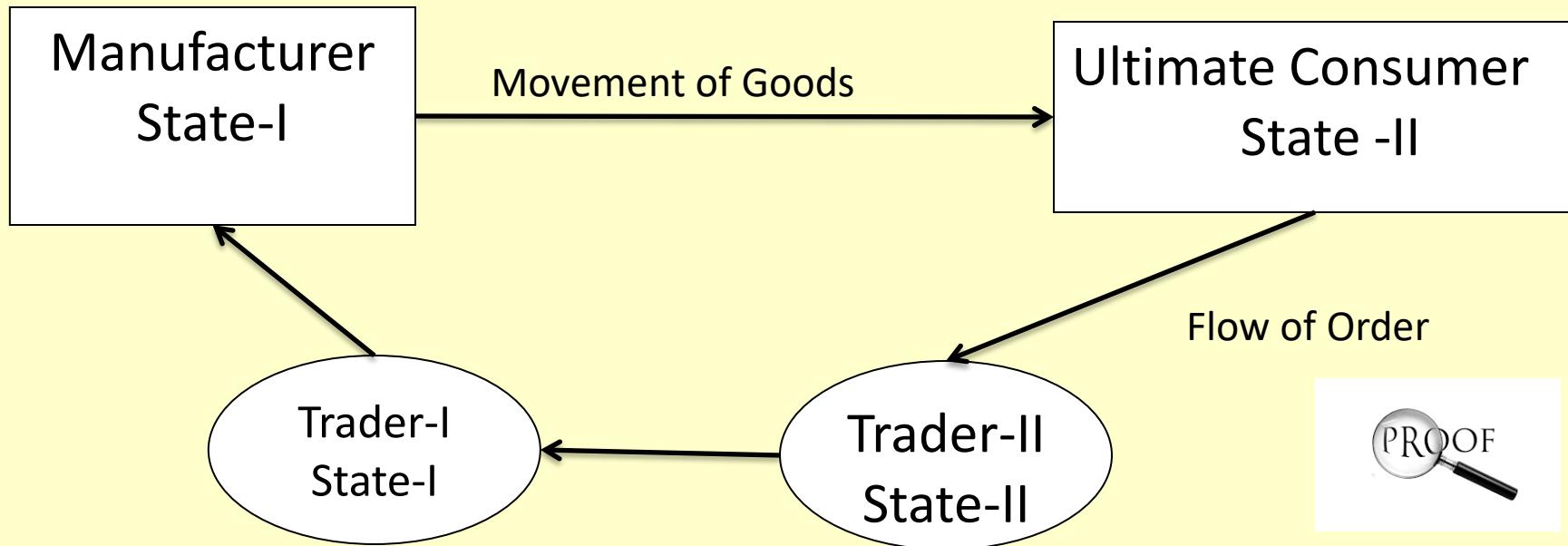
Synopsis

Additional features have been added to the e-way bill mobile application of tax officers, which will provide them real-time tracking details of e-way bill and vehicle to help them nab tax evaders who are misusing the e-way bill system.



GST officers have been armed with real-time data of commercial vehicle movement on highways with integration of the **e-way bill** (EWB) system with **FasTag** and **RFID**, a move which will help in live vigilance of such vehicles and check GST evasion. Additional features have been added to the e-way bill mobile application of **tax officers**, which will provide them real-time tracking details of e-way bill and vehicle to help them nab tax evaders who are misusing the e-way bill system.

CASE STUDY :



How will the E-way Bill provisions be complied in the above scenario if Trader -I wants to hide identity of Manufacturer and Trader -II ultimate consumer.

5) What if the seller has not paid the tax ?



- Direct Recovery from Receiver
- Press Release –issued by the Central Board of GST council Meeting on 4-5-2018. –No direct recovery – only in bogus cases
- Important Case law of recent time
 - M/s Bharat Aluminium Company Limited v/s Union of India and others – (HC-CG)
 - M/s D.Y. BEATHEL ENTERPRISES V. STATE TAX OFFICER, TIRUNELVELI (HC-Madras)
 - M/s Arise India Limited (TS-314-HC-2017)- Delhi High Court

6) What accounts & Records to be maintained?

35. (1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, **a true and correct** account of—

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods; (Other than Composition –U/s 10) (Format specified)
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed :



***Fails to account for the goods or services or both** in accordance with the provisions of sub-section 35(1), the proper officer shall determine the amount of tax payable as if such goods or services or both had been **supplied by such person 73 or section 74.**

Provided that where **more than one place of business** is specified in the certificate of registration, the **accounts relating to each place of business** shall be **kept at such places of business :**

6) What accounts & Records to be maintained?

Maintenance of accounts by registered persons

- Relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.
- **Format of maintenance of Stock** Opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.
- If any taxable goods are **found to be stored at any place(s) other than those declared** without the cover of any valid documents, will be treated as if such goods have been supplied by the registered person.
- .



7) No Goods have been received – No supply

- If no supply than department alleges that –NO ITC is allowed - Reverse input tax credit
- If no supply than – where is the question of Outward Liability
- Can two stands be taken by the department –where they say for reversal of ITC there will be No supply and for payment outward liability there will be tax.
- Case law – **CWT v/s Inder Sharma 1997 VI AD (Delhi) 1029 – Wealth Tax**
Contradictory views for taxing and exemption not allowed
- Bogus Purchase addition – restricted to - GP-5% - **Suresh Mehta HUF Vs ITO (ITAT Mumbai)**



8) Enquiry conducted on the basis of the Statement of third party or transporter?

Section - 136. A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act **shall be relevant**, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

- a) when the person **who made the statement is dead or cannot be found**, or is **incapable** of giving evidence, or is **kept out of the way by the adverse party**, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or



8) Enquiry conducted on the basis of the Statement of third party or transporter?

b) when the person who made the **statement is examined as a witness in the case before the court** and the court is of the opinion that, having regard to the circumstances of the case, the statement **should be admitted in evidence in the interest of justice.**

Honorable High Court of Chhattisgarh in TAXC 54/2017 in M/s Hi Tech Abrasives Ltd vs CCE, Raipur on 04.07.2018 has held that, "So for a statement to be treated 'relevant' and 'admissible' under the law 'mere recording' of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice"

In case 'such statement' is straight away treated as relevant and admissible without first verifying the 5 contingencies under Section 136(a)....., the entire proceedings shall amount to circumventing the statutory laid down procedure of law enshrined in the Act, vitiating the whole procedure of prosecution/adjudication. '



8) Enquiry conducted on the basis of the documents of third party or transporter?

SECTION 144. Presumption as to documents in certain cases. — Where any document —

- (i) is **produced by any person** under this Act or any other law for the time being in force; or
- (ii) has been **seized from the custody or control of any person** under this Act or any other law for the time being in force; or
- (iii) has been **received from any place outside India** in the course of any proceedings under this Act or any other law for the time being in force,

and such document **is tendered by the prosecution in evidence** against him or any other person **who is tried jointly with him**, the court shall —



8) Enquiry conducted on the basis of the documents of third party or transporter?



- (a) unless the contrary is proved by such person, presume —
- (i) the **truth of the contents** of such document;
 - (ii) that the **signature and every other** part of such document which purports to be in the **handwriting of any particular person** or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) **admit the document in evidence** notwithstanding that it is **not duly stamped**, if such document is otherwise admissible in evidence

8) Enquiry conducted on the basis of the Statements/documents of third party or transporter?



LAW OF EVIDENCE

As per Sec 24 of Indian Evidence Act - confession made by an accused person **is irrelevant in a criminal proceeding**, if the making of the confession appears to the Court to have been caused **by any inducement,**

threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Case Law - M/S Ambika International Vs Union Of India And Another(*2016-TIOL-1238-Hc-P&H-Cx) on 17.06.2016 –HC P&H
Section 136(a) and (b) and Section 9D(1) are in pari-materia - *“The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement, recorded during inquiry/investigation, by the gazetted Central Excise officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements*

8) Enquiry conducted on the basis of the Statements/documents of third party or transporter?



Indian Evidence Act, 1872 Vs GST Law:

IEA Sec 103. Burden of proof as to particular fact. —The burden of proof as to any Particular fact **lies on that person who wishes the Court to believe in its existence**, unless it is provided by any law that the proof of that fact shall lie on any particular person. **(Onus lies to Department)**

SECTION 155. GST ACT Burden of proof. — Where any person claims that **he is eligible** for input tax credit under this Act, the **burden of proving such claim shall lie on such person.**

Do extra work –Collect your evidence to rebut the evidence collected by the department, Collect statements , ledgers & affidavit etc. in support of your claim.

8) Enquiry conducted on the basis of the Statements/documents of third party or transporter?

Right of Cross Examination:



- At what point of time, should the right of cross examination be exercised?
- Who should cross examine whom?

Case Law :

J & K Cigarettes Ltd. & Ors. vs Collector Of Central Excise & Ors. on 28 August, 2009

- Before arriving at this opinion, the authority would give opportunity to the affected party to make submissions on the available material on the basis of which the authority intends to arrive at the said opinion.

9) DOES PROSECUTION –U/S 132 IS ALSO CONCLUDED IF PENALTY IS PAID ?



Section -122

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....., whichever is higher.

Section 74(5)

The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and **a penalty equivalent to fifteen per cent. of such tax on** the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

9) DOES PROSECUTION –U/S 132 IS ALSO CONCLUDED IF PENALTY IS PAID ?



Explanation 1. — For the purposes of section 73 and this section 74, —

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;
- (ii) where the notice under the same proceedings is issued to the **main person liable to pay tax** and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the **persons liable to pay penalty under [sections 122 and 125] are deemed to be concluded.**

10) AT WHAT STAGE ATTACHMET CAN BE DONE?

Previous Provision -SECTION -83(1) – Attachment

1) Where **during the pendency** of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74,



Substituted Provision - Substituted by the Finance Act, 2021, w.e.f. a date yet to be notified.

(1) Where, after the initiation of any proceeding under **Chapter XII (Assessment), Chapter XIV (Inspection, Search, seizure and arrest) or Chapter XV (Demand & Recovery)**, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, **by order in writing**, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.”.

GST- IMPORTANT CASE LAW'S

FACT & DISCUSSION OF THE CASE :

- ❑ An Input Tax Credit as claimed by the petitioner was 95,464.59 lakhs and 2A GST, ITC Form was of 86,606.67 in lakhs, difference - **Tax 8,857.91 lakhs**
- ❑ Press Release of GST Council dated 04th May 2018, there shall not be any automatic reversal of Input Tax Credit of buyer on non-payment of tax by the seller.
- ❑ The physical verification was offered to be made by petitioner it was not accepted.
- ❑ Recovery of like nature from the buyer, the action can only be available in the exceptional circumstances relied on , *M/s. D.Y. Beathel Enterprises – Similar case.*



HELD :

- ❑ Petitioner's depositing 5% amount of Rs. 14,93,79,211/- demanded *vide* order dated 22-1-2021 (Annexure P-9) within a period of 15 days, no coercive steps shall be taken pursuant to the said order.
- ❑ List it in the week commencing **02nd August, 2021.**



FACT & DISCUSSION OF THE CASE :

- ❑ Based on the returns filed by the sellers, the petitioners herein availed input tax credit.
- ❑ Later, during inspection by the respondent herein, it came to light that Charles and his wife, did not pay any tax to the Government.
- ❑ Without involving the said Charles and his wife Shanthi, the impugned orders came to be passed levying the entire liability on the petitioners herein.
- ❑ Discussion on Press release issued by the Central Board of GST council on 4-5-2018.



FACT & DISCUSSION OF THE CASE :

- ❑ Discussion on Section 16(1) & (2)
- ❑ When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.
- ❑ According to the respondent, there was no movement of the goods.



HELD:

- ❑ Examination of Charles and his wife has become all the more necessary and imperative.
- ❑ Petitioners have insisted on this, why the respondent did not ensure the presence of Charles and his wife Shanthi, in the enquiry.
- ❑ Thus, the impugned orders suffers from certain fundamental flaws. It has to be quashed for more reasons than one.
- ❑ **Enquiry** alone will have to be held **afresh**. In the said enquiry, Charles and his wife Shanthi will have to be **examined as witnesses**. Parallely, the respondent will also **initiate recovery** action against Charles and his wife Shanthi.



FACT:

- ❑ Due to technical glitches that could not be got resolved, supplier is not able to obtain registration and file GSTR-1 for certain period. One of buyers who had paid for value of goods along with tax also filed petition due to the fact that ITC did not travel to him through GSTR 2A and was issued intimation by the revenue for wrong avilment of ITC through DRC-01A.



HELD:

- ❑ Held by Kerala High Court in ST. JOSEPH TEA COMPANY LTD. In WP(C) NO. 17235 OF 2020 on 17-06-2021 that supplier should pay tax through DRC-03 along with interest for the impugned period by obtaining provisional registration. If such payment is effected, the recipients shall not be denied ITC only on the ground that the transaction is not reflected in GSTR 2A[Para 7]

- ❑ The Hon'ble Supreme Court of India took cognizance of the difficulties being faces by the litigants across the country in filing their **suits/appeals / applications / petitions /other proceedings** due to the Covid-19 in Suo Motu Writ Petition (Civil) number 3 of 2020.
- ❑ In computing the period of limitation for any suit, appeal, application or proceeding, the period from **15.03.2020 till 14.03.2021** shall stand excluded.
- ❑ In cases where the **limitation would have expired during the period between 15.03.2020 till 14.03.2021**, notwithstanding the actual balance period of limitation remaining, all persons **shall have a limitation period of 90 days from 15.03.2021.**



- ❑ The period from **15.03.2020** till **14.03.2021** shall also stand **excluded** in computing the ----- and **any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits** (within which the court or tribunal can condone delay) and **termination of proceedings.**

Judgments of High Courts - AP

Walchandnagar Industries Limited Vs Commercial Tax Officer dated 11th May 2020

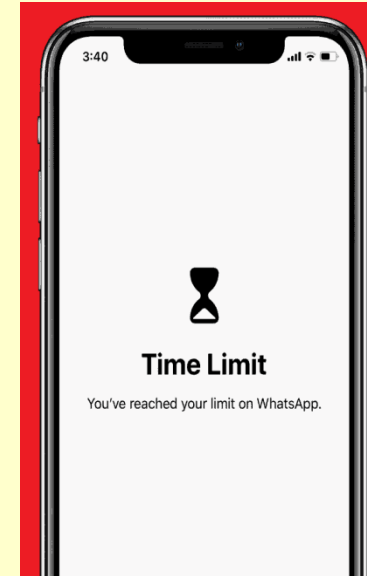
This Court does not wish to go further into the matter but would not like to remind the 1st respondent that **the order passed by Hon'ble Supreme Court of India is binding** on all the citizens/Tribunals/Courts of this country, including those **exercising Quasi Judicial functions.** It appears that 1st respondent's **understanding of the law as declared by the Hon'ble Supreme Court of India is clearly misconceived.**



- ❑ The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant–public in all the states. We, therefore, **restore the order dated 23rd March, 2020** and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.
- ❑ We have passed this order in exercise of our powers under **Article 142 read with Article 141 of the Constitution of India**. Hence it shall be a binding order within the meaning of Article 141 on all **Courts/Tribunals and Authorities**.



- ❑ **Para-5** In other words, the extension of timelines granted by Hon'ble Supreme Court *vide* its Order dated 27-4-2021 is applicable in respect of any appeal which is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against **any quasi-judicial order** or where **proceeding for revision or rectification of any order is required** to be undertaken, and is not applicable to any other proceedings under GST Laws.



❑ FACTS & DISCUSSION OF THE CASE

- Provisional attachment was ordered against appellant while invoking section 83 of Himachal Pradesh Goods and Service Tax Act, 2017 and rule 159 of the HPGST Rules, 2017
- Appellant instituted Writ Petition under article 226 of Constitution challenging orders of provisional attachment.
- High Court dismissed writ petition on ground that provisional attachment could not be challenged in a petition under article 226 **on ground that an 'alternative and efficacious remedy' of an appeal under section 107 was available.**



❑ HELD

- Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of Commissioner in pursuance of delegation effected under section 5(3) and an appeal against order of provisional attachment was not available under section 107 (1)

❑ HELD

- Power to order a provisional attachment of property of taxable person including a bank account is **draconian in nature and conditions** which are prescribed by statute for a valid exercise of power must be **strictly fulfilled**;
- Expression 'necessary so to do for protecting government revenue' implicates that interests of government revenue **cannot be protected without ordering** a provisional attachment;
- Formation of an opinion by Commissioner under section 83(1) must be based on **tangible material bearing on necessity of ordering** a provisional attachment for purpose of protecting interest of government revenue;
- **Breach of mandatory requirement** of rule 159(5) and Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on **whether or not to grant an opportunity of being heard**.

❑ FACTS & DISCUSSION OF THE CASE

- The petitioners are engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars.
- There is a loss of a small portion of the inputs, inherent to the manufacturing process.
- The impugned orders seek to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act.
- (9) No input tax credit shall be available to a registered dealer for tax paid Omitted[or Payable] at the time of purchase of goods, if such Inputs damaged in transit or destroyed at some intermediary stage of manufacture.



❑ HELD

The impugned assessment orders reject a portion of ITC claimed, invoking the provisions of clause (h) extracted above.

This relates to goods lost, stolen, destroyed, written off or disposed by way of gift or free samples.

In my considered view, the loss that is occasioned by the process of manufacture cannot be equated to any of the instances set out in clause (h) above.

The situations as set out above in clause (h) indicate loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.



FACTS & DISCUSSION OF THE CASE

- Road Blocked next day Sunday
- Validity of E-way Bill , extension permissible under Rule 138
- Representation by the Petitioner twice not considered & mentioned penalty agreed & paid
- Goods stored by respondent in his relative house for 16 days & went to leave
- Detention notice - GST-MOV-07 and order passed by different authority
- Merely stated by the states in the counter affidavit that there is clear evasion of tax and so he did not consider the said explanations.



❑ HELD

- Plainly arbitrary and **illegal and violates Article 14** of the Constitution of India.
- Respondent could have drawn an inference that petitioner is evading tax merely because the e-way bill has expired is also nowhere explained in the counter-affidavit.
- On account of **non-extension of the validity of the e-way bill by petitioner** or the auto trolley driver, **no presumption can be drawn** that there was an intention to evade tax.
- **Blatant abuse of power** by the 2nd respondent in collecting from the petitioner tax and penalty





❑ FACTS & DISCUSSION OF THE CASE

- Assessee was engaged in business of mining and selling of coal - In commercial contracts entered during course of business certain clauses **providing penalty for non-compliance/breach of terms of contract** had been stipulated
- Received certain amount from buyers of coal and vendors **toward penalty, earnest money deposit forfeiture and liquidated damages**
- Adjudicating Authority did not accept contention of assessee and held that penalty, earnest money deposit forfeiture and liquidated damages had been received by assessee toward consideration for tolerating an act leviable to service tax under section 66E(e)

❑ HELD

- As such for invocation of the said clause, there has to be first a concurrence to assume an obligation to refrain from an act or tolerate an act etc. which are clearly absent in the present case.
- Whether since in instant case penal clauses in contract were in nature of providing a safeguard to commercial interest of assessee,
- Section 74 of the contract Act, declares the law as to liability upon breach of contract where compensation is by agreement of parties pre-determined.
- it was not possible to sustain view taken by Adjudicating Authority that penalty, earnest money deposit forfeiture and liquidated damages had been received by assessee towards consideration for tolerating an act leviable to service tax under section 66E(e)

❑ HELD

"The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:



- | |
|---|
| <p>(1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.</p> |
|---|

- | | |
|-----|---|
| (2) | Even if the assessee comes forward to make voluntary payment by filing Form DRC-03 , the assessee should be asked/advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee. |
| (3) | Facility of filing complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings. |
| (4) | If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer." |

THANKS



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