

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 2396 of 2023

M/s Prestress Steel LLP, ...Petitioner

Versus

Commissioner, Uttarakhand State
GST and others ...Respondents

Present:-
Mr. Harshit Sanwal, Advocate for the petitioner.
Mr. Mohit Molekhi, Brief Holder for the State.

And

Writ Petition (M/S) No. 2399 of 2023

M/s Prestress Steel LLP, ...Petitioner

Versus

Commissioner, Uttarakhand State
GST and others ...Respondents

Present:-
Mr. Harshit Sanwal, Advocate for the petitioner.
Mr. Mohit Molekhi, Brief Holder for the State.

JUDGMENT

Hon’ble Ravindra Maithani, J. (Oral)

Since common questions of law are involved in both these petitions, they are decided by this common judgment.

2. The challenge in these petitions is made to the orders dated 09.06.2023 passed by the respondent no.3, Assistant Commissioner State Tax/Tax Officer, Mobile Squad, Rudrapur, under Section 20 read with 129 of the Central/State Goods and Services Tax, 2017 (“the Act”).

3. Facts necessary to appreciate the controversy, briefly stated, are as follows. The petitioner is into the business of manufacturing of PC wires- Strand ACSR Core Wire and Galvanized steel wire. He purchases the raw material from Steel Authority of India Limited, Kolkata (“SAIL”). The petitioner placed an order with SAIL, the goods were transported from West Bengal to Kanpur through railway in the wagon against invoices and other documents required under the Act. The wagon was unloaded and taken into custody by the petitioner for further transportation of good to Bazpur. For that purpose two vehicles were deployed bearing registration nos. HP 939081 and UP 25 BT 6528 (“the vehicles”). Accordingly, e-way bill was also generated and goods were moved towards its destination on 04.06.2023. When the vehicles were intercepted by the respondent no.3, it was found that the vehicles were not carrying the delivery challans as required under Rule 55 (5) (b) of the Central/State Goods and

Services Rules, 2017(“the 2017 Rules”). After completing the procedure as required under the Act and Rules, by the impugned order, separate penalty has been imposed with regard to the each of the vehicles engaged in transportation. In these petitions, those two orders dated 09.06.2023 have been challenged. The petitioner also seeks refund of the amount which was deposited on 10.06.2023 pursuant to the impugned orders dated 09.06.2023.

4. It is the case of the petitioner that the imposed penalty is illegal and it has been passed without appreciating the fact that the petitioner had already ensured all the compliances under the Act. He had all the documents with him except the delivery challan.

5. Instant petition was admitted on 24.08.2023, when the Court directed the respondents to file counter affidavit with further direction to the petitioner to file rejoinder, if any. The Court passed the following order on that date:-

“Respondents may file counter affidavit within two weeks.

One week thereafter, rejoinder affidavit, if any, be filed.

List this matter for final hearing on 20.09.2023, after fresh, as the first case.

No time extension for filing pleadings shall be given to any of the parties.

Parties are requested to adhere by the time given for filing proceedings.”

6. On the next date of hearing i.e. 20.09.2023, it was revealed that the respondents did not choose to file any counter affidavit. The Court proceeded to hear the matter finally, while observing as follows:-

“On 24.08.2023, when this matter was taken up, this Court has categorically cautioned that no time extension for pleadings shall be given and the parties are requested to adhere by the time given for filing proceedings. In last two paragraphs of the order dated 24.08.2023, this Court noted as follows:-

“No time extension for filing pleadings shall be given to any of the parties.

Parties are requested to adhere by the time given for filing proceedings.”

The Court shall now proceed to hear the petition in the absence of any counter affidavit, that had chosen not to be filed by the respondents.

List on 21.09.2023 for final hearing after fresh cases.”

7. In fact, in the instant case, there is no factual dispute. Facts are admitted. Questions of law has been raised by the petitioner that may be decided based on the material available in the writ petitions.

8. Heard learned counsel for the parties and perused the record.

9. Learned counsel appearing for the petitioner would submit that the impugned orders are bad in the eye of law. He would refer to the Rules 138A, 55 (3) and 55 (5) (b) of the 2017 Rules to argued that non availability of the delivery challan with the vehicles is a mere procedural impropriety or irregularity; it has no element of evasion of tax, whatsoever. Learned counsel would refer to provisions of Section 126 of the Act to argue that in the instant case, the penalty has been much disproportionate; it was an error which was rectifiable. Learned counsel would also raise the following points in his submission:-

- (i) According to the principle of interpretation, a statutory provision should not be read in the manner that it may tend to make any other provision of the statute as redundant; the provision of the statute should be read so as to give life to each of the provisions contained in the statute; there should be harmonious interpretation of the statutory provisions.

- (ii) Essentially, the taxing statute ensures that there is no leakage in the tax; it avoids loss to exchequer, as also it protects the interest of honest tax payer, and also takes care of those, who defaults in the payment of tax. Referring to Circular No. 64/38/2018/GST of the Government of India, it is argued that in case of non compliance of the provisions with regard to generation of e-way bill, necessarily the provision of Section 129 of the Act may be invoked, but not in case of minor infraction.
- (iii) In the instant case, there is no allegation or chance of evasion of tax. GST authorities were told of the transactions, firstly, when the goods were transported from Kolkata to Kanpur through railway route and thereafter, from Kanpur, when e-way bills were generated for the vehicles. Each and every information was available with the GST authorities. Tax has been paid. Therefore, it is argued that the impugned orders are bad in the eye of law.

10. Learned counsel would refer to the principles of law, as laid down in the cases of Satyam Shivam Papers Pvt. Ltd. Vs. Assistant Commissioner ST and others, (2021) 92 GSTR 154, Daya Shanker Singh Vs. State of Madhya Pradesh (2022) 94 GST 233 (MP), Smart Roofing Private Limited Vs. State Tax Officer, 2022 (62) GSTL 29, Algae Labs Private Limited Vs. State Tax Officer-I, Tirunelveli, 2022 (64) GSTL 272 and Varun Beverages Vs. State of UP, 2023 (71) GSTL 4.

11. In the case of Satyam Shivam Papers Ltd. (*supra*), a vehicle was intercepted and proceedings under Section 129 of the Act were initiated. It was a defence that due to circumstances beyond the control of in-charge of the vehicle, the goods could not reach to its destination. Under those situations, the Court had held that **“there was no material before the 2nd respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill because even the 2nd respondent does not say that there was any evidence of attempt to sell the goods to somebody else on 06.01.2020”**.

12. The judgment of Hon'ble Allahabad High Court in the case of Satyam Shivam Papers Ltd. (*supra*), has been affirmed by the Hon'ble Supreme Court (MANU/SC/0082/2022) while upholding the judgment the Hon'ble Supreme Court observed that **“the analysis and reasoning of the High Court commends to us, when it is noticed that the High court has meticulously examined and correctly found that no fault of intent to evade tax could have been inferred against the writ petitioner.”**

13. In the case of Daya Shanker Singh (*supra*), the Hon'ble High Court of Madhya Pradesh discussed the provisions of Section 129 of the Act. In that case also the e-way bill had expired on 19.05.2022 at 12:00 AM. It was intercepted at 4:35 AM on 20.05.2022. Proceedings under Section 129 of the Act were initiated. It was the defence that, in fact, the truck was moved towards the weigh bridge, while it was intercepted. Under those facts and circumstance, the Hon'ble High Court of Madhya Pradesh observed that **“there was no element of tax evasion, fraudulent intent and negligence”**.

14. In the case of Smart Roofing Pvt. Ltd. (*supra*), the proceeding under Section 129 of the Act were challenged. It was the case of the petitioner in that case

that he had no intention to evade tax as he had already generated the e-way bill by declaring the consignee etc. The Hon'ble Madras High Court held that **“no doubt, the authorities acting under the Act were justified in detaining the good inasmuch as there is a wrong declaration in the E-way bill. However, the facts indicate that the consignor and the consignee are one and the same entity, namely, Head Office and the Branch Office.”** The Hon'ble Court further observed that **“in that case, there is only a technical breach committed by the petitioner and there is no intention to evade tax accordingly.”** The principles of law, as laid down in the case of Smart Roofing Pvt. Ltd. (*supra*) were followed in the case of Algae Labs Private Limited (*supra*).

15. In the case of Varun Beverages (*supra*), there was an error in the vehicle registration number. The proceedings under Section 129 of the Act were initiated, which were challenged. The Hon'ble Court held that **“as there is no dispute to the fact that it is a case of stock transfer and there is no intention on the part of dealer to evade any tax, the minor discrepancy as to the registration of vehicle in State in the e-way bill would**

not attract proceedings for penalty under Section 129,.....”

16. On the other hand, learned counsel for the State would discuss the scheme of the Act. He would submit that the requirement of procedure, as given under the Act, tends to ensure that there are no leakages; if the process is not followed, it may likely lead to leakages. He would raise the following points in his submission:-

- (i) Breach of procedure requirement cannot be condoned, if it may facilitate fraud, escape, leakage and administrative inconveniences.
- (ii) Procedural requirement in the present tax regime is more important because generally now assessments are based on submissions made by the assessee.
- (iii) Rule 55 of the 2017 Rules is mandatory in its compliance.
- (iv) The vires of Rule 55 of the 2017 Rules is not put to challenge.
- (v) If each of the vehicles carry delivery challan as required under Rule 55 (5) (D) of the 2017 Rules, there would be no chances of any leakage.

- (vi) The provisions of Section 129 of the Act gets overriding effect on the other provisions of the Act because it has non obstante clause. It deals with goods in transit.
- (vii) The provisions of Section 122 of the Act would come into play, if in any proceedings it is found that some deviation has been done which is punishable under Section 122 of the Act. It may be during inspection also.

17. A few provisions have been referred to while making submissions by learned counsel for the parties. It would be apt to reproduce few of them.

18. Section 68 of the Act, *inter alia*, makes provisions with regard to the documents that may be carried by the transporter while consigning goods, it reads as follows:

“68. Inspection of goods in movement.—

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.”

19. Section 122 of the Act is in Chapter XIX of the Act, which deals with offences and penalty. It reads as follows:-

“122. Penalty for certain offences.— (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;
(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
.....
.....
.....
.....
(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.
.....
.....”

20. Section 126 of the Act deals with General disciplines related to penalty. It reads as hereunder:-

“126. General disciplines related to penalty.— (1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

*Explanation.—*For the purpose of this subsection,—

(a) a breach shall be considered a ‘minor breach’ if the amount of tax involved is less than five thousand rupees;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) 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.”

21. Section 129 of the Act provides for procedure in case of detention, seizure and release of goods and conveyances in transit. It reads as follows:-

“129. Detention, seizure and release of goods and conveyances in transit.— (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

 (a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

 (b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twentyfive thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax andpenalty;

 (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

.....

.....

.....”

22. It may be noted that Section 129 of the Act was amended w.e.f. 01.01.2022 by the Finance Act, 2021. Prior to the amendment, Clauses (a) and (b) to Section 129 Sub Section (1) of the Act were as follows:-

“129. Detention, seizure and release of goods and conveyances in transit.— (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c).....
.....
.....”

23. There is another Section which deals with violation of the Rules. It is Section 164 of the Act, which reads as follows:-

“164. Power of Government to make rules.— (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed

or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.”

24. Reference has also been made to Rules 55 and 138 of the 2017 Rules. Rule 55 Sub-Rule (3) and Rule 55 Sub-rule (5) are as follows:-

“55. Transportation of goods without issue of invoice. - (1) For the purposes of-

(1).....

(2).....

(3) Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in rule 138.

(4).....

(5) Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots-

(a) the supplier shall issue the complete invoice before dispatch of the first consignment;

(b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;

(c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and

(d) the original copy of the invoice shall be sent along with the last consignment.”

25. Reference has also been made to Rule 138 A of the 2017 Rules. It reads as follows:-

“138A. Documents and devices to be carried by a person-in-charge of a conveyance. -

- (1) The person in charge of a conveyance shall carry-
 - (a) the invoice or bill of supply or delivery challan, as the case may be; and
 - (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:
Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.
.....
.....”

26. It is not in dispute that at the time of interception on 04.06.2023 the in-charge vehicles were not carrying delivery challan as required under Section 55 (5) of the 2017 Rules. The goods were transported from Kolkata to Kanpur in one wagon and thereafter, they were taken separately in two trucks. This requirement is not in dispute. What is being argued is that it is not such a case which may invoke the provisions of Section 129 of the Act.

27. In fact, learned counsel for the petitioner would refer to Rule 138 A of the 2017 Rules to argue that sub Rule (1) of sub Clause (A) of 138 A makes it clear that invoice may be replaced by bill of supply or the delivery challan, as the case may be. This proposition, by mere reading of Rule 138 A sub-Rule (1) (a), may not be doubted.

28. Reference has also been made to Rule 55 sub Rule (3) which has already been quoted hereinabove. According to which, when the goods are transported on the delivery challan in lieu of invoice, it needs to be declared as specified in Rule 138. This has been referred to indicate that both invoice and delivery challan may be interchangeable. It is also argued that there remains no other information with regard to the goods, which may not be found in any of these two documents.

29. During the course of hearing, the Court wanted to know from the learned State counsel as to what additional information the delivery challan may have?

30. Learned State counsel would submit that the delivery challan may be accompanied separately by each of the vehicle. It has not been indicated that the delivery challan contains any additional information.

31. Admittedly, the petitioner had generated e-way bills pertaining to both the vehicles. The vehicles were carrying invoices, e-way bills and bilty. It is not a case of tax evasion. All the dues had already been paid, including the tax. Documents have been referred to by the learned counsel for the petitioner to indicate that after tax had been

paid, on the direction of SAIL, the goods were handed over to the petitioner at Kanpur.

32. The question that falls for consideration is as to whether this situation may invoke the provisions of Section 129 of the Act? It is not a case of evasion of tax. It is not a case that the delivery challan was not taken with the intention to evade the tax. Taxes have already been paid.

33. The provisions of a statute have to be interpreted in a manner so as to give life to each of the provisions. In the case of *Sri Venkataramana Devaru and Others Vs. State of Mysore and Others*, AIR 1958 SC 255, the Hon'ble Supreme Court observed as hereunder:-

“29. The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26(b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put

wholly out of operation, in the latter, effect can be given to both that provision and Article 26(b). We must accordingly hold that Article 26(b) must be read subject to Article 25(2)(b).”

34. The rule of harmonious construction of any statute requires that statutory provision should be so interpreted that they may not come in conflict with any provision. It should be harmonised to the best extent possible. In the case of *Managing Director, Chattisgarh Co-operative Bank Maryadit Vs. Zila Sahkari Kendriya Bank Maryadit and Others*, (2020) 6 SCC 411, the Hon’ble Supreme Court on this aspect observed as hereunder:-

“33. It is a settled principle of law that where two provisions of an enactment appear to conflict, courts must adopt an interpretation which harmonises, to the best extent possible, both provisions. Justice G.P. Singh in his seminal work *Principles of Statutory Interpretation* states:

“To harmonise is not to destroy. A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific... The principle is expressed in the maxims *generalia specialibus non derogant* and *generalibus specialia*.”

Similarly, Craies in *Statute Law* states:

“The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.”

Where two provisions conflict, courts may enquire which of the two provisions is specific in nature and whether it was intended that the specific provision is

carved out from the application of the general provision. The general provision operates, save and except in situations covered by the specific provision. The rationale behind this principle of statutory construction is that where there appears a conflict between two provisions, it must be presumed that the legislature did not intend a conflict and a subject-specific provision governs those situations in exclusion to the operation of the general provision.”

35. A bare reading of Section 129 of the Act, prior to the amendment dated 01.01.2022 indicates that essentially it had an element of tax also because sub (a) to sub Section (1) to Section 129 of the Act, speaks of release of a vehicle on payment of applicable tax and penalty. The words “applicable tax” has now been deleted from this provision. Goods are to be transported alongwith certain documents as specified under the Act. If every non-compliance in respect of the documents that a vehicle should carry may attract the provisions of Section 129 of the Act, what would be those situation in which the provisions of Section 122 of the Act may be invoked?

36. Section 130 of the Act is another provision with regard to confiscation. At this stage, it also requires reference. Section 130 sub Section (1) (i) reads as follows:-

“130. Confiscation of goods or conveyances and levy of penalty.— (1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
.....
.....
.....”

37. A bare reading of Section 130 of the Act, makes it clear that here what is to be established that (i) there has been non compliance of the provisions of the Act, which leads to the evasion of the Tax and further the evasion of tax was intentional.

38. Under Section 129 of the Act, there was no factor like intention. It is mere non compliance. But as stated, prior to amendment which came into force on 01.01.2022 as per Section 129 sub Section (1) sub Clause (a), “the vehicle could have been released on payment of applicable tax”, which this Court had already discussed. It makes it abundantly clear that initially when Section 129 of the Act was enacted, the legislature had considered that there was some tax element, which was to be addressed before the release of the vehicle. Section 122 of the Act, on the other hand, is simpliciter. Section 122 (xiv) of the Act makes one liable to some penalty if a person transports any taxable goods without the cover of the documents as may be specified in this behalf. It has no tax element.

39. A bare reading of the Section 122 of the Act makes it abundantly clear that mere non production of document is punishable herein.

40. The arguments made on behalf of the State does not merit acceptance that this provision under Section 122 of the Act would not apply, when the vehicle is intercepted.

41. Undoubtedly, Section 129 of the Act begins with non obstante clause. Detention, search and seizure may be done. But what followed after such detention. Every detention may not invariably proceed under Section 129 of the Act. This has further been confirmed by virtue of the Circular 94 issued by Government of India, which gives certain conditions, if there are some typographical errors etc. Even after detention, this circular reads that instead of proceeding under Section 129 of the Act, the Revenue may proceed under Section 126 of the Act.

42. Every interception of the vehicle, in contemplation with non compliance of the provisions of the Act, under Section 129 of the Act does not mandatorily require that the procedure and penalty should be under Section 129 of the Act. It depends upon the facts and circumstances of each case.

43. In case, the non compliance of the provisions of the Act may require payment of the tax, perhaps the provision of Section 129 of the Act would come into play in some cases. Further, if it is a case of intentional evasion of tax, perhaps the provision of Section 130 of the Act would come into play. But if both tax and intention factors are not there, undoubtedly, the provision of Section 122 of the Act should be made applicable in such cases.

44. Even otherwise, Section 126 of the Act gives guidelines with regard to general principles for penalty and it cautions the officers not to impose any penalty for minor breaches, which is easier, rectifiable and made without fraudulent intent or gross negligence.

45. In the instant case, as stated, there has been no evasion of tax. There has been no intention to evade tax. Every information was with the GST authorities. Even if the petitioner was not carrying any delivery challan, there was no additional information that could have been provided by virtue of production of delivery challan. E-way bill was properly generated. Tax was properly paid. It was mere non compliance of the provisions of Section 55 (5) (b) of the Act.

46. Under the facts and circumstances of this case, this Court is of the view that instead of proceeding under Section 129, the respondents authorities ought to have proceeded under Section 122 of the Act.

47. In view thereof, this Court is of the view that impugned orders are not in accordance with law. Both the orders deserves to be set aside and writ petitions deserve to be allowed.

48. Both the writ petitions are allowed.

49. The impugned orders dated 09.06.2023 are set aside.

50. The GST authorities are directed to refund the amount to the petitioner, which was deposited on 10.06.2023, pursuant to the impugned orders.

51. However, respondents authorities are at liberty to proceed under Section 122 of the Act.

(Ravindra Maithani, J.)
26.09.2023

Jitendra