

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7702 of 2022

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DHABRIYA POLYWOOD LIMITED
Versus
UNION OF INDIA

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Appearance:

MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
MR UTKARSH SHARMA, AGP - ADVANCE COPY SERVED TO
GOVERNMENT PLEADER/PP for the Respondent(s) No. 2
NOTICE NOT RECD BACK for the Respondent(s) No. 1,3

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 27/04/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

“(a) to quash and set aside the Notice issued by the respondent No.3 under Section 129(3) of the CGST Act in Form GST MOV-07 dated 12/04/2022 (Annexure-A)

“(b) to quash and set aside the order of detention passed by the respondent No.3 under Section 129(1) of the CGST Act in Form GST MOV-06 dated 12/04/2022 (Annexure – A1)

“(c) pending the admission, hearing and final disposal of this petition, to stay the implementation and operation of the Notice issued under Section 129(3) of the CGST Act in Form GST MoV-07 dated 12/04/2022 at Annexure-A to this petition;

“(d) pending the admission, hearing and final disposal of this petition, to stay the implementation and operation of the order of detention passed under Section 129(1) of the CGST Act in Form GST MOV-06 dated 12/04/2022 at Annexure-A1 to this petition;

(e) direct the respondent No.3 to release the goods worth Rs.12,19,889/- of the petitioner.

(f) any other and further relief deemed just and proper be granted in the interest of justice.

(g) to provide for the cost of this petition.”

2 The controversy involved in the present writ application is in a very narrow compass. Our order dated 20th April 2022 would make the picture further clear. The same reads thus:

“1. We have heard Ms. Vaibhavi Parikh, the learned counsel appearing for the writ applicant and Mr. Utkarsh Sharma, the learned AGP appearing for the State respondents on an advance copy served to him.

2. It appears that the matter is at the stage of final order of detention passed under Section 129(1) of the CGST Act, 2017 in Form GST MOV – 06 dated 12.04.2022. Prima facie, it appears that the only discrepancy noted in the E-way bill is with regard to “wrong vehicle type”.

3. Prima facie, we are of the view, subject to what Mr. Sharma, the learned AGP has to submit, that the goods and the conveyance could not have been detained on the ground assigned in Form GST MOV-06.

4. Issue Notice to the respondents for final disposal of this writ application, returnable on 27.04.2022.

5. By the next returnable date, the authority may reconsider its decision and pass an appropriate order.

6. On the returnable date, notify this matter on top of the Board.

7. No Notice now be issued to the respondents as Mr. Sharma, the learned AGP has already entered his appearance on their behalf.”

3 We have heard Ms. Parikh, the learned counsel appearing for the writ applicant and Mr. Sharma, the learned A.G.P. appearing for the respondents.

4 It appears from the materials on record that the writ applicant, vide application dated 12th April 2022 addressed to the State Tax Officer – 2, Mobile Squad, Amirgadh, made a request to release the goods, as, according to the writ applicant, in stating the vehicle type, inadvertently, it was shown as ODC. The letter reads thus:

“April 12, 2022

*To,
The State Tax Officer – 2,
Office of the State Tax Officer
Mobile Squad, Amirgadh.*

GSTIN : 08AACCD5090Q1Z4

Sub : Request to release our goods and vehicle detained at Checkpost

We, Dhabriya Polywood Limited, a Public Limited Company having our Registered Office and Factory at B-90-1, Malviya Industrial Area, Jaipur-302017 (Rajasthan) and SP-2032(A), Ramchandrapura Industrial Area, Sitapura Extn, Jaipur (Rajasthan) and Holding GST Registration No. 08AACCD5090Q1Z4. in Rajasthan. We are manufacturer of uPVC Windows & Doors, Extruded PVC Profiles, Sheets, Moldings etc, all wood-substitute products. We are also having our manufacturing units and branches in various other states/locations including Gujarat State. We have filed all our GST Returns and have discharged all the due tax liabilities till date.

On 11.04.2022, we have supplied our manufactured goods (Le. UPVC WINDOWS & DOORS) from our Jaipur unit to our Bhavnagar (Gujarat) buyer vide invoice no. SP-22-23/0021 for total Rs.12,19,889/= after charging IGST @18% of Rs. 1,86,084.78 and goods were moved through truck no. RJ14GJ0853 with all valid documents i.e. Invoice, LR and e-Way Bill No. 7812-5241-2727, which was generated through official GST Website at the time of removal of goods from the factory premises.

Today early morning, your office has withhold the goods and vehicle on the Amirgadh checkpost for the purpose of physical verification/inspection of the goods, without assigning any specific reason and after receiving the information for the same from the driver, we have immediately sent our Ahmedabad Branch Manager to the checkpost to get the physical verification of the goods conducted but

now you have issued the order/notice under section 129(1) at 9.15 PM (Vide Memo NO. 16 dated 12/4/2022 Form GST MOV-06 and MOV-07) for the detention of the goods and vehicle and have assigned the reason: WRONG VEHICLE TYPE (ODC).

It is submitted that goods were moved with all the proper documents including e-Way bill, generated from the GST Portal. There was no Tax Evasion or Intent to evade Tax by any means. You have not found any discrepancy after physical verification of goods and conveyance but have detained the goods & vehicle stating the reason: WRONG VEHICLE TYPE (ODC).

Sir, goods were moved through truck and correct number of truck as well as LR is also filled in the e-1 Way Bill. Selection of the ODC vehicle type while generating e-Way Bill is just a clerical/technical error and it doesn't result in any tax evasion by us. There is no provision to levy penalty/tax under Section 129(1) for such clerical errors as there is no evasion of the tax in any manner. Goods were supported with proper documents and e-Way Bill and no discrepancies were noticed during physical verification.

You are humbly requested to please drop the notice of penalty issued by your office and release the goods and vehicle, as delay in delivery of the goods will put us on heavy demurrages and financial penalties from the buyer's end.

Please release our goods and oblige.

Thanking you,

Yours faithfully,

*For, DHABRIYA POLYWOOD LIMITED
sd/-
DIRECTOR"*

5 The short point for our consideration is whether, in fact, it was a *bona fide* mistake on the part of the writ applicant, or whether it was a mischievous act with a view to derive some illegal benefit, as asserted by Mr. Sharma, the learned A.G.P. We take notice of the fact that the goods were in transit with all the necessary documents including the E-way bill generated from the GST portal. The goods were moved through a truck whose registration number was also correct. The LR was also filled in the E-way bill.

6 Keeping the aforesaid in mind, we should look into the circular issued by the Government of India, Central Board of Indirect Taxes and Customs dated 14th September 2018. The same reads thus:

*“CBEC/20/16/03/2017-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 14th September, 2018

*To,
The Principal Chief Commissioners / Chief Commissioners / Principal
Commissioners / Commissioners of Central Tax (All) / The Principal
Directors General / Directors General (All)*

Madam / Sir,

Subject : Modifications of the procedure for interception of conveyance 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 – regarding.

Kind attention is invited to Circular No. 41/15/2018-GST dated 13 April, 2018 as amended by Circular No. 49/23/2018-GST dated 21" June, 2018 vide which the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances was specified.

2. Various representations have been received regarding imposition of penalty in case of minor discrepancies in the details mentioned in the e-way bill although there are no major lapses in the invoices accompanying the goods in movement. The matter has been examined. In order to clarify this issue and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') hereby clarifies the said issue hereunder.

3. Section 68 of the CGST Act read with rule 138A of the Central

Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding Rs.50,000/- should carry a copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part B of FORM GST EWB-01 amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto fifty kilometres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.

4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section 129 of the CGST Act may be initiated.

5. Further, 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 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 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.

6. In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.

7. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

*(Upender Gupta)
Commissioner (GST)”*

7 The circular makes it clear that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, the proceedings under Section 129 of the CGST Act may not be ordinarily initiated, more particularly, in the situation, as highlighted in para 5 of the circular.

8 We are of the view that the goods of the writ applicant fall within Clause 5 of the circular referred to above. The manner in which the writ applicant has proceeded so far and also having regard to the fact that very promptly he brought to the notice of the authority concerned and admitted its mistake, we would like to give the writ applicant some benefit of doubt.

9 In view of the aforesaid, this writ application succeeds and is hereby allowed. The impugned notice issued by the respondent No.3 in Form GST MOV – 07 dated 12th April 2022 is hereby quashed and set aside. Consequently, the order of detention passed by the respondent

No.3 under Section 129(1) of the CGST Act in Form GST MOV – 06 dated 12th April 2022 is also hereby quashed and set aside. The goods and the conveyance shall be released at the earliest.

10 With the aforesaid, this writ application stands disposed of.

