

**BEFORE THE APPELLATE AUTHORITY, GST, HIMACHAL PRADESH,  
AT BLOCK NO. 30, SDA COMPLEX, KASUMPTI, SHIMLA-09 (HP).**

1. Appeal No : 007/2019  
Date of Institution : 31.01.2019  
Date of Order : 11-02-2020
2. Appeal No : 008/2019  
Date of Institution : 30.01.2019  
Date of Order : 11-02-2020
3. Appeal No : 009/2019  
Date of Institution : 30.01.2019  
Date of Order : 11-02-2020

**IN THE MATTER OF:-**

M/s Bhushan Power & Steel Limited  
F Block 1<sup>st</sup> Floor International Trade town  
Nehru Park Delhi 110019

...Appellant

Versus

Asst. Commissioner State Taxes & Excise (Proper Officer)  
Circle Mall Road, the Mall Shimla (HP)

...Respondent

**Parties represented by:-**

1. Sh. Rakesh Sharma, (Adv.) for the appellant.
2. Ms. Poonam Thakur, Asst. Commissioner State Taxes & Excise (ACST&E)  
Proper Officer for the Department.



**Appeal under Section 107 of CGST/HPGST Act, 2017 read with rule-108 of  
Himachal Pradesh Goods & Services Tax Rules, 2017.**

**ORDER**

At the outset, I would like to make it clear that the provisions of both the Himachal Pradesh Goods and Service Tax Act, 2017 and Central Goods & Service Act, 2017 (hereinafter referred to as HPGST and CGST/HPGST Act respectively) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the HPGST Act would also mean a reference to the corresponding similar provisions under the CGST/HPGST Act.

1. Since the all three appeals are similar in nature and pertain to the same appellant therefore taken up together. These appeals have been filed against the order dated 21-11-2018 passed by the Asst. Commissioner State Taxes & Excise-cum-Proper Officer, the Mall Road Circle, Shimla vide which an additional demand of Rs.3,80,272/- in Appeal No. 007/2019, Rs.3,61,778/- in Appeal No. 08/2019 and Rs.

2,85,506/- in Appeal No. 009/2019 were created against the appellant under sub-section (1) Section 129 of Goods and Service Tax Act, 2017.

2. The brief facts of the cases are that the appellant Bhushan Power & Steel Limited is a registered company having its manufacturing plant at Village Thelkoli, PO Thelkoli, Tehsil Rengali, District Sambalpur, Odisha, 768210. The appellant in pursuance to orders for the purchase received from M/s Engineer-in-Chief, Irrigation & Public Health, Shimla, Himachal Pradesh, while supplying steel tubes Galvanized pipe (Round) to the aforesaid purchaser, generated the Invoice No. DS2101028708, DS2101028684 & DS2101028710 and accordingly consigned the goods to Irrigation & Public Health, delivery at Anni, Himachal Pradesh through vehicle no. PB 23K 8947, PB 65AT 9888 & PB 23K 9159, under G.R. No. 766963,766958 & 766962 dated 31-10-2018 of M/s Zinka Logistics Solutions Pvt. Ltd. The appellant accordingly generated E-way bills No. 8010 2524 4745, 8710 2521 7483 & 8310 2525 4772 on 1-11-2018 with validity up to 20-11-2018. The goods in question started its movement from Thelkoloi, Odisha.
3. The goods reached at Chandigarh on 20-11-2018 and transshipment took place at Chandigarh and new vehicles HP 21B 3210, HP 63 4038 & HP 11C 4691, were arranged by the branch of appellant for further movement of goods from Chandigarh to Anni, Himachal Pradesh as the driver of original vehicles were not in a position to drive the vehicle in hilly terrain.
4. The branch of the appellant arranged the local vehicle HP 21B 3210, HP 63 4038 & HP 11C 4691, from Chandigarh itself and accordingly an entry to the said effect was done in Part B of E-way Bill No-8010 2524 4745, 8710 2521 7483 & 8310 2525 4772.
5. The Respondent Authority, the Assistant Commissioner of State Taxes & Excise, Mall road Circle, Shimla, on 21-11-2018 checked the stationery vehicle loaded with steel tubes Galvanized pipe (Round) at Khalini and telephonically required the driver of the vehicle to reach at spot where the truck was parked. The officer examined the documents and found the E-way Bill with expired validity.
6. The Assistant Commissioner of State Taxes and Excise, Mall Road Circle, Shimla, after taking the contact details from driver of vehicle informed the present appellant about the expiry of E-way Bill.
7. The appellant enquired from the driver about delay in movement of goods as there was enough time to reach the destination from 1<sup>st</sup> November to 20<sup>th</sup> November, 2018. The driver in-turn informed the appellant that the journey couldn't be resumed earlier on account of occupancy in festive time. He further informed that he was under impression to cross the state barrier before expiry of E-way-Bill.
8. The appellant appeared before the respondent authority and explain his bonafide and requested to release the vehicle in accordance with the provisions of the GST Acts. The Respondent officer created the tax demand of Rs. of Rs.3,80,272/- in Appeal No. 007/2019, Rs.3,61,778/- in Appeal No. 08/2019 and Rs.2,85,506/- in Appeal No. 009/2019 respectively.

9. The appellant to secure the release of goods submitted the Bank Guarantee and Personal Bond of value directed by the Assistant Commissioner of State Taxes & Excise, Mall Road Circle, Shimla.

10. **GROUND OF APPEAL:**

- i) That the order dated 21-11-2018 passed by Assistant Commissioner of State Taxes & Excise, Mall Road Circle, Shimla, whereby an additional demand of Rs. 3,80,272/- have been created on account of tax and penalty is illegal arbitrary and unjustified.
- ii) That the appellant has complied with all the provisions of GST, more specifically section 67 of HP GST Act, 2017 and Section 129 of CGST/HPGST, Act, 2017. Complete documents as envisaged under the statute were Act, accompanied with the vehicle. E-way-bill was duly generated and even at the time of expiry of the same majority distance was covered by the vehicle. The delay in completion of the journey was caused only due to reasons beyond the control of the appellant.
- iii) That the vehicle in question carrying the goods at the time of detection was stationary for quite some time as the driver had visited his native place and was trying his best to contact the transport company to update about his location and delay in reaching the destination.  
That the goods in the present case were in respect of government undertaking i.e. Irrigation and Public Health, after advance purchase order placement, followed by the inspection of goods by the technical team. There is not an iota of possible evasion of the tax by the seller, purchaser or transporter of goods. The appellant is relying on the judgment of Kerala High Court dated 17.01.2018 in WP(C) 196 of 2018.
- v) That the present transaction is an Interstate transaction and IGST is payable and paid thus demand and penalty of equal amount is even otherwise, is not legally sustainable as the provisions provides for action only when there is evidence of non payment of the tax at first hand.
- vi) That the impugned order has been passed in mechanical manner without appreciating the factual position and genuineness of transaction.
- vii) That the Proper Officer charged IGST from the appellant on the goods detained whereas the goods had already suffered the IGST as is evident from the invoices enclosed herewith appeal. The charging of the IGST again on the same transaction is illegal and unjustified.
- viii) That section 129 (1) provides detention or seizure of goods in case of contravention of the provisions of GST Act or rules made there under. Section 129 (6) provides that proceedings shall be initiated as per section 130 of CGST/HPGST Act, 2017 where GST along with penalty is not paid within 7 days of detention/seizure. The language of which is reproduced as under:



“(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.....

(6) where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.”

That the reference of Section 130 under section 129(6) clarifies the intention of the legislature regarding providing two different provisions under section 122 and section 129. Section (1) provides the condition in which confiscation of goods or conveyance is allowed. Section 130 (1) uses the words 'with intent to evade the payment of tax' does not account any goods on which he is liable to pay tax' supplies any goods liable to pay tax under this Act without having applied for registration which indicates that section 130 allows detention where person has willfully contravened the GST provisions with intent to evade payment of tax. The usage of these words in section 130, reference of which is given in section 129 applies in case where willful default and intent to evade payment of taxes is present not when merely mistakes or technical glitches are there. Language of section 130 (1) is reproduced as under:



- (f) *Notwithstanding anything contained in this Act, if any person—  
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
- (g) *does not account for any goods on which he is liable to pay tax under this Act; or*
- (h) *Supplies any goods liable to tax under this Act without having applied for registration; or*
- (i) *Contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*
- (j) *Uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance.*  
*Then all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.*

Kerala High Court has very aptly determined in M/s Indus Towers Limited versus The Assistant State Tax Officer and State Tax Officer (intelligence) 2018 (01) LCX0010 that the invocation of section 129 can only be done when ingredients of section 130 are present. Relevant portion is extracted hereunder for ready reference

"A combined reading of Section 129 and 130, especially the provision contained in sub section (6) of Section 129 indicates that the detention of the goods is contemplated under the statutes only when it is suspected that the goods are liable to confiscation. This aspect is seen clarified by the Central Board of Excise & Customs in FAQs published by them on 31-03-2017 also, Section 130 dealing with the confiscation of goods indicates beyond doubt that the confiscation of goods is contemplated under the statutes only when a taxable supply is made otherwise than in accordance with the provision contained in statutes and rules made there under with the intent to evade payment of tax. If that be so, mere infraction of the procedural Rules like rules 55 and 138 of the State GST Rules can not result in detention of goods. Though they may result in imposition of penalty. In other words, detention of goods merely for infraction of the procedural Rules in transactions which do not amount to taxable supply is without jurisdiction."



11. The appellant submitted that detention or seizure under section 129 (1) and issuance of SCN under section 129 (3) in absence of intention to evade payment of tax illegal and do not justify the intention of legislature to penalise the willful defaulter. In the instant case there is no willful default or any attempt to evade tax hence the impugned order is liable to be quashed.

That the impugned order dated 21-11-2018 creating an additional demand of Rs Rs.3,80,272/- in Appeal No. 007/2019, Rs.3,61,778/- in Appeal No. 008/2019 and Rs 2,85,506/- in Appeal No. 009/2019 on account of GST and penalty be quashed being illegal, arbitrary and unjustified.

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12. In the reply of the above grounds of appeal, respondent Ms Poonam Thakur has submitted following points:-

(i) Ld. ACST&E in her reply stated that while on checking dated 21-11-2018 three vehicles No. HP 21B 3210, HP 63 4038 & HP 11C 4691, were intercepted. On detailed verification it was found that in all the three cases validity period of the EWB was already expired when the conveyances carrying goods in transit were intercepted.

(ii) Reply Para 1 to 6 of appeal:

Ms. Bhushan Power and Steel Limited consigned Steel Tube Galvanized pipe (round) to Executive Engineer Irrigation Public Division Anni of different quantity in all the three different cases having taxable value of Rs. 10,04,938/- Rs.

10,58,310.07/- and Rs. 7,93,072/- respectively taxed @ 18% having IGST value Rs. 1,80,889/- Rs. 1,90,135.81/- and Rs. 1,42,753/- respectively thereby making total invoice value equal to Rs. 11,85,827/- Rs. 12,46,446/- and Rs. 9,35,824/- respectively through three different invoices having three different serial Nos. dated 31-10-2018. M/s Bhushan Power and Steel Limited consigned the above mentioned consignments through transporter Zinka Logistics Solutions Private Limited after generating three E-way bills for three consignments. And for all the three consignments three E-way Bills were generated that were valid up to 20-11-2018 whereas vehicles were intercepted on 21-11-2018 and on verification E-way Bills in all the three cases were found to be expired.

(iii) Reply to para 7

She submitted that para 7 of appeal is denied as there is no excuse mentioned in statute for having festive season which can be considered as an explanation for expiry of E-way bill. If validity of EWB expires, the goods are not supposed to be moved because as per the Rule of E-way bill system the document of E-way bill once expired ceased to be valid and no consignment can be carried against it further. **As, Expired EWB means that there is no EWB for the consignment,** meaning thereby that if conveyance carrying goods is intercepted having expired E-way bill it implies there is no EWB at taxable goods is invalid. And hence, as such the conveyance carrying goods against expired E-way shall be treated as contravening the section 68 read with Rule 138 of the Goods & Services Tax, 2017 and goods and conveyance contravening the above provisions if intercepted by the proper officer are liable to be detained under Section 129 of the Goods & Services Tax Act, 2017.



(iii) Reply to Para 8:

Levy of tax and penalty (100%) is as per provisions of Act. There are SOP to be followed in GST along with Act and Rules.

(iv) Reply to para 12 Point 1

A just, legal and up-rightful order passed within provisions of law after affording reasonable opportunities of being heard was passed in the matter under consideration for contravening section 68 read with Rule 138 and tax and penalty as specified under Statute was levied. Hence it is requested that legal and valid order so passed be upheld where the same has been passed to protect the Government Revenue after affording reasonable opportunity of being heard.

(v) Para 12 Point 2: Denied as it's not the matter of majority distance. It's the complete distance that has to be covered within the stipulated time period and validity period. Once validity expires the E-way bill becomes invalid and consignment carried is illegal.

(vi) Para 12 point 3: In all the three matters conveyance in-charge/drivers have themselves conceded to the fact that the conveyances kept standing for some time in Chandigarh without any valid reason for the same. Moreover there were no exceptional

circumstances in any of the matter which could be entered in part B of E-way Bill for extending the validity that was already expired.

(vii) Detailed Reply to point No.4 to 15 of Para 12 (Grounds of Appeal)

A standard operating procedure (SOP) has been laid down by the CBEC vide its Circular No. 41/15/2018 dated 13<sup>th</sup> April 2018 and circular No. 49/23/2018 dated 21<sup>st</sup> June 2018 for interception of conveyances for inspection for goods in movement, and detention, release and confiscation of such goods and conveyances which has further been modified vide its Circular No. 64/38/2018 dated 14<sup>th</sup> September 2018 which specifically as down that:-

*Section 68 of the CGST/HPGST Act read with rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST/HPGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value of exceeding Rs. 50,000/- should carry a copy of documents viz., invoice/bill of supply /delivery challan/bill of entry and a valid E-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST/HPGST Act are invocable. Further, in Part B of FORM GST EWB-01 amounts to the E-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138 (3) of the CGST/HPGST Rules, except in the case where the goods are transported for a distance of up to fifty kilometers within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.*



(viii) *Whereas, section 129 of the GST Act, 2017 provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the GST Act or the rules made there under. **It has been informed by Circular No. 64/38/2018 dated 14<sup>th</sup> September 2018 that proceedings under section 129 of the CGST/HPGST Act are to be initiated for every mistake in the documents mentioned in para above.** It is further been clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an E-way bill (where Expired EWB implies No. EWB for the consignment), proceedings under section 129 of the CGST/HPGST Act may be initiated. Section 129 of the CGST/HPGST Act provides for detention, seizure and release of goods and conveyances in transit while section 130 of the CGST/HPGST Act provides for the confiscation of goods or conveyances and imposition of penalty.*

(ix) Keeping in view the above discussion conveyances bearing No. HP 21B 3210, HP 63 4038 & HP 11C 4691 involved in three cases having similar grounds of contravention of provisions were detained as the same were found contravening provisions of E-way bills specified under section 68 read with rule 138 and were

therefore detained under section 129. Where Section 129 of CGST/HPGST Act, 2017 reads as under:-

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 there under, 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 twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty; and*

(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 ;Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.*

(2) *The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.*

(3) *The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).*

(4) *No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

(5) *On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.*

(6) *Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-*



section (1) within <sup>1</sup>"fourteen days" of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130: Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

(x) Hence in view of the discussion, standard operating procedure (SOP) laid down in Statute for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances was followed in verbatim, whereby statement of driver/person in charge of the Goods and Conveyance was recorded in Form GST MOV-01. Order for physical certification/inspection if the conveyance, goods and documents were issued in Form GST MOV-02 and the conveyance in-charges were directed to station the conveyance carrying goods at Shimla (at their own risk and responsibility). After issuance of Form GST MOV-02 a report in Part-A of FORM GST EWB-03 was uploaded electronically on the common portal. Physical verification was done in a stipulated time frame and the report was furnished in Form GSTMOV-04 and the same was served upon the conveyance in-charges. On completion of the physical verification/inspection of the conveyances and the goods in movement, the final report of the inspection in Part B of FORM GST EWB-03 was also reported, on the common portal.

(xi) After affording reasonable opportunity of being heard, order of Detention passed under section 129 (1) of the Goods & Services Tax Act, 2017 in Form GST MOV-06 by undersigned dated 21-11-2018 in all the three cases, were served upon the all the concerned, whereby discrepancies noticed after physical verification of goods and conveyance were narrated in detail.

(xii) It has specifically been mentioned in the statute vide sub section 129 that:- **The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).**

(xiii) Hence a detailed notices under section 129 (3) of the Goods & Services Tax Act, 2017 in Form GST MOV-07 were also served upon all concerned, whereby applicable tax and penalty under sub-section (1) of section 129 of the Goods & Services Tax Act was also calculated on the worksheet provided therein and along with it orders of Demand of Tax and Penalty in Form GST MOV-09 were also passed and served upon all the concerned. And it was further directed by undersigned, to show cause, within seven days from the receipt of this demand notice, as to why the proposed tax and penalty mentioned supra should not be payable by the concerned, failing which, further proceedings under the provisions of Goods and services Tax Act, 2017 shall be initiated. And that failing to furnish reply within the stipulated date or

failing to appear for personal hearing on the appointed date and time, the case will be decided ex- parte on the basis of available records on merits. The entire process followed by undersigned whereby statement of conveyance in-charge in Form GST MOV-01, verification to be conducted in Form GST MOV-02 and report of verification in Form GST MOV-04, order of detention in Form GST MOV-07 order and demand and penalty order passed in Form GST MOV-09 was duly served upon Supplier.

(xiv) Since it has specifically been mentioned in the Statute that goods and conveyance detained/seized in transit for contravention of any provision under section 129 shall be released on payment of applicable tax and penalty vide sub-section (1) of section 129. Therefore, applicable tax and penalty payable under section 129 was worked out in all the three cases to be paid by the concerned either vide clause (a) or clause (b) or Clause (c) of sub-section (1) of section 129, which reads as under:-

- (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 twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty; and**
- (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 :Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.**



(xv) Hence, after affording due opportunity of being heard, the liability of tax and penalty created vide sub-section (1) section 129 was also added electronically in the electronic liability ledger GST PMT-01 in all the cases under consideration. And the Summary of order passed by undersigned in FORM GST MOV-09 was uploaded electronically in DRC-07 on common portal of the person concerned.

(xvi) The Proper Officer further stated that authorized signatory Sh. Madan Lal Sharma and Advocate Sh. Rakesh Sharma, who appeared on behalf of supplier tendered a authority letter on behalf of M/s Bhushan Power & Steel and requested for release of Goods and conveyance detained under section 129 vide Clause (c) of sub-section (1) of Section 129. Representative of supplier was directed to execute a bond equal to value of goods in Form GST INS-04 and security in the form of a Bank guarantee equivalent to the amount of applicable tax and penalty as specified under Sub-Rule (1) Rule 140 of Goods & Service rules, 2017 for release of seized goods.

Goods and conveyances involved were released provisionally in Mov-05; on production of MOV-08 vide Clause C of sub-section 129 read with Rule 140 Goods & Services Tax Act, 2017.

(xvii) In view of all the above said it is stated that the legal and proper orders passed in all the three cases are highly justified and valid and the same may be upheld as they have been passed after affording reasonable opportunity of being heard to all the concerned. Ld. Proper Officer further stated that the orders under consideration have been passed to ensure proper implementation of E-way Bill Act & Rules and to further safe guard and protect Government revenue in the matters where consignment were found under the cover of expired E-way Bills and once expired E-way Bill becomes not only invalid but illegal. Further allowing, transshipment of consignment vide expired E-way bills, which are invalid as well as illegal in the parlance of GST Act and Rules proves beyond doubt the evasive intentions of transporter and other parties concerned in all the matters under consideration. Hence, the orders so passed within the provisions of GST Act, & Rules 2017 and within the ambit of E-way Bill provisions which is totally online, transparent, procedure based may kindly be upheld.



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After hearing the both appellant and respondent in detail the common facts in the instant cases in-brief are that the appellant (M/s Bhushan Power & Steel Ltd.) at Village Thelkoli, PO Thelkoli, Tehsil Rengali, District Sambalpur, Odisha, 768210 has supplied steel tubes Galvanized pipe (Round) to the Engineer-in-Chief, IPH, Shimla, Himachal Pradesh, deliverable at Anni under the cover of proper documents i.e tax invoice, GR and e-way bill with the validity up to 20.11.2018. The goods reached at Chandigarh on 20.11.2018 and transshipment took place and new vehicles were arranged for further movement of goods towards Anni, Himachal Pradesh and entry in the part-B of e-way bill was made accordingly. On dated 21.11.2018, ACST&E, Mall Road Circle Shimla intercepted the stationary vehicle at Khawara Chowki, Shimla in the early morning and telephonically contacted the driver of the vehicle to reach at the spot where the truck was parked. The Officer examined the documents and found the e-way expired on 20.11.2018 at 00 hrs., therefore proceeding was initiated under section 129 of the GST Act and Tax /penalty was accordingly imposed.

14. In the instant appeal cases the goods were consigned from Thelkoloi, Odisha to Anni, Kullu, Himachal Pradesh and travelled a distance of around 2000 kilometers. The goods were accompanied by proper documents transshipped into another vehicle at Chandigarh and the vehicle no. was updated by the appellant and e-way bill was valid at the time of transshipment of the vehicle on 20.11.2018. The validity of the e-way bill expired on midnight of 20.11.2018 and the vehicle was inspected and detained by the respondent at early morning on 21.11.2018. The vehicle was stationary and parked by the road side and driver was called on telephonically and


proceedings were initiated u/s 129(1) for expiry of validity of e-way bill. There was no discrepancies either with regard to other documents accompanied the consignment or with the quantity of goods being transported.

15. Rule 138(10) says that validity of e-way bill may be extended within 8 hours from the time of its expiry but in the instant cases the vehicle was practically apprehended in almost 08 to 09 hours of the expiry of the e-way bill, prima facie it appears that, the appellant has been not given reasonable opportunity to update the Part-A of e-way bill. It was noted that Part-B of the e-way bill was duly filled which puts to rest on any doubts about the intention of the appellant to evade tax. Secondly, Circular No. 64/38/2018-GST dated 14<sup>th</sup> of September, 2018 issued by the Central Board of Indirect Taxes and Customs and the circular of Government of Himachal Pradesh dated 13.03.2019 valid from 14.09.2018 clearly states in para no.3 as under:-
16. *that Section 68 of the CGST/HPGST Act read with rule 138-A of the Central Goods and Services Tax Rules, 2017 (hererafter referred to as 'the CGST/HPGST Rules') required that the person incharge of a conveyance carrying any consignment of goods of value exceeding Rs. 50,000 should carry a copy of documents viz, invoice/ bill of supply/ delivery challan/ bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt a contravention of the provision of the law takes place and the provisions of Section 129 and Section 130 of the CGST/HPGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part-B of FORM GST EWB-01 amounts to the e-way bill becoming not a valid documents for the movements of goods by road as per explanation (2) to rule 138 (3) of CGST/HPGST Rules, except in the case where the goods are transported for a distance of up to 50 kilometers within the state or Union territory to or from the place of business of the transporter to the place of business of the consigner or the consignee, as the case may be.*
17. Therefore, it has been specifically mentioned that the non-furnishing of information in Part-B 01 of FORM GST EWB-01 amounts to the e-way bill becoming the not a valid document. It appears that e-way bill is invalid only if Part-B of ~~e~~-way bill is not filled or a considerable time to update the Part -A of e-way bill has gone by.
18. Similarly, the para no. 5 of the circular says *in case a consignment of goods is accompanied with an invoice or any other specify document and also an e-way bill, proceeding u/s 129 of the GST Act may not be initiated.* Therefore, in my opinion imposition of tax/ penalty by the respondent is harsh and unsustainable.
19. **In the view of above circumstances the instant appeals are accepted and the order passed by Asst. Commissioner State Taxes & Excise-cum-Proper Officer, the Mall Road Circle, Shimla are set aside. Since the appellant has made minor procedural laps as required to follow under rule 138(10) therefore a penalty of Rs One thousand only (Rs- 1000/- IGST Act ) in each case is imposed on the tax payer under section 125 under the CGST/ HPGST Act 2017 in accordance to CBIC Circular No. 64/38/2018-GST, dated 14<sup>th</sup> Sep 2018 and**

the State Circular no. 12-25/2018-19-EXN-GST-(575)-6009-6026 dated 13<sup>th</sup> March 2019 and may be recovered accordingly. The judgment in these cases was reserved on 18.12.2019 which is released today.



Parties be informed accordingly.


  
Rohit Chauhan,  
Addl. Commissioner of State Tax & Excise, Gr-I  
- cum- Appellate Authority GST (Appeals),  
Himachal Pradesh

Endst. No EXN-007/2019-AA/GST Shimla HP- 2980-85

Dated 12-02-2020.

Copy to:-

1. The Commissioner of State Taxes & Excise, Himachal Pradesh, Shimla.
2. The Commissioner CGST, Shimla, H.P for information .
3. The Addl Commissioner State Taxes & Excise Grade-II (IT) with request to upload the same on departmental website.
4. M/s Bhushan Power & Steel Limited (HP) through Sh. Rakesh Sharma (Adv).
5. The Asst Commissioner State Taxes & Excise (Proper Officer), Mall Road, Shimla, for necessary action and compliance.
6. Guard File.

  
Reader to the  
GST Appellate Authority  
Himachal Pradesh

Dc (IT) / SA-2  
3  
14/2/20