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By Nidhi, Advocate



Judgment No.: 176
Dt.:20-09-2024



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Judgment Deals With

Procedural lapse in Part B of the E-way bill was minor and curable and goods were moved within the same company's establishments, not for sale, thus penalty order were set aside.

Section/Rule	Rule 138
Authority	Gujarat High Court
Case Name	Ceat Limited VS State Of Gujarat
Dated	25 th April, 2024
Citation	R/Special Civil Application No. 25115 of 2022

Brief facts of the case:

The petitioner entered into agreement with Sandhya Container Movers, Mumbai for transportation of tyres, tubes and flaps from its warehouse located at Mumbai to its Halol Plant on 04th November, 2020 along with the E-invoice and E-way bill.

During the transport of the said goods by the Truck, GST Officer intercepted the conveyance and recorded statement of the driver of the Truck carrying the goods under Form MOV-01. Thereafter the order for inspection of the Truck and the goods were issued in Form GST MOV-02 dated 04th November, 2020.

During the inspection, it was recorded that the goods were accompanied by E-way Bill and E-invoice dated 29th October, 2020.

It was found in the inspection that E-way bill was not valid as Part B of the E-way bill produced by the petitioner did not contain the correct details and therefore the goods and the Truck was detained under Section 68(3) and show-cause notice under Section 129(3) of the GST Act was issued in Form GST MOV-07 dated 05th November, 2020 for calling upon the petitioner to pay tax and penalty.

Immediately thereafter on the next date on 06th November, 2020, the Department issued the order demanding tax and penalty in Form GST MOV-09.

The petitioner, in order to see that the goods and the Truck are released, paid amount of interest and penalty

by challan on 10th November, 2020.

The petitioner challenged order of demanding penalty and tax by preferring appeal before the appellate authority under Section 107 of the GST Act which was dismissed confirming order of tax and penalty vide impugned order dated 12th March, 2021.

Contention of the Petitioner:

There was a minor lapse in Part B of the E-way bill and the Order-in-Original in Form MOV-09 is passed without assigning any reason.

The Department could not have imposed tax or penalty as the goods were moved from head office to plant of the petitioner which is also evident from the E-invoice dated 29th October, 2020 which clearly shows that the goods are transported from the petitioner company only to its Halol Plant.

There was procedural lapse in Part B of the E-way bill which is curable and does not impact any tax liability as per Rule 138 of the CGST Rules, 2017.

The actual date entered into the E-way bill is of 04th November, 2020, whereas the goods have been transported on 02nd November, 2020 and therefore, there was procedural lapse and on pointing out the same, petitioner immediately corrected the Part B of the E-way bill showing the correct date of transport of the goods.

The Department, **while passing order did not assign any reason and thus, the same is liable to be quashed.**

The appellate authority, without considering the submissions made by the petitioner, has confirmed order of interest and penalty after recording of facts and reproducing Rule 138 of the Rules in the impugned order.

Thus, both the orders i.e. MOV-09 as well as appellate order are non-speaking order.

Findings & Decision of the Court:

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 in the e-way bill would not attract proceedings for penalty under Section 129 and the order passed by the detaining authority as well as first appellate authority cannot be sustained.

Moreover, the Department has not placed before the Court any other material so as to bring on record that there was any intention on the part of the dealer to evade tax except the wrong mention of date in the e-way bill. The vehicle through which the goods were transported and the bill showed the one and the same date while only there is a minor discrepancy in Part-B of the e-way bill.

Considering the above conspectus of law and the Department having not assigned the reasons, the impugned orders were set aside.