

A.F.R.

Court No. - 21

Case :- WRIT TAX No. - 41 of 2018

Petitioner :- M/S Om Disposals

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C.,A.S.G.I.,Krishna Agarawal,Manish Goyal

With

Case :- WRIT TAX No. - 645 of 2018

Petitioner :- M/S Fenasia Ltd.

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rahul Agarwal,Tarun Gaur

Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Krishna Murari,J.

Hon'ble Ashok Kumar,J.

By means of this petition filed under Article 226 of the Constitution of India petitioners have challenged the authority of the State of U.P. for issuing the notification dated 21.07.2017 whereby which E-way bill-01 has been prescribed for the purposes of import of goods for an amount over and above Rs.50,000/- from outside the State of U.P. into the State of U.P. under the newly introduced provisions of Goods and Service Tax Laws. The aforesaid aforesaid requirement has been prescribed by the State under Rule 138 of the U.P. Goods and Service Tax Rules (herein short 'GST Rules').

The questions involved in all the writ petitions are identical and for the facility, the facts of Writ Tax No. 41 of 2018 (M/s Om Disposals, Dhanoura Road, Near J.P. Public School, Chandpur, Bijnor, U.P.) are being referred to.

We have noticed that the aforesaid writ petition has been filed in the month of January and while entertaining the said writ petition, this Court has granted time to the Standing Counsel for filing counter affidavit but till date no counter affidavit has been filed by any of the respondents.

Brief facts of the case are that the petitioner is proprietorship concerned and is engaged in the process of manufacturing of disposable paper cups, plates etc. The petitioner is registered under the provisions of GST Laws and the competent authority empowered to grant registration to a dealer has allotted GSTIN number to the petitioner. The petitioner manufacturing unit is

situated near J.P. Public School, Chandpur, Bijnor, U.P.

An order was placed by the petitioner to M/s JV Engineering Works, CB-103, Ring Road, Naraina, New Delhi for purchase of paper cup making machine. The said machine was to be dispatched by the seller situated at New Delhi to petitioner manufacturing unit situated at Bijnor (U.P.). The seller situated at New Delhi issued an advance receipt evidencing receipt of Rs.7,08,000/- from the petitioner towards the supply of paper cup making machine. Due to some reason, delivery was delayed though advance payment has been made by the petitioner. After gap of certain period, dealer at Delhi has dispatched the machine without intimating the petitioner and has issued invoice no.014 dated 18.11.2017. The goods were being transported by Lorry receipt dated 18.11.2017 issued by one M/s Mithila Transport Service. The vehicle was intercepted by the Mobile Squad Officials and interception memo no.106 dated 19.11.2017 was issued under Section 129(1) of the U.P. SGST Act, 2017. The reason specified/mentioned in the aforesaid interception memo was that the goods were being transported without E-way bill.

Consequential show cause notice dated 20.11.2017 was issued under Section 129(3) of the Act which was served on the driver of the vehicle.

The contention of the learned counsel for petitioner is that the petitioner came to know about the dispatch of the goods only after interception by the Mobile Squad Authorities. Immediately after knowing the said interception and the defect indicated by the Mobile Squad Authorities, the petitioner generated E-way bill on 20.11.2017 itself.

The petitioner thereafter filed his reply on 20.11.2017 and has provided all supporting documents along with E-way bill which was generated by it in original.

On 22.11.2017, the consignment was seized eventually and penalty order was passed by the authority directing the petitioner to pay a sum of Rs.1,08,000/- towards tax and sale amount towards penalty. The sole ground for passing the order was at the time of interception the goods were not accompanied with E-way bill-01.

Against the order dated 22.11.2017 appeal has been preferred by the petitioner before the Additional Commissioner, Grade-2 (Appeals)-1, State Taxes, Noida, which was dismissed by the appellate authority vide order dated 14.12.2017 mentioning therein the same reason as were mentioned by the Mobile

Squad Authorities.

The contention of the petitioner is that the State authority has no jurisdiction to prescribe any documentation in respect of transaction which is covered under IGST Act. This issue has not been dealt with by the appellate authority. It is submitted by the petitioner that in view of the fact that the Tribunal contemplated under the GST Act has not yet been constituted and the fact that challenge is to a notification issued by the State of U.P., the petitioner has filed instant writ petition with a prayer that the notification dated 21.07.2017 which provides that E-way bill-01 for importing goods for more than Rs.50,000/- be quashed.

A further prayer has also been made for quashing of the order passed by Mobile Squad and confirmed by the appellate authority.

The contention on behalf of the petitioners, in nutshell, is that under Section (xx) and Section (xv) of the IGST, provisions of CGST Act, 2017 pertaining to interception, search, imposition of interest and penalty have been made applicable to transaction covered under the IGST Act. He further submits that Section 2(9) of IGST Act as also Section 2(53) of CGST Act, defines 'Government' to be the 'Central Government'. Rule 138 of the CGST empowers the Central Government, specify by means of a notification, the documents that a person incharge of conveyance carrying any consignment of goods shall carry till such time as E-way bill system is developed and approved by the council. The Act only authorizes the Central Government to specify the documents in respect of transaction covered under the IGST Act or CGST Act.

Learned counsel for the petitioner further submits that the notification dated 21.07.2017 issued in exercise of power under Rule 138 of the U.P. GST Rules can be apply to transaction and movement of the goods within the State as the U.P. GST Rules are only applicable to such movements of the goods. Inter-State transaction falls within the purview of IGST Act, and it is the Central Government alone which can specify the documents that are required to be carried by transporter or other person during inter-State movements of the goods. He further submits that the Central Government having not prescribed any documents in this regard, the petitioner was under no obligation to carry any documents apart from tax, invoice, challan, goods receipt etc along with consignment.

Lastly, the learned counsel for the petitioner submitted that the consignment, in question, could not be detained, seized and subjected to levy of penalty for not carrying any form/document

which the State of U.P. has prescribed as it has no jurisdiction to prescribe, any document for inter-State movement of goods.

We have considered the arguments and perused the record.

The issue came up for consideration before Kerala, Madras and Telangana and Andhra Pradesh High Courts which have categorically held that the State Legislature or the State Government has no power to make law/rules to govern interstate movement of goods and cannot even detain a consignment for not carrying documents prescribed by them for transporting goods in the course of interstate trade. Reference may be made to the judgment of the Hon'ble Madras High Court in M/s Ascis Trading Company v. The Assistant State Tax Officer 2017 (71) STJ 143 and the judgment of High Court of Kerala in Sri Shaji Gregory G.S. Vs. The State of Kerala 2017 (71) STJ 164.

Sri Rahul Agarwal, learned counsel for the petitioner has also placed reliance upon a Division Bench decision of this Court dated 13.04.2018 rendered in Writ (M/B) No. 5536 of 2018, Satyendra Goods Transport Corporation. In the said case 220 pieces of Chocholate Display Cooler of M/s Voltas Ltd. were being transported from Pant Nagar, State of Uttarakhand to Radiant Enterprises, Kolkata, West Bengal. The consignment was intercepted at Lucknow in State of U.P. on the ground that original TDF form was not available. Notice under Section 129(3) of U.P. GST Act, 2017 was issued and an order under clause (b) of Section 129(1) for payment of tax and penalty was passed by proper officer.

On a challenge being made the Division Bench held as under:

*"A process for initiation of a new indirect taxation regime was put into motion by the Constitution (101st Amendment) Act 2016 dated 8.9.2016 by which Articles 246-A, 269-A, 279-A and other provisions of the Constitution were amended. As per the amended Article 269-A, which pertains to levy and collection of Goods and Services Tax in the course of **inter-state trade or commerce** such tax shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Service Tax council. Import within the territory of India was included within the meaning of the term "Inter-State Trade or Commerce" and in respect of it tax, as aforesaid, would be levied and collected by the Government of India.*

In pursuance to the aforesaid 101st Amendment of the Constitution three enactments were passed by the Parliament, i.e. the Integrated Goods and Services Tax Act 2017; the Central Goods and Services Tax Act 2017; the Union Territory Goods and Services Tax Act 2017 (hereinafter referred as "U.T.G.S.T. Act"). In addition to the aforesaid three enactments, the

Legislature of the State of Uttar Pradesh passed an enactment known as the "U.P.G.S.T. Act 2017".

In matters of **inter-State Trade and Commerce** including import into the territory of India and out of it, the I.G.S.T. Act 2017 applies, whereas, in matters of **intra-State trade and commerce** the "C.G.S.T. Act 2017" and the State Goods and Services Tax Acts, which in this case is "U.P.G.S.T. Act 2017", apply.

Section 3 of the I.G.S.T. Act 2017 provides that the Board may appoint such Central Tax Officers as it thinks fit for exercising powers under this Act. There is no dispute about the fact that by virtue of section 4 of the I.G.S.T. Act 2017 the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorized to be the proper officers for the purposes of the said Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council by notification, specify. Similarly for enforcement of C.G.S.T. Act 2017 by virtue of section 6 thereof State Authorities under U.P.G.S.T. Act 2017 are also empowered to enforce C.G.S.T. Act 2017.

It is also not in dispute that by virtue of section 20(xv) of the "I.G.S.T. Act 2017" the provisions of "C.G.S.T. Act 2017" apply in respect of matters covered by the I.G.S.T. Act 2017 on the subject of inspection, search, seizure and arrest. Chapter XIV of the C.G.S.T. Act 2017 deals with inspection, search, seizure and arrest. While section 67 of C.G.S.T. Act 2017 deals with the power of inspection, search and seizure, section 68 deals with inspection of goods in movement and it is this provision with which we are primarily concerned. It reads as under:

"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."

As would be evident from its reading, the documents which 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, are such, as may be prescribed. Now this prescription has been made under Rule 138 of the C.G.S.T. Rules 2017 which reads as under:

"138. E-way rule

Till such time as an E-way bill system is developed and approved by the

Council, the Government may, by notification, specify the documents that the person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage."

As would be evident from a reading of the aforesaid rule it refers to an E-way bill System which is to be developed by the G.S.T. Council and it provides for an interim arrangement by the Government till an E-way Bill System is so developed and approved. The words "Government" used therein is defined in section 2(53) of C.G.S.T. Act 2017 to mean the "Central Government". It is not in dispute that on the date of interception of the vehicle in question E-way Bill System had not been developed, therefore, the documents which were required to be carried during movement of any consignment of goods were those which may have been notified by the Central Government under Rule 138 of the C.G.S.T. Rules 2017, as, by virtue of section 20(xv) thereof, it is this rule which is applicable to matters pertaining to I.G.S.T. Act 2017. Neither the State of U.P. nor the Government of India has brought on record any such notification which may have been issued prescribing the relevant documents to be carried in the course of such movement as is referred in section 68 of the C.G.S.T. Act 2017 and Rule 138 of the C.G.S.T. Rules 2017. In fact, Dr. Deepti Tripathi, learned counsel for the Government of India made a categorical statement on the basis of instructions that T.D.F. Form was not required to be carried for movement of inter-State goods to which the I.G.S.T. Act 2017 applies. In fact, as per Dr. Deepti Tripathi, learned Advocate appearing for the Government of India, C.G.S.T. Rules 2017 were amended on 30th August 2017 and vide another notification dated 29.12.2017 this amendment containing the E-way Bill system was to come into force from 1.2.2018, but, the notification dated 29th December 2017 was rescinded by a subsequent notification dated 2.2.2018. Thereafter the notification dated 7th March 2018 has been issued regarding E-way Bill System.

Thus, E-way bill system has been prescribed only recently by a notification of the Government of India dated 7th March 2018 whereby Rule 138 of the C.G.S.T. Rules 2017 has been amended and other Rules have been incorporated in this regard. These amendments are to come into force from a date to be specified by the Central Government.

Be that as it may, the fact of the matter is that on the date of incident i.e. 17.12.2017 neither there was any E-way Bill System nor any notification by the Central Government under Rule 138 of the C.G.S.T. Rules 2017 requiring the carrying of a T.D.F. Form or any other such document in the course of inter-State supply/movement of goods, as such, the very basis for passing the impugned orders and taking action against the petitioner as impugned herein is apparently erroneous and illegal. In view of the above it cannot be said that there was any intent to evade tax.

As regards the contention of Sri Rahul Shukla, based on the notification issued under Rule 138 of the U.P.G.S.T. Act 2017, no doubt the said notification also takes into consideration the requirement of carrying documents i.e. T.D.F. Form-1, in respect of inter-State movements of goods, but, in our view it is only the Government of India which is empowered to issue such a notification in respect of inter-State trade under section 20(xv) of the I.G.S.T. Act 2017 read with section 68 of the C.G.S.T. Act 2017 and Rule 138 of the C.G.S.T. Rules 2017 made thereunder, as, the term "Government" used in Rule 138 is defined in

section 2(53) of the C.G.S.T. Act 2017 to mean the 'Central Government', just as, under section 2(9) of the I.G.S.T. Act 2017 'Government' means 'the Central Government'. Moreover, with respect to Goods and Service Tax in relation to inter-State Trade the Parliament alone has the authority to legislate as would be evident from the 101st Amendment to the Constitution.

In this view of the matter we are of the considered view that on the relevant date i.e. 17.12.2017 there was no requirement of carrying T.D.F. Form-1 in the case of an inter-State supply of goods. In fact on the relevant date there was no prescription of the documents to be carried in this regard under Rule 138 of the C.G.S.T. Act 2017, accordingly, the seizure and penalty imposed upon the petitioners based on the notification dated 21.7.2017 issued under Rule 138 of the U.P.G.S.T. Act 2017, which was not applicable, is clearly illegal.

Cross-empowerment under section 4 of I.G.S.T. Act 2017 and section 6 of C.G.S.T. Act 2017 merely means that State Authorities empowered under the U.P.G.S.T. Act 2017 can also enforce the provisions of C.G.S.T. Act 2017 or I.G.S.T. Act 2017, but it does not mean that they can apply the provisions of U.P.G.S.T. Act 2017 or Rules made thereunder to cases of inter-State trade in violation of section 20(xv) of I.G.S.T. Act 2017. It does not mean that the State Government can issue a notification under Rule 138 of U.P.G.S.T. Rules made under U.P.G.S.T. Act 2017 to prescribe documents to be carried in an inter-state supply of goods and services regarding which only the Central Government has the power under section 20(xv) of I.G.S.T. Act 2017 read with section 68 of C.G.S.T. Act 2017 and Rule 138 of C.G.S.T. Rules 2017.

The fact that the authorities under the State Act were empowered to exercise the powers under the C.G.S.T. Act 2017, assuming it to be so, is inconsequential, as, it is not their jurisdiction to exercise power of seizure which is under question, but, the manner in which they have exercised it on the basis of an inapplicable provision of law, as, they have proceeded on the presumption that T.D.F. Form-1 prescribed under a notification issued by the State Government under Rule 138 of the Rules made under the U.P.G.S.T. Act 2017, was required to be carried, which is not the requirement in law. For this very reason the judgment dated 29.1.2018 passed by a Coordinate Bench of this Court in Writ Tax No.95 of 2018 does not apply to the instant case, as the challenge therein was to the very power of the State Authorities under U.P.G.S.T. Act 2017 to seize goods involved in inter-state supply. Here the question is whether petitioner was required to carry T.D.F. Form I or not, which we have answered in the negative.

As regards the provisions of section 129 U.P.G.S.T. Act 2017 under which the impugned action has been taken, the same is not applicable to an inter-State trade or commerce. By virtue of section 20 of the I.G.S.T. Act 2017 it is section 129 of C.G.S.T. Act 2017 that would apply, but this is not the ground on which we are invalidating the impugned action, as, if it is traceable to the aforesaid provision of C.G.S.T. Act 2017 which is *pari materia* to the State Act, then mere wrong mentioning of a provision would be too technical a ground for interference. We are invalidating the action on account of absence of any notification by the Central Government under Rule 138 of C.G.S.T. Rules 2017 and in view of incorrect application of notification issued by the State Government under Rule 138

of U.P.G.S.T. Rules."

The contention of the petitioner that the appellant authority has recorded its reasons that the E-way bill having been downloaded after the interception of the consignment (even though produced along with the reply to the show cause notice) and should therefore be disregarded, runs contrary to several decisions of this Hon'ble Court in which it has specifically opined that the purpose of issuing show cause notice is to provide an opportunity to a dealer to remove the defects and explain its conduct, in case document furnished along with the reply to the show cause notice were not given due credence or not taken into account, the purpose of issuance of show cause notice stand defeated. For this purpose, the petitioner relies upon the judgment of this Court in *Ganpati Udyog Vs. C.C.T.* 2012 NTN (vol. 49) 142 and *Balaji Timber Paints Vs. C.C.T.* 2010 NTN (vol. 43) 53 and *P.S. Sales Pvt. Ltd. Vs. C.C.T.* 2015 NTN (vol. 58) 379.

It is further submitted that under Section 129(1) of the UPGST Act or the CGST Act, where "any person" transports any goods in contravention of the provisions of the Act, they are subject to detention, seizure and penalty. Section 129(4) specifically provides that no tax, interest or penalty shall be determined without giving "the person concerned" an opportunity of being heard.

On the other hand, Sri A.C. Tripathi, learned Standing Counsel for the State has invited our attention to a final order dated 24.08.2017 passed by another Division Bench of this Court in PIL No. 38246 of 2017 (U.P. Kar Adhivakta Sangathan Vs. State of U.P. and others) and submitted that the validity of the notification dated 21.07.2017 has already been upheld by a Coordinate Bench of this Court. Challenge to the same notification cannot now be entertained, as the notification dated 21.07.2017 (and the Circulars issued thereunder) issued by the State of U.P. prescribing various documents and the Forms of documents liable to be carried along with the goods in transit has already been upheld. Shri Tripathi further submits that the judgment of the Lucknow Bench dated 13.04.2018 in *Satyendra Goods Transport Corporation (supra)* has not considered the judgment dated 24.08.2017 delivered in PIL No. 38246 of 2017 U.P. Kar Adhivakta Sangathan (*supra*).

Rebutting the aforesaid submissions of the Standing Counsel, Shri Agarwal submits that the judgment dated 24.08.2017 passed in U.P. Kar Adhivakta Sangathan (*supra*) has itself failed to notice that the relevant legal provisions particularly the definition of the government under Section 2(53) of the CGST

Act and Section 2(9) of the IGST Act. The judgment in U.P. Kar Adhivakta Sangathan (supra) seems to have been delivered in the context of the provisions of the U.P. GST Act and not in the context of the IGST Act or the CGST Act and the transaction covered there-under. Learned counsel for the petitioner submits that the judgment dated 24.08.2017 in U.P. Kar Adhivakta Sangathan (supra), when read in context, cannot be said to have affirmed the power of the State of U.P. to also prescribe documents in respect of interstate transactions that fall under the IGST Act.

Prima facie, Shri Rahul Agarwal appears to be correct in submitting that Section 20 (xx) and Section (xv) of the IGST Act, when read along with the Rule 2(53) of the CGST Rules and Rule 138 of the GST Rules, provide authority to the Central Government to specify, by notification, the documents that the person in-charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage. The temporary arrangement contemplated under Rule 138 of the CGST Rules (till such time as E-Way Bill system is developed and approved by the GST Council) contemplate the Central Government to specify the documents by issuing the notification. These provisions have been appropriately referred to by the judgments of the Madras High Court, the Kerala High Court and the Lucknow Bench in Satyendra Goods Transport Corporation (supra).

However, the judgment dated 24.08.2017 passed in U.P. Kar Adhivakta Sangathan (supra) referred to by Sri A.C. Tripathi, learned Standing Counsel does not refer to these provisions but upholds the power of the State of U.P. in issuing the notification dated 21.07.2018. The relevant findings/conclusions of the judgment dated 24.08.2017 read as under:

" The petitioner is not challenging the validity of any provision of U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act') or the Rules framed thereunder, namely, Section 165 of the Act or Rule 138 of the Rules.

The submission of Sri N.C. Gupta, learned counsel for the petitioner is that in view of Article 279A added to the Constitution of India, a council has been constituted and therefore, until and unless the council recommends the documents and the format of the various forms, the State Government has no authority or jurisdiction in law to prescribe the documents to be carried with the goods in transit or even the forms in which the said documents should exist.

Section 165 of the Act empowers the government, i.e. the State Government to make regulations consistent with the Act and the Rules to carry out the provisions of the Act by issuing a notification thereof.

Simultaneously, Rule 138 of the Rules provides that till such time E-Way bill system is developed and approved by the council, the Government may, by notification, specify the documents that the person in charge of conveyance carrying any consignment of goods shall carry while the goods are in movement or transit storage.

The aforesaid Rule is clear and there is no ambiguity therein. It provides that until and unless an E-Way bill system is developed and approved by the council, the Government of U.P. may prescribe the documents which are supposed to be carried with the goods in movement or in transit storage and this can be done by issuing a notification. (emphasis supplied by us)

To ascertain the real controversy before the Division Bench in *Kar Adhivakta Sangathan* (supra), we directed that the records of Public Interest Litigation No. 38246 of 2017 be placed before us. We have perused the memo of public interest petition and examined the grounds of challenge made to the authority of the State of U.P. to issue notification we find that the submissions now being raised to challenge the authority of the State of U.P. in issuing the notification dated 21.07.2017, were not even raised before the Bench deciding *U.P. Kar Adhivakta Sangathan* (supra). The submissions now being urged by Mr. Agarwal were never brought to the notice of the Division Bench; the Division Bench had no opportunity to peruse the relevant statutory provisions and adjudicate upon the legality of the notification issued by the State of U.P. in that light.

At the same time, the judgment in *U.P. Kar Adhivakta Sangathan* (supra) has not been considered and discussed by the Lucknow Bench, may be for the reason that it was never placed before it. The judgment in *U.P. Kar Adhivakta Sangathan* (supra) is an unreported decision, and but for the fact that the Standing Counsel had earlier defended the validity of the notification and was aware of the decision, the judgment in *U.P. Kar Adhivakta Sangathan* (supra) would have escaped our notice too.

We are therefore, faced with two judgments given by the Coordinate Benches of this Court with diametrically opposite conclusions:

a) the earlier judgment in *U.P. Kar Adhivakta Sangathan* (supra) has affirmed the notification dated 21.07.2017 issued by the State of U.P.,

b) the judgment dated 13.04.2018 in *Satyendra Goods Transport Corporation* (supra), while not invalidating the notification, has effectively held that the seizure and penalty imposed upon the petitioner based on the notification dated 21.07.2017 issued under Rules 138 of the U.P. GST Rules was

illegal.

While one judgment seems to have not considered relevant statutory provisions, the other judgment seems to have overlooked the earlier judgment which may, otherwise, have constituted binding precedent. In such situation, it may be said that the doctrine of per incuriam applies to both judgments, though in different contexts.

In our considered opinion, in such a situation, it would not be appropriate for us to comment on the correctness of either of the two judgments delivered by co-ordinate Benches of this Court or embark on a third independent course of our own. Judicial propriety requires us to refer the matter to a larger Bench for an affirmative pronouncement on the validity of the notification dated 21.07.2017 and the Circulars issued thereunder (as modified from time to time) in so far as it pertains to the requirement of form E-way bill-01 to be carried for import of consignment valued not more than Rs.50,000/- in a case of inter-State transaction and the legality of seizure/penalty proceedings undertaken by the authorities of the State of U.P. for violation thereof.

The Supreme Court in *U.P. Power Corporation Ltd. Vs. Rajesh Kumar* (2012) 7 SCC 1 has, in paragraph 17, observed that judicial discipline commands that where there is disagreement between Coordinate Benches of a Court, the matter ought to be referred to a larger Bench for resolution. Prompted by judicial decorum and discipline, we direct the Registry to place the papers before the Hon'ble the Chief Justice for nomination of appropriate larger Bench to decide the following questions of law:

"(a) Whether the judgment of the Division Bench dated 24.08.2017 in U.P. Kar Adhivakta Sangathan (supra), having not noticed the relevant provisions of the IGST Act and the CGST Act and yet affirmed the notification dated 21.07.2017 issued by the State of U.P., does not lay down the correct law and does not constitute binding precedent?

(b) Whether the judgment dated 13.04.2018 delivered by another Division Bench at Lucknow in Satyendra Goods Transport Corporation (supra), having not noticed the earlier Division Bench judgment in U.P. Kar Adhivakta Sangathan (supra), can be said to have correctly nullified the impact of the notification dated 21.07.2017 issued by the State of U.P. on the ground that State of U.P. could not have prescribed any E-way bill or TDF in respect of an inter-State transaction under the Goods and Services Tax regime?

(c) Whether the State Government is empowered under Rule 138 of U.P. GST Rules to issue a notification prescribing carrying of any forms or documents along with a consignment during inter-State movement?

During the course of hearing, it was pointed out by learned counsel for the petitioner that the goods and the vehicle are both lying seized since they were first detained by Mobil Squad Officials. In the interest of justice, we provide that the goods and the vehicle shall stand released forthwith upon the petitioner furnishing an indemnity bond for the value of the tax and penalty levied by the authorities as confirmed by the order of the first appellate authority dated 14.12.2017.

In Writ Tax No. 645 of 2018 (M/s Fenasia Vs. State of U.P. and others) in which the petitioner is registered under the Goods and Services Tax Act in the State of West Bengal and not in the State of U.P. and whose consignment has been seized on 12.03.2018, we provide that the goods and the vehicle shall be released upon the petitioner furnishing security other than Cash or Bank Guarantee to the satisfaction of the Mobile Squad Officials. It has been pointed out by the learned Standing Counsel that the other issue pertaining to the revival of the earlier notification upon its repeal and thereafter rescission of the repealing provision has already been heard and judgment reserved by another coordinate Bench of this Court. We are consequently not entering into this controversy and would prefer to await the judgment to be pronounced by the coordinate Bench.

In Writ Tax No. 157 of 2018, by order dated 08.02.2018, the goods and the vehicle have directed to be released, no interim order is, therefore, required in the matter.

Let the papers be placed by the Registry before the Hon'ble the Chief Justice for nomination/constitution of an appropriate larger Bench.

Order Date :- 30.4.2018
OP