

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 19TH DAY OF AUGUST, 2020



BEFORE

THE HON'BLE MR.JUSTICE NATARAJ RANGASWAMY

WRIT PETITION No.202433/2019 (T-RES)

Between:

Shri Venkateshvara Logistics Fleet
Owners and Transport Contractors
C.O. Dolor No.5, Vaigal Nagar
Vandiyar Bit.2, Ring Road
Madurai-625020
HO: City Prof. Wali Galli
Near Satyam Dharam Karita
Khora Kalan, Delhi 36
Branch office at Ishwar Nagar
Ganesh Colony, Opp. APMC
Navanagar, Hubballi

Represented by its
Authorized Representative
Shri Rachya S/o Sri Shivakumar
Murgodamath, Age: 30 years
Residing at Ishwar Nagar
Ganesh Colony
Opp. APMC Navanagar, Hubballi

... Petitioner

(By Sri Rasalkar Narayan Gangadhar Rao, Advocate)

And:

The Assistant Commissioner of Central
Tax & Central Excise, Customs & Service
Tax, Bijapur Division, Shobha Complex
Bagalkot Road, Vijayapur-586 109

... Respondent

(By Smt. Archana P. Tiwari, AGA)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the impugned proceedings for the detention of the goods conveyance vehicle No.HR 55 AF 7882 second time by issue of order in GST MOV 2 dated 10.03.2019 by the respondent, the Assistant Commissioner of Central Tax and Central Excise, Customs and Service Tax, Bijapur Division, Shobha Complex, Bagalkot Road, Vijayapur-586109 as per Annexure-C1, being without jurisdiction and without authority of law, besides being irregular, improper and illegal.

This petition having been heard, reserved for orders on 03.08.2020 and coming on for pronouncement of order this day, the Court made the following:-

ORDER

The petitioner, a transporter registered under the Central Goods and Services Tax Act, 2017 (henceforth referred to as 'CGST Act') and Integrated Goods and Services Tax Act, 2017 (henceforth referred to as 'IGST Act') was engaged by M/s. Venkataramana Traders, a registered supplier in Karnataka (henceforth referred to as the "Supplier") to transport 300 bags of arecanut to a recipient registered dealer in Delhi, M/s. Gulli Enterprises (henceforth referred to as the "Subject recipient"). The consignment was loaded in a truck bearing registration No.HR-55-AF-7882 and when the goods was in transit, the officials of the respondent intercepted the vehicle at Sagar, Shimoga District. On enquiry, the driver of the vehicle furnished the E-way bill and invoice which related to a different consignment of 220 bags of areca by the supplier to the same subject recipient registered at Delhi by a lorry bearing registration No.MH-09-C-4289. Thus, the authorities concerned issued an order dated 07.03.2019 in

Form GST MOV-02 (Annexure-B) and seized the truck and the goods by an order of detention in Form GST MOV-06 (Annexure-B1) dated 07.03.2019. A notice under Section 129(3) of the CGST Act in Form GST MOV No.7 (Annexure-B2) dated 07.03.2019 was issued requiring the payment of tax of Rs.2,12,100/- and penalty of Rs.2,12,100/-. The petitioner claimed that the e-way bill and the invoice relating to the transport by another vehicle bearing registration number MH-09-C-4289 was handed over to the driver by mistake and that the correct e-way bill along with the invoice showing the payment of the Central Tax by the lorry bearing no. No.HR-55-AF-7882 was furnished before the Tax officials at Shimogga, which was not accepted. Thus, a payment challan and a mandate form for a sum of Rs.4,24,200-00 towards inter-State tax of Rs.2,12,100/- and penalty of Rs.2,12,100/- was generated and paid on 08.03.2019. Since the vehicle was seized and parked in the Sagar APMC yard, Agricultural Produce Marketing Committee collected the cess and penalty payable under the Act from the supplier on 07.03.2019.

Upon the payment of tax and penalty, the vehicle and the goods were released on 08.03.2019 as per Form GST MOV-05 (Annexure-B6). Thereafter, an intimation in GST Form DRC-03 was furnished intimating the payment of a sum of Rs.4,24,200-00 on 10.03.2019. The petitioner contended that with the payment of the tax and penalty as stated above, all the proceedings in respect of the notice under Section 129(3) of the CGST Act stood concluded as provided under Section 129(5) of the CGST Act.

2. However, on 10.03.2019 the vehicle bearing No.HR-55-AF-7882 and the goods were again seized at Bijapur and the statement of the driver was recorded by the Assistant Commissioner of Central Tax. An order for physical verification in Form GST MOV-02 (Annexure-C1) was issued on 10.03.2019 purportedly on the ground that "prima facie the documents tendered were found to be defective". The lorry and the goods were stationed at Bijapur. This was followed by a summons under Section 70 of the CGST Act addressed to the driver of the lorry and

the authorized representative of the petitioner. Later, on 12.03.2019, the statement of the driver and the authorized representative was recorded.

3. The petitioner, in terms of its letter dated 13.04.2019 requested the Commissioner of Central Tax and by letter dated 15.04.2019 requested the Additional Commissioner of Central Tax to release the vehicle and the goods since the tax and the penalty was paid pursuant to the notice under Section 129(3) of the CGST Act which concluded the proceedings. Since the respondent did not release the goods and the lorry, the petitioner has filed this petition for quashing the second order of detention as without the authority of law.

4. The learned counsel for the petitioner submitted that once the tax and penalty is paid, all proceedings are deemed to be concluded as provided under Section 129(5) of the CGST Act. Therefore, he contended that initiation of subsequent proceedings to seize the very same lorry and the goods is illegal. He relied on the Judgment of the

Allahabad High Court in VSL Alloys (India) Pvt., Ltd., vs. State of U.P. and another in Writ Tax No.637/2018 and Balkrishna Steel Traders vs. State of Gujarat reported in (2019) 87 ITPJ (G) 338 and M/s. R.K.Overseas vs. Union of India and three others in Writ Tax No.111/2018 and contended that an order passed under Section 129(3) of the CGST Act is though appealable, yet the Allahabad High Court had released the goods. He also relied upon the judgment in Zebronics India Private Ltd., vs. State of U.P. and others in Writ Tax No.799/2017. He also relied upon the judgment in Jaspreet Kalra Vs. Union of India by the Uttarakhand High Court in (2019) 87 ITPJ (G) 570. He also relied upon the judgment of the Karnataka High Court in the case of Sri Sai Balaji Diggers vs. State of Karnataka in W.P.No.11932/2019 to contend that once the penalty under Section 129(5) of the CGST Act was paid, the proceedings have come to an end. He also relied upon the judgment of this Court in W.P.No.13839/2018 and the judgment in W.P.No.6445/2019.

5. The respondent filed a detailed statement of objections and enclosed therewith elaborate documents. A perusal of the documents enclosed along with the statement of objections would disclose that soon after the vehicle and the goods were released on 08.03.2019, the Deputy Commissioner of Central Tax, Shivamogga, addressed a letter dated 09.03.2019 (Annexure-R14) to the Assistant Commissioner of Central Tax, Bijapur, stating,

".... after release of the vehicle, it has come to the notice of this office that the transporter has not paid the said amount through DRO-03, but has only submitted copy of challan for having paid the said amount. As the movement of goods (i.e., Arecanuts) from Nelamangala to Delhi via Sagar is suspicious, this office has made discrete enquiries where M/s. Venkataramana Traders is registered. On verification, it appears that the said supplier is not existing in the address where the GST registration has been obtained. Further, the earlier supplies made by the said trader has

been examined from the e-way portal. On verification, it is seen that the said supplier has made supplies of Arecanuts upto February 2019 to the extent of Rs.49,12,54,817/-. Further, it is also seen that the movement of goods in certain transaction is suspicious even in earlier supplies. It has come to the knowledge of this office that the vehicle bearing No.HR-55AF-7882 is moving in the jurisdiction of your Division. Hence, it is requested to intercept the said vehicle and may be detained as further investigation is required for not only the supplies made in the said vehicle but also for earlier supplies....”

6. Based on the above, the vehicle and the goods in question were seized on 10.03.2019 at Bijapur, by the Assistant Commissioner of Central Tax. Contrarily though and curiously, the Assistant Commissioner of Central Tax while issuing an order for physical verification in Form GST MOV-02 dated 10.03.2019 indicated that “prima facie the documents tendered are found to be defective”. The

Assistant Commissioner of Central Tax recorded the statement of the driver of the lorry on 10.03.2019.

7. Following the above, the Commissioner of Central Tax, Mysuru, addressed a letter dated 12.03.2019 to the Additional Commissioner, stating

".... that there was a reason to believe that the above mentioned unit may also be fictitious. You are directed to effect seizure of the vehicle along with the consignments owned by M/s. Venkataramana Traders under Section 67 of the CGST Act. ...".

8. A contemporaneous letter dated 12.03.2019 (Annexure-R18) was addressed by the Commissioner of Central Tax to Assistant Commissioner of Central Tax, Bijapur, stating,

"In view of the facts mentioned above, there is a reason to believe that the above mentioned unit may also be fictitious. You are directed to effect seizure of the vehicle along with consignments owned by

M/s. Venkataramana Traders under Section 67 of the CGST Act. Further, officers of the Shivamogga Division will be visiting Bijapur to take safe custody of the seized vehicle along with goods”.

9. Pursuant thereto, the Superintendent of Central Tax, Sagar Range, Sagar, took custody of the vehicle and consignment on 14.03.2019.

10. Another letter dated 12.03.2019 (Annexure-R16) was addressed by the Commissioner of Central Tax, Mysuru, to the Additional Commissioner, Bengaluru, stating,

“....On discreet enquiry made by the officers of Shivamogga Division, it appears that the same is non-existent and fictitious. Further, it is also noticed that the said supplier has carried out outward movement of goods worth Rs.73 crore till 08.03.2019. As it is seen that the said supplier is a Migrated tax payer under the administration of State Government, it is requested to do necessary physical

inspection of the premises and furnish a report so as to enable this office to carry out further investigation in this matter”.

11. It is stated that on 12.03.2019, the premises of the registered supplier was inspected and it was found that the said supplier was not having his business in the premises, but, on the other hand, an entity named by M/s. Bhairaveshwara Enterprises was operating from the said premises.

12. A letter dated 12.03.2019 was also addressed by the Commissioner of Central Tax (Annexure-R21) to the Principal Commissioner of Central Tax, Chennai, stating,

“..... Therefore its movement in Sagar-Siddapura border appeared suspicious. In view of such doubt, the State GST authorities were requested to verify the veracity of the registered address of M/s. Venkataramana Traders. The SGST authorities after conducting the physical verification found that M/s. Venkataramana Traders does not exist in the said address as registered in GSTN and in the

said address, M/s. Bhairaveshwara Enterprises exists....

It has also come to our notice that M/s. Venkataramana Traders has made transactions with the following assessee:

M/s. Ramdev Enterprises, Chennai.

In view of the facts mentioned above, there is a reason to believe that the above mentioned units may also be fictitious. To ascertain the reality of the transactions, as mentioned above, it is requested to cross verify the address of units mentioned under your jurisdiction namely, M/s. Ramdev Enterprises, Chennai..."

13. Another letter dated 12.03.2019 (Annexure-R22) was addressed to the Commissioner of Central Tax, Bengaluru, for physical inspection of M/s. M.M. Enterprises, Bengaluru, and which stated,

"However, it was seen that as per the documents the vehicle was originated from Dobbaspeth, Bengaluru, and destined to New

Delhi and the consigner was M/s.Venkataramana Traders having GSTIN 29BKOPA9171P1ZA. Therefore, its movement in Sagar-Siddapura border appeared suspicious. In view of such doubt, the State GST authorities were requested to verify the veracity of the registered address of M/s. Venkataramana Traders. The SGST authorities after conducting the physical verification found that M/s. Venkataramana Traders does not exist in the said address as registered in GSTN and in the said address M/s. Byraveshwara Enterprises exists. The owner of the building has also certified that he had not leased the premises to any such trader called M/s. Venkataramana Traders. In view of this suspicion, further verification was conducted with regard to the transactions carried out by M/s. Venkataramana Traders. On further verification made by the officers of Shivamogga Division, it is noticed that the said supplier has carried out outward movement of goods worth Rs.75 crore till 08.03.2019.

It has also come to our notice that M/s. Venkataramana Traders has made transactions with the following assessee:

M/s. M.M.Enterprises, Bengaluru.

In view of the facts mentioned above, there is a reason to believe that the above mentioned unit may also be fictitious. To ascertain the reality of the transactions as mentioned above, it is requested to cross verify the address of unit mentioned under your jurisdiction i.e., M/s. M.M.Enterprises and the verification report along with spot mahazar in this regard may please be sent for further action at this end."

14. Contemporaneously, another letter dated 12.03.2019 (Annexure-R23) was addressed to the Commissioner of Central Tax, Ahmedabad, in respect of physical inspection of M/s. Pragathi Enterprises with whom the said M/s. Venkataramana Traders had dealt.

15. Following the above, the Principal Commissioner of Central Tax, Bengaluru, vide his letter

dated 14.03.2019 (Annexure-R25) indicated that M/s. M.M.Enterprises was a fictitious entity and that action was initiated for cancellation of the registration of M/s. M.M.Enterprises. Likewise, the Commissioner of Central Excise, Ahmedabad, in terms of its letter dated 15.03.2019 (Annexure-R26) indicated that M/s. Pragathi Enterprises, Ahmedabad, was a fictitious entity and this was followed by a letter by the Commissioner of CGST, Chennai, dated 15.03.2019 (Annexure-R27) whereby it is disclosed that M/s. Ramdev Enterprise was closed and when the premises was inspected, no documents or details was found except the copy of GST certificate of M/s. Ramdev Enterprises. The Principal Commissioner of New Delhi, addressed a letter dated 15.03.2019 (Annexure-R28) stating that M/s. Gulli Enterprises was inspected and the land owner of the premises where M/s. Gulli Enterprises was situate informed that he had entered into rent agreement with Mrs. Chanthuglo M.N. Gullie, but she never came to occupy the premises. The owner is stated to have mentioned that the premises was rented out to

some other tenant. Consequent thereto, the Commissioner of Central Tax, Mysuru, also addressed a letter dated 12.03.2019 (Annexure-R30) to the Manager, Bank of Baroda, Mysore for freezing the bank account of Mr. Alpesh, who was the proprietor of M/s. Venkataramana Traders. However, the bank had declined to freeze the account as the account was with Tumkur Branch and not Mysuru.

16. The Principal Commissioner, Mysuru, addressed a letter dated 21.03.2019 (Annexure-R31) to the Principal Commissioner of CGST, New Delhi, wherein it was claimed that the transaction between M/s. Venkataramana Traders and M/s. Gulli Enterprises was a fake invoice racket to claim the input tax credit. Therefore, it was requested that the registration of M/s. Gulli Enterprises be cancelled. A similar letter dated 22.03.2019 (Annexure-R32) was addressed to cancel the registration of M/s. M.M.Enterprises.

17. Thus, the respondent contended that the proprietor of M/s. Venkataramana Traders was the mastermind behind the evasion of tax. Therefore, the respondent contended that the goods in question cannot be released and further, investigation is necessary to be carried out. The learned counsel claimed that the petitioner was neither the supplier nor the recipient of the goods and therefore he had no locus standi to file the present writ petition. The learned counsel though did not raise any objection regarding the availability of an alternative remedy in the statement of objection but orally contended that the petition was not maintainable in view of the alternate remedy and also on the ground that the petitioner had not challenged the Order of seizure dated 12.03.2019.

18. The counsel for the petitioner has filed a detailed rejoinder contending that it is a transporter and that it is under a contract of bailment to ensure the transportation of the goods to the destination. Further, as

the vehicle belonging to the petitioner is seized along with the goods, the petitioner claimed it has the locus standi to present this writ petition. It contended that the seizure of the vehicles and the goods on 10.03.2019 evidenced by the issuance of GST MOV-2 indicated that it was a seizure under Section 129 of the CGST Act which was not permissible. It contended that the provision of Section 67 of the CGST Act cannot be invoked to seize goods which is in transit and even if it is permissible, then the seizure had to be in form GST INS-01. Further, it claimed that under Rule 140 of the Central Goods and Services Tax Rules, 2017 (henceforth referred to as the 'CGST Rules'), the tax officials were bound in law to obtain a bond and release the goods and having regard to the fact that the goods are perishable in nature, it was incumbent upon the authorities to release the vehicle and the goods as the goods had suffered tax twice and penalty was recovered once. The petitioner placed additional documents on record which are an affidavit filed by the proprietor of registered recipient (M/s Gulli Enterprises) conforming that it had purchased

the goods from Venkataramana Traders and that it would account the said purchase and pay tax on the goods on their sale. The petitioner also placed on record its registration as downloaded from the GST web site and also the returns filed by it up till the financial year 2019-20.

19. In so far as the question of locus standi is concerned, the petitioner is a registered transporter and is a bailee of the goods and the contract of bailment terminates only upon the petitioner delivering the consigned goods at the destination. Even otherwise, the CGST Act recognizes the role of a registered transporter and its competence to generate the E-way bill from the GST portal in Form GST EWB-01. Every time a vehicle is intercepted, it is the transporter who has to furnish the documents that corresponds to the goods in transit. Even otherwise, the vehicle belonging to the petitioner is seized and therefore the petitioner is entitled to file this writ petition. Further the petitioner has pleaded that the supplier is under an obligation to pay the demurrage

charges and therefore, the petitioner is entitled to challenge the proceedings and seek release of the goods so that it could recover all its claims from the supplier or the recipient or from the sale of the goods if either the supplier or the recipient fails to pay the bailment charges and other incidental or related expenses incurred.

20. Section 15 of the Carriage by Road Act, 2007 provides

"15. Right of common carrier in case of consignee's default. -

(1) If the consignee fails to take delivery of any consignment of goods within a period of thirty days from the date of notice given by the common carrier, such consignment may be deemed as unclaimed:

Provided that in case of perishable consignment, the period of thirty days shall not apply and the consignment shall be deemed unclaimed after a period of twenty-four hours of service of notice or any lesser period as may

be mutually agreed to by and between the common carrier and the consignor.

(2) In the case of an unclaimed consignment under sub-section (1), the common carrier may,-

(a) if such consignment is perishable in nature, have the right to sell the consignment; or

(b) if such consignment is not perishable in nature, cause a notice to be served upon the consignee or upon the consignor if the consignee is not available, requiring him to remove the goods within a period of fifteen days from the date of receipt of the notice and in case of failure to comply with the notice, the common carrier shall have the right to sell such consignment without any further notice to the consignee or the consignor, as the case may be.

(3) The common carrier shall, out of the sale proceeds received under sub-section (2),

retain a sum equal to the freight, storage and other charges due including expenses incurred for the sale, and the surplus, if any, from such sale proceeds shall be returned to the consignee or the consignor, as the case may be.

(4) Unless otherwise agreed upon between the common carrier and consignor, the common carrier shall be entitled to detain or dispose off the consignment in part or full to recover his dues in the event of the consignee failing to make payment of the freight and other charges payable to the common carrier at the time of taking delivery”.

21. In the case on hand, the petitioner's vehicle was detained and its driver was constrained to be with the vehicle from 07.03.2019 till date, the vehicle had commenced the tripsheet and the 300 bags of areca nut were kept loaded onto the vehicle till date resulting in demurrage charges which the petitioner is entitled to recover from the supplier and in default, the petitioner is entitled to recover the same by sale of the goods

consigned. Thus, the petitioner is undeniably under an obligation to ensure that the goods consigned reach the destination and thus, has the necessary locus standi to file this petition.

22. In so far as the remedy of an appeal, Section 107 of the CGST Act provides that every Order passed by an adjudicating authority is appealable. Sub section (4) of Section 2 defines an adjudicating authority as an authority under the Act which is empowered to pass any Order under the Act. This virtually creates a level of an appeal against any order passed by any authority under the CGST Act, regardless of the fact whether such an Order is really adjudicatory or not. In the instant case, though there is a direction by the Commissioner of Central Tax, Mysore dated 12.03.2019 to the Assistant Commissioner of Central Tax to seize the vehicle and the goods, there is no authorization in GST Form INS-01 or seizure in GST Form INS-02. Thus, in the eye of law there is no seizure and

consequently, there is no Order that the petitioner has to appeal against.

23. It is trite that an alternative remedy is not an absolute bar for maintaining a writ petition and it is profitable to refer the decision of the Apex Court in **Commissioner of Income Tax and others vs. Chhabil Dass Agarwal** reported in **2014 (1) SCC 603**. If for any reason, it is found that the authorities of the State have acted arbitrarily or in violation of the principles of natural justice, more particularly when the goods involved are perishable in nature and where the authorities do not act with alacrity or act in absolute violation of the provisions of the Act or if the alternative remedy is neither efficacious nor practical, this Court cannot shirk its Constitutional duty to ensure a level playing field to a citizen who cannot take on the mighty State. In the present case, having regard to the findings that would follow, this Court holds that in the peculiar facts of this case, this Court is entitled

to exercise jurisdiction to set right a palpable illegal proceeding.

24. On careful consideration of the averments made in the writ petition, counter, rejoinder and the arguments advanced, what emerges is that the vehicle and the goods were intercepted at Sagar for the first time for checking the e-way bills, purportedly in exercise of power under Section 68 of the CGST Act. The driver of the vehicle was carrying documents of another consignment and thus there was a mismatch. Thus, the vehicle was searched, the statement of the driver was recorded and the vehicle was detained and a notice under Section 129(3) was issued. The authorized representative appeared before the authorities at Sagar and handed over the correct e-way bill and the corresponding invoice. Yet, the authorities insisted and the petitioner paid the applicable IGST and the penalty. The vehicle was later released on 08.03.2019. Thus in view of Section 129 (3) of the Act, the proceedings

in so far as the consignment was concerned stood concluded.

25. Later, on a "reason to believe" that the registered supplier at Nelamangala was not existing at the registered address and that the said supplier had made supplies to the tune of *Rs.49,12,54,817/-* till February 2019, some of which were suspicious, the Deputy Commissioner of Central Tax, Shivamogga, addressed a letter dated 09.03.2019 (Annexure-R14) to the Assistant Commissioner of Central Tax, Bijapur to intercept and detain the vehicle for further investigation. Based on the above, the Assistant Commissioner of Central Tax, Bijapur intercepted the vehicle and detained the vehicle and issued GST MOV-2 on the ground- "prima facie the documents tendered are found to be defective". This therefore meant that the vehicle and the goods were detained for the second time under Section 129 of the CGST Act though the earlier proceedings in respect of the same vehicle and the goods had concluded. It is relevant to note that this

subsequent interception and detainment was not in exercise of power under Section 67 of the CGST Act as it was not done by a proper officer who should be an officer not below the rank of a Joint Commissioner. Further any seizure in exercise of power under Section 67 of the CGST Act should be by an officer who is authorized by the proper officer in GST INS-01 and the seizure of goods should be in Form GST INS-02. Since there is neither the authorization in Form GST INS-01 or the seizure in Form GST INS-02, it can safely be held that the subsequent interception and detainment was not in exercise of Section 67 of the CGST Act.

26. Close on the heels of the above, the Commissioner of Central Tax, Mysuru, addressed a letter dated 12.03.2019 to the Additional Commissioner to seize the vehicle along with the consignments owned by M/s. Venkataramana Traders under Section 67 of the CGST Act. The Assistant Commissioner of Central Tax, Bijapur was directed to seize the vehicle and the goods. Later the

Commissioner of Central Tax, Mysuru, instructed its subordinates that the supplier was responsible for outward movement of goods worth Rs.73,00,00,000-00 (jump of Rs.30,00,00,000/-) till 08.03.2019 and directed physical inspection of the premises and furnish a report so as to enable further investigation in the matter. Later, in an effort to unearth the genuinity of the supplies made by the supplier to various entities in Chennai, Ahmedabad, Delhi letters were written to check the registered addresses of the recipients. It was found that the registered supplier was not doing business at the registered address and likewise the recipients were not found doing any business at the registered address. The department therefore sent out letters to freeze the bank account of the proprietor of the supplier and obtained information from the Income tax about the returns filed by him.

27. It is therefore clear that the department has initiated an action under Section 67 of the CGST Act to identify the fraudulent issue of invoice by the supplier to

avail input tax credit. The respondent was not able to indicate the status of the enquiry under Section 67 of the CGST Act namely whether it had determined the input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts and or whether it had conducted a scrutiny of the returns filed by the supplier, and as to whether it had conducted an audit etc. A memo dated 30.07.2020 was filed enclosing the cancellation of the registration of the supplier with effect from 31.01.2019

28. However, the moot question is whether the department is entitled to seize a consignment of perishable goods in transit more particularly when it is accompanied by a lawful e-way bill, invoice and when it has paid the applicable 1GST.

29. Under Section 83 of the CGST Act, during the pendency of any proceedings under Section 67 or 74, the Commissioner in order to secure the interest of the revenue can provisionally attach any property. However,

such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the Order. Rule 140 of the CGST Rules provide that the seized goods may be released on a provisional basis upon the execution of a bond for the value of the goods in Form INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

30. Under Rule 141 of the CGST Rules, any perishable goods seized shall be released forthwith by an Order in Form GST INS-05 if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable whichever is lower. Thus, having regard to the scheme of the CGST Act and the rules, whenever perishable goods are seized, it is the duty of the seizing authorities to obtain a bond and or security or require the payment of the market price of the goods or the amount of tax, interest and penalty whichever is lower.

This is precisely the reason that whenever such perishable goods are intercepted and detained under Section 129 of the CGST Act, the period for payment of tax and penalty in respect of perishable goods can be reduced to seven days.

31. The Act provides that any person trading in goods or services exceeding value of Rs.20,00,000-00 should be registered under the Act and such application when filed would be verified and only after it is found that the documents are in order that such person is registered. The proper officer may after grant of registration physically verify the place of business of a registered person. Such registration could be canceled if the person does not conduct any business from the declared place of business. If the supplier has made outward movement of goods worth Rs.73,00,00,000-00, then the recipients must have availed the tax credit and this could not have gone unnoticed by the department. This could be attributed to the lackadaisical attitude of the department and the case of the supplier in the instant case should be an eye opener

for the State authorities under the Act to ascertain whether the registered establishments are doing business at the registered places and also to take pro active steps for the installation of Radio Frequency Identification devices as this would help the easy tracking of the movement of goods and for verification of e-way bills and the payment of tax etc. Thus, the revenue has to put its house in order and strive to achieve the lofty targets set by the CGST Act by effectively using the tools of audit, inspection, seizure, prosecution, recovery etc.

32. In view of the above and in the facts and circumstances of this case, it is held that in a proceeding under Section 67 of the CGST Act against the supplier, the respondent was not justified in seizing the perishable goods in transit, moreso when the goods had suffered tax and penalty. Hence, this writ petition is allowed and the respondent is directed to forthwith release the lorry bearing registration number HR-55-AF-7882 and the goods carried by it which is covered by the E-Way bill

181110112217. However, liberty is reserved for the proper authority under the CGST Act to continue the proceedings initiated under Section 67 and determine the amount of tax payable on the previous supplies made under Section 74 or initiate any penal action under Section 132 of the CGST Act against the supplier or the registered recipients for the alleged fraudulent availing of input tax credit or the wrongful generation of invoices.

33. In view of the disposal of this writ petition, I.A.No.2/2019 for release of the goods would not survive for consideration and hence, it is rejected.

**Sd/-
JUDGE**