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GST Charcha: Compliances of E-Way Bill – Alarming Bells!!

Recently, a penalty of whopping INR 1.32 crores (approx.) imposed by the Hon'ble High Court ("HC") of Madhya Pradesh on a transport company namely M/s Gati Kintetsu Express Pvt. Ltd. for non-filing of Part-B of E-Way Bill has created a situation of flux amongst the transporters as to what is the real essence of introducing E-Way Bill system in India – Is it really a system to check tax evasion or to confer arbitrary powers on authorities to impose heavy penalties in case of missing details for a technical fault even when apparently there is no ill intention to evade taxes.

This GST Charcha aims to draw attention on the **troublesome open powers for detention and seizure of goods/conveyances in transit under Section 129 of the CGST Act, 2017** in the light of recent judgment of Madhya Pradesh HC viz-a-viz earlier ruling of Allahabad HC and the likely consequences transporters and/or tax payers may face for any procedural lapse(s) while transporting goods.

Part A & Part B of E-Way Bill

E-Way Bill is the document which is necessary to be carried along other specified documents in terms of Rule 138A of the CGST Rules viz. invoice/bill of supply/delivery challan, by the transporter while transporting (either as supply or other than supply) goods whose consignment value exceeds INR 50,000/-. Normally, E-Way bill has two parts; Part-A and Part-B which are to be filled and generated by the registered persons, who is causing movement of goods or by transporter, if he is being assigned for the same before the transportation of goods.

While Part-A contains the details like GSTIN of the recipient, Place of delivery, Challan No. etc. to be filed by the registered consignor or consignee causing movement of goods, Part-B contains details of the Vehicle no., its type, Transport Document no., etc., to be filed before the delivery of goods by the transporter so that the conditions of validity of the movement of goods are met by the concerned parties.

Even E-way bill is mandatory for non-taxable supplies through delivery challan: Kerala HC in the case of ***Assistant State Tax Officer Vs. Indus Towers Ltd. [2018] 95 taxmann.com 160 (Kerala)***, has held that E-way bill mandatory for non-taxable supplies through delivery challan.

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HC upholds INR 1.32 crore penalty for non-filing of E-Way Bill 'Part B' during inter-state transportation of goods

A matter arose before the Madhya Pradesh HC in the case of ***Gati Kintetsu Express Pvt. Ltd. Vs. Commissioner, Commercial Tax of MP & Ors [TS-307-HC-2018(MP)-NT]***, wherein a transport company was carrying consignment of goods from Pune to Noida via Indore where it was apprehended in Indore for not carrying along the requisite and properly filled up E-Way Bill. The transport company failed to fill up Part-B of the E-Way Bill and resultantly the goods were seized and penalty to the tune of INR 1.32 crores was imposed. The petitioner in order to buttress their argument cited the Allahabad HC judgment of ***VSL Alloys (India) Pvt. Ltd. Vs. State of U.P and others [TS-154-HC-2018(ALL)-NT]*** and took the plea that there was no ill-intention on the part of the petitioners and the seizure of petitioner's goods was nothing but abuse of process of law.

Petitioner's reliance on Allahabad HC decision was rejected in as much as distance therein was within 50 km and assessee was not under obligation to fill Part B of E-Way Bill. Accordingly, it was observed that as per the CGST Rules, Part B is a mandatory requirement, else the E-way Bill is not genuine / legal. Since in present case, distance was more than 1200-1300 km, petitioner was held guilty for not filing Part B before loading of goods and penalty was upheld.

The Petitioner also sought to justify such non-submission owing to technical error with no intention to evade taxes to which the Court responded that no such grievance was uploaded on the GST grievance portal and hence such a plea cannot be availed by the petitioners for such non-compliance.

Gloomy fate of Section 129 powers:

With all due regards to the Hon'ble Madhya Pradesh HC, there does not seem any viable justification in imposing such harsh penalty on assessee for mere failure to fill Part B of E Way Bill. The fact that E-Way Bill was carried with the consignment and having all particulars duly filled in Part A of E-Way Bill, evasion of taxes cannot be assumed arbitrarily. It needs to be appreciated that the primary purpose for introducing E-Way Bill is to track the movement of goods and ensure no tax evasion. But, when the petitioner has already discharged his liability of payment of tax, then imposing such a severe penalty is too harsh for a bona fide law-abiding citizen. Further, it is a settled

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proposition of fiscal jurisprudence that mere non-compliance of procedural aspect of law without the intention to evade taxes must not be met with harsh penalties.

One of the reasons for non-compliance of Part B of E-Way Bill can be the confusion between the finance/tax or supply chain teams and the transporting team as to who owes the responsibility to fill Part B of E-Way Bill. This may lead to error in filing of Part B.

Reference may be taken from other Allahabad HC ruling in case of ***Torque Pharmaceuticals (P.) Ltd. Vs. State of U.P - [2018] 93 taxmann.com 277 (Allahabad)***, wherein seizure order was quashed in case where subsequent vehicle registration number was handwritten on the E-Way Bill during inter-state transport of goods due to technical glitch.

An associated issue also crops from the statute itself under Section 129 of CGST Act, 2017 which validates detention and seizure of goods/conveyance and consequently levying penalty as high as 100% of tax payable along with tax payable for any contravention of provisions of GST Act and Rules made thereunder irrespective of there being any intent to evade taxes or not. Further, there is no provision which allows for releasing of goods without levying penalty once the proof of payment of appropriate tax is shown or a mere technical breach is shown. Furthermore, in Section 17(5)(i) of the CGST Act, there is specific denial of credit in the GST Regime for such tax paid under Section 129.

Fear looms large over the transportation industry of being met with the same fate for inadvertently non-filing of the information in Part B of the E-Way Bill. Resultantly, the All India Motor Transport Congress has initiated an indefinite pan-India transportation strike from July 20, 2018. The ongoing monsoon session of the Parliament should consider to appropriately amend Section 129 of the CGST Act, 2017 to restrict levying of penalties only in cases where there is intent to evade taxes.

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