

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11383 of 2018**

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VANRAJBHAI HASMUKHBHAI CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:

MS SANDHYA D NATANI(3678) for the PETITIONER(s) No. 1

for the RESPONDENT(s) No. 1

MR PRANAV DAVE, AGP for the RESPONDENTS

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**

and

HONOURABLE MR.JUSTICE A.Y. KOGJE**Date : 30/07/2018****ORAL ORDER****(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

Draft amendment allowed.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order directing the respondents to release Truck No.GJ-03-AZ-6473 along with goods therein.

3. When initially the petition was filed, it was the case on behalf of the petitioner that the Truck in question came to be detained by the appropriate authority under the GST, having noticed that the e-way bill was not tendered for the goods in movement, bill amount is under-invoice and LR is blank. It was the case on behalf of

the petitioner that the petitioner is ready and willing to pay taxes determined in accordance with law. During the pendency of the petition, the final order of assessment has been passed under Section 129(3) of the Central Goods and Services Tax Act and the order of demand of tax and penalty has been passed and therefore, by way of amendment, the same are under challenge.

4. An affidavit in reply is filed on behalf of the Department pointing out that the petitioner is a habitual offender and is in habit of transporting goods without e-way bill and similar modus operandi is adopted to pay tax, the moment he is caught. It is submitted that there are 10 instances wherein the petitioner is caught without e-way bill and therefore, the petitioner is habitual defaulter and tax evader.

5. No so far as challenge to the final order passed under Section 129(3) of the Act is concerned, it is submitted that the said order is appealable and therefore, the present petition challenging the final order under Section 129(3) of the Act may not be entertained.

6. Now so far as challenge to the final order under Section 129(3) of the Act is concerned, it is submitted by Ms.Sandhya Natani, learned Advocate

appearing on behalf of the petitioner that the said order is passed without giving any sufficient opportunity and only 7 days time was granted before the impugned order under Section 129(3) of the Act was passed and therefore, the same can be said to be in breach of principles of natural justice and therefore, present petition be entertained.

7. Having heard learned Advocates appearing for the respective parties and considering the facts narrated hereinabove, more particularly when the petitioner is reported to be a habitual defaulter and tax evader and is found to be involved in at least 10 cases wherein the petitioner was caught without e-way bills, this Court refuses to exercise discretion in favour of the petitioner. The modus operandi adopted by the petitioner is to transport the goods without e-way bill and as and when he is caught and the Truck is detained, he will make payment of tax and get the Truck released.

8. So far as challenge to the impugned order passed under Section 129(3) of the Act is concerned, the same is appealable order and all the defences /contentions may be available to the petitioner as and when the appeal is preferred.

9. In the facts and circumstances of the case and

in view of alternative statutory remedy available by way of appeal, present petition deserves to be dismissed and it is accordingly dismissed.

(M.R. SHAH, J)

SHITOLE

(A.Y. KOGJE, J)

