

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 7061 of 2019**

**With**

**R/SPECIAL CIVIL APPLICATION NO. 7062 of 2019**

**With**

**R/SPECIAL CIVIL APPLICATION NO. 7063 of 2019**

**With**

**R/SPECIAL CIVIL APPLICATION NO. 7064 of 2019**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS.JUSTICE HARSHA DEVANI**

**and**

**HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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**F S ENTERPRISE**  
Versus  
**STATE OF GUJARAT**

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Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1

MR TRUPESH KATHIRIYA ASSISTANT GOVERNMENT PLEADER(1) for the Respondent(s) No. 1,2

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**CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI**

**and**

**HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

**Date : 11/10/2019**  
**COMMON ORAL JUDGMENT**  
**(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. Since the facts and contentions raised in all these petitions are more or less similar, the same were taken up for hearing together and are decided by this common judgment. For the sake of convenience, reference is made to the facts as appearing in Special Civil Application No.7061 of 2019.

2. The petitioner is a proprietary concern and is duly registered under the provisions of the relevant Goods and Services Tax Acts (hereinafter referred to as "the GST Acts"). The petitioner received an order from one M/s. Riya Enterprise, who is a registered person in the State of Maharashtra under the GST Acts for supply of TMT bars and angles. Pursuant to such order, the petitioner was transporting the goods and the driver of the truck duly had with him the tax invoice as well as the transport receipt in respect of such goods. Before commencement of movement of goods, the petitioner had duly generated e-way bill in respect of the transaction on the online GST portal. The details of invoice as well as details of the buyer were duly entered in the online e-way bill.

2.1 The truck along with the goods came to be detained on the highway by the second respondent, viz., the State Tax Officer, Mobile Squad, Sagbara. The driver of the truck duly produced all documents relating to the goods including invoice, transport receipt and e-way bill. However, despite the fact that the petitioner had complied with the procedure for movement of goods as stipulated under the GST Acts, by the

impugned order, the truck with the goods came to be detained/seized under section 129 of the GST Acts on the ground that the transport receipt was a photocopy and the details filled in the transport receipt were handwritten.

2.2 Subsequently, the second respondent issued a notice demanding payment of tax and penalty under section 129 of the GST Acts for release of the goods. A copy of the statement of the driver in the prescribed format GST MOV 1 was also provided to the petitioner. The petitioner, thereafter, immediately approached the concerned authority and submitted all the documents which are required to accompany the goods under the GST Acts. The e-way bill was admittedly generated prior to the commencement of movement of goods which contained all details relating to invoice as well as the buyer of the goods. Insofar as the transport receipt is concerned, the petitioner explained that it was common practice of the transporter to send scanned copies of the transport receipt through whatsapp/email which were then filled at the place of dispatch and signed by the authorized representative of the transporter. However, no format was prescribed for transport receipt under the GST Acts and thus, there was no question of there being any breach of the provisions of the GST Acts. Despite such written statement and repeated oral requests, the second respondent refused to release the truck with the goods without payment of tax and penalty under section 129 of the GST Acts. Being aggrieved, the petitioner has approached this court challenging the order of detention dated 2.4.2019 passed by the second respondent under section 129 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") and the

provisions of other relevant statutes as well as the notice dated 2.4.2019 issued in FORM GST MOV-07, demanding tax and penalty under section 129 of the GST Acts.

2.3 By an order dated 12.4.2019, this court, by way of interim relief, had directed the respondents to forthwith release truck No.GJ-04-AT-9302 along with the goods contained therein.

3. Mr. Uchit Sheth, learned advocate for the petitioner submitted that section 129 of the GST Acts is a drastic measure and hence, there has to be a serious and grave error for which the authorities can have an apprehension of evasion of tax and that the powers thereunder, should not be exercised lightly as the consequences are grave and that the detention has to be duly justified.

3.1 Adverting to the merits of the present case, it was submitted that the detention/seizure under section 129 of the GST Acts of the truck with the goods, is wholly without jurisdiction, arbitrary and illegal. It was urged that the petitioner had duly complied with the procedure that is required to be followed for dispatch of goods under the GST Acts viz., the tax invoice was duly prepared prior to movement of goods; E-way bill was generated prior to commencement of movement which contained details of the goods, tax invoice as well as the buyer of goods including his registration number under the GST Acts; and the transport receipt of the transporter was also accompanying the goods; and there was absolutely no contravention of any provision of the GST Acts.

3.2 It was further submitted that insofar as the transport receipts are concerned, the petitioner has explained that it was a routine practice for the transporter to send scanned copies of the transport receipts which would then be filled and signed by the authorised representative of the transporter at the place of dispatch. However, there is no format of transport receipt prescribed under the GST Acts, and hence, the detention/seizure of the truck with the goods and subsequent demand of tax and penalty under section 129 of the GST Acts on such flimsy ground, even through there was no contravention of the provision of the GST Acts, is wholly without jurisdiction, arbitrary, bad and illegal.

3.3 It was contended that ultimately the objective of section 129 of the GST Acts is to ensure that there is no evasion of tax through unaccounted movement of goods. It was contended that in the case of the petitioner admittedly when the tax invoice was issued and e-way bill was generated through online GST portal containing all details regarding the goods, there was absolutely no possibility of evasion. Moreover, the fact that the petitioner was transporting goods was conveyed to the GST authorities through its online portal prior to commencement of movement of goods.

3.4 Reference was made to Circular No.64/38/2018-GST dated 14.9.2018, issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing, to point out that in paragraph 5 thereof, it has been provided that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the

following situations:-

- “a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;*
- b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;*
- c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;*
- d) Error in one or two digits of the document number mentioned in the e-way bill;*
- e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;*
- f) Error in one or two digits/characters of the vehicle number.”*

3.5 It was pointed out that paragraph 6 thereof, provides that in case of the above situations, penalty to the tune of Rs. 500/- each, under section 125 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) and the respective State GST Act should be imposed (Rs.1000/- under the Integrated Goods and Services Tax Act, 2017) in FORM GST DRC-07 for every consignment. It was submitted that having regard to the guidelines laid down in the above circular, for the reasons stated in the detention order, the detention is not tenable, and that the goods in question could not have been seized.

3.6 Next, it was submitted that while the conveyance with the goods was detained on the above ground alone, in the affidavit in reply filed on behalf of the respondents, new grounds have been raised, namely, that the petitioner had not obtained GST registration for the commodities which were being transported and that the driver of one of the vehicles had given a statement that the goods were being transported from Sihor to Aurangabad. It was emphatically argued that addition of reasons by way of an affidavit is not tenable. In support of such submission, the learned advocate placed reliance upon the decision of the Supreme Court in the ***Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi***, AIR 1978 SC 851, for the proposition that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

3.7 It was submitted that insofar as inclusion of the goods in the registration certificate under the GST Acts is concerned, a person is registered as a supplier under the GST Acts, there is no concept of goods-wise registration. In fact even in the FORM GST REG-01, which is the form for application of registration, only the top five commodities need to be specified. Thus, it is only in the nature of general information which has to be provided and that there is no provision which makes a transaction of a commodity not specified in the application for registration to be invalid or illegal. It was submitted that in fact

there can be no such provision since all commodities are not even required to be mentioned in the application for registration.

3.8 It was further submitted that in the present case while due to oversight, the commodities being transported were not mentioned in the application for registration, as a matter of fact, a clear description of the commodities along with HSN Code was given in the invoice as well as the e-way bill and the correct rate of tax was also applied. The e-way bill was generated on the online portal before commencement of movement of goods wherein the description of goods as stated was admittedly in order. It was submitted that this was nothing but online intimation of description of goods intended to be supplied by the petitioner and thus there was no question of any intention of concealing any fact from the department. It was submitted that at best it could be said to be a technical error on the part of the petitioner in filling the application for registration and upon such error being pointed out, the petitioner immediately filed an application for amendment of the registration certificate. It was contended that on such basis, it cannot be said that the goods were being transported in contravention of the provisions of the GST Acts.

3.9 Insofar as the alleged statements of drivers are concerned, it was submitted that such statements have not been relied upon for detention of the trucks with the goods. It was submitted that two of the four drivers have stated that the goods were moving from Sihor in Bhavnagar to Mumbai, one driver has not given any statement and the fourth driver has stated that the goods were moving from Bhavnagar to



Aurangabad; whereas in fact all the four trucks were meaning for the same recipient. It was urged that one of the four drivers seems to have erroneously mentioned the destination as Aurangabad and that such statement is uncorroborated and in fact does not even form the basis of the detention orders. It was submitted that when the petitioner approached the driver concerned for clarification, he had conveyed that the authority had simply taken his signature on his alleged statement and that he was not aware of the contents of the statement. It was submitted that this in any case, has absolutely no consequence insofar as the liability of the petitioner is concerned, inasmuch as, the petitioner had disclosed such transaction to be inter-State supplies under the Integrated Goods and Services Tax Act, 2017 and the destination of the goods will have no bearing on the tax liability of the petitioner provided that such destination is outside the State of Gujarat. Thus, there is no question of any mala fide intention on the part of the petitioner.

3.10 The learned advocate next submitted that the petitioner as well as the recipient of the goods, are registered persons under the GST Acts and the invoice as well as the e-way bill were admittedly found to be in order, and hence, the detention of the truck with goods is wholly without jurisdiction and illegal.

3.11 The attention of the court was invited to the statement Annexure-II to the affidavit-in-reply filed on behalf of the respondents, on which reliance has been placed by the respondents wherein it has been recorded that the goods were loaded at Sihor in Bhavnagar and were to be unloaded at

Aurangabad, to submit that the concerned driver has stated that he is not aware of the contents thereof. Reference was made to the FORM GST MOV-01 issued by the second respondent, to submit that the statutory statement of the driver shows that the goods in question were being transported from Bhavnagar to Virar, Thane. It was emphatically argued that the conveyance containing goods cannot be stopped to make a fishing inquiry and that the impugned order being arbitrary and illegal deserves to be quashed and set aside.

4. Opposing the petition, Mr. Trupesh Kathiriya, learned Assistant Government Pleader, placed reliance upon the averments made in the affidavit-in-reply filed on behalf of the respondents, wherein it has been stated that the vehicle in question was carrying TMT bars and MS Angles, Round bars and Square bars (HSN CODE 7214 taxable at 18%) from Bhavnagar to Virar-Thane, Mumbai. The petitioner was only registered for dealing in Waste, Parings and Scrap of Plastic (HSN CODE 3915 taxable at 5%) as per the commodity disclosed in the Form GST REG-01 as per rule 8(1). The registration is to be carried out in accordance with section 25, as the registration has been taken voluntary. Therefore, even though the petitioner was having a valid GST registration, the commodity which was being transported was not disclosed in the registration application. The petitioner thereafter, on 8.4.2019, by way of an amendment had added the commodity which was being transported and intercepted and proceedings under section 129 were initiated. It is contended that if it was the case of the petitioner that such disclosure of commodity was not mandatory, amendment was not required to be carried

out, then, amending the commodity, itself clearly reflects that the disclosure of commodity is mandatory in view of GST REG-01, to be precise, clause 18 of the form. It is further averred that the vehicle was detained from Dahej and on recording the statement of the driver, it was found that the vehicle was being taken to Aurangabad from Sihor and not from Bhavnagar to Mumbai. Therefore, also, it creates strong doubt as regards the transaction in question and the e-way bill does not match with the route. It is also submitted that in the facts and circumstances, it is apparent that the petitioner has willfully contravened various provisions of the GGST / CGST Acts only with a view to evade the payment of tax.

4.1 The learned Assistant Government Pleader, accordingly, urged that the provisions of section 129 of the GGST Act/CGST Act have rightly been invoked in the present case and that the petition being devoid of merits deserves to be dismissed.

4.2 It may be pertinent to note that though the above averments with regard to the petitioner not being registered for the commodities which were being transported have been made in the affidavit-in-reply and have also been reiterated by the learned Assistant Government Pleader while making submissions before this court, the learned Assistant Government Pleader, even after taking instructions from the Instructing Officer who was present in the court room, was not in a position to point out any provision of law which requires a supplier to be registered in respect of the goods in which he deals with, nor was he in a position to point out any statutory requirement regarding the format of lorry receipt.

5. From the facts as emerging from the record, it appears that the vehicles in question came to be intercepted and the impugned orders of detention under section 129(1) of the CGST Act/ GGST Act, came to be issued on the ground that lorry receipt issued by the transporter is a photocopy without computerised serial number and contact number details.

6. The question that therefore arises for consideration is, whether on the above ground, the second respondent was justified in exercising powers under section 129(1) of the CGST Act.

7. In this regard, it may be germane to refer to the provisions of section 68 of the CGST Act, which provides for inspection of goods in movement. Sub-section (1) thereof provides that 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. The documents which were required to be kept while transporting the goods are prescribed under rule 138A of the CGST Rules, 2017, which reads thus:-

***Rule 138A: Documents and devices to be carried by a person-in-charge of a conveyance***

*(1) The person in charge of a conveyance shall carry—*

*(a) the invoice or bill of supply or delivery challan, as the case may be; and*

*(b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:*

*Provided that nothing contained in clause (b) of this sub-*

*rule shall apply in case of movement of goods by rail or by air or vessel.*

*(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.*

*(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.*

*(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.*

*(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill*

- (a) tax invoice or bill of supply or bill of entry; or*
- (b) a delivery challan, where the goods are transported for reasons other than by way of supply."*

8. On a plain reading of the above rule, it is evident that the documents which are required to be kept by the person in charge of a conveyance while transporting goods are (i) the invoice or bill of supply or delivery challan, as the case may be; and (ii) a copy of the e-way bill. In the present case, admittedly

when the trucks in question came to be intercepted, the concerned driver had produced the invoice as well as the e-way bill in respect of the goods which were being transported.

9. At this juncture, reference may be made to the provisions of section 168 of the CGST Act /GGST Act which provides for power to issue instructions or directions. Sub-section (1) thereof, which is relevant for the present purpose reads thus:

*“(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.”*

10. In order to ensure uniformity in the implementation of the provisions of the CGST Act across the field formations, the Central Board of Indirect Taxes and Customs in exercise of the powers conferred under section 168(1) of the CGST Act, has issued Circular No.41/15/2018-GST dated 13.4.2018, laying down the procedure for inspection of conveyance for inspection of goods in movement and detention, release and confiscation of goods and conveyances and has issued certain instructions. Such instructions to the extent they are relevant for the present purpose read thus:-

*“(b) The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify*

such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. An e-way bill number may be available with the person in charge of the conveyance or in the form of a printout, sms or it may be written on an invoice. All these forms of having an e-way bill are valid. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to <http://mis.ewaybillgst.gov.in> or the Mobile App or through SMS by sending EWBVER <EWB\_NO> to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).

(c) ... ..

(d) Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in FORM GST MOV-01. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty four hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.

(e) Within a period of three working days from the date of issue of the order in FORM GST MOV-02, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in FORM GST MOV-03 from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.

(f) On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST MOV-04 and serve a copy of the said report to the person in charge of the goods and

conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST EWB-03 within three days of such physical verification/inspection.

(g) Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in FORM GST MOV-05 and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention in FORM GST MOV-06 and a notice in FORM GST MOV-07 in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable. The said notice shall be served on the person in charge of the conveyance.

(h) Where the owner of the goods or any person authorized by him comes forward to make the payment of tax and penalty as applicable under clause (a) of sub-section (1) of section 129 of the CGST Act, or where the owner of the goods does not come forward to make the payment of tax and penalty as applicable under clause (b) of sub-section (1) of the said section, the proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules, release the goods and conveyance by an order in FORM GST MOV-05. Further, the order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

(i) Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in FORM GST MOV-05, after obtaining a bond in FORM GST MOV-08 along with a security in the form of



bank guarantee equal to the amount payable under clause (a) or clause (b) of sub-section (1) of section 129 of the CGST Act. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings.

(j) Where any objections are filed against the proposed amount of tax and penalty payable, the proper officer shall consider such objections and thereafter, pass a speaking order in FORM GST MOV-09, quantifying the tax and penalty payable. On payment of such tax and penalty, the goods and conveyance shall be released forthwith by an order in FORM GST MOV-05. The order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act."

It may be noted that the above instructions issued by the Board are binding upon all the officers discharging duties under the GST Acts.

11. At this juncture, it may be apposite to refer to the decision of the Supreme Court in the case of **Commissioner of Customs, Calcutta v. Indian Oil Corporation Ltd.**, (2004) 3 SCC 488, wherein the court has held thus:-

**“9.** This Court has, in a series of decisions, held that circulars issued under Section 119 of the Income Tax Act, 1961 and Section 37-B of the Central Excise Act are binding on the Revenue.

**10.** The somewhat different approach in *Hindustan Aeronautics Ltd. v. CIT*, (2002) 2 SCC 127, by two learned Judges of this Court, apart from being contrary to the stream of authority cannot be taken to have laid

down good law in view of the subsequent decision of the Constitution Bench in *CCE v. Dhiren Chemical Industries (I)*, (2002) 2 SCC 127. After this Court had construed an exemption notification in a particular manner, it said:

*“11. We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue.”*

**11.** *Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in *CCE v. Dhiren Chemical Industries (II)*, (2002) 10 SCC 64, where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37-B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in *Simplex Castings Ltd. v. Commr. of Customs*, (2003) 5 SCC 528.*

**12.** *The principles laid down by all these decisions are:*

*(1) Although a circular is not binding on a court or an assessee, it is not open to the Revenue to raise a contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.*

*(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.*

*(3) A show-cause notice and demand contrary to the existing circulars of the Board are ab initio bad.*

*(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars.”*

12. Since the above decision was rendered in the context of section 37B of the Central Excise Act, reference may be made

to the said section, which reads thus:-

**“37B. Instructions to Central Excise Officers.-** The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963 ), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board:

Provided that no such orders, instructions or directions shall be issued-

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Principal Commissioner of Central Excise or Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

13. Thus, section 37B of the Central Excise Act is more or less in pari materia with the provisions of section 168 of the GST Acts. Hence, the above decision would be squarely applicable even to instructions issued by the Central Board of Indirect Taxes and Customs under the GST Acts. The officers and all other persons employed in the execution of the GST Acts are, therefore, bound to observe and follow such orders, instructions and directions of the Board.

14. Examining the facts of the present case in the light of the above statutory provisions and binding instructions issued by the Board, the conveyances in question with goods being TMT Bars etc. were intercepted by the second respondent on 2.4.2019 and FORM GST MOV-01 came to be issued to the

persons in charge of the conveyance The annexures to the forms contain the details of the invoice as well as the e-way bill, which clearly indicates that both the documents prescribed under rule 138A of the CGST Rules had been produced when the conveyances came to be intercepted. It seems that inspection of the conveyances was not carried out; however, an order of detention came to be made under section 129(1) of the CGST Act, detaining the conveyance with the goods on the following ground:

*“Supplier GSTin Regi effective date is 14/3/19. Recipient GSTin Regi effective date is 28/03/19. L.R. issued by transport is photo copy without computerised serial No. and contact No. detail.”*

15. Thereafter, a notice under section 129(3) of the CGST Act came to be issued in FORM GST MOV-07 proposing to levy tax and penalty and calling upon the petitioner to appear before the second respondent on 9.4.2019 at 11:30 a.m.

16. Thus, though the person in charge of the conveyance had produced the documents which were statutorily required to be kept with him during the course of transportation of the goods, the vehicle in question was detained on extraneous grounds namely that the lorry receipt issued by the transporter was a photocopy without computerised serial number and contact number details.

17. In terms of the instructions contained in the above circular dated 13<sup>th</sup> April, 2018, the proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of

goods. In the present case, since no FORM GST MOV-02 has been issued, no Part A of Form GST EWB-03 has been uploaded on the common portal, no FORM GST MOV-04 has been issued and no Part B of Form GST EWB-03 has been uploaded on the common portal, it is clear that the conveyance has been intercepted for verification of documents and not for physical verification inasmuch as, if the officer intended to undertake an inspection he was required to issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02 and thereafter upload Part A of Form GST EWB-03 on the common portal, prepare a report in FORM GST MOV-04 and furnish the same to the petitioner and to upload the final report of the inspection in Part B of Form GST EWB-03 on the common portal. On a perusal of FORM GST MOV-01, it is abundantly clear that both the documents prescribed under rule 138A of the CGST Rules, viz. the invoice and the e-way bill, were produced by the person in-charge of the conveyance. The proper officer, upon verification of these two documents has not found any discrepancies therein. Hence, in terms of the instructions contained in paragraph 2(b) of the above circular, the proper officer was required to allow the conveyance to move further. However, the proper officer has issued an order of detention under section 129(1) of the CGST Act on the ground that the lorry receipt was a photocopy and did not bear a computerised serial number or contact number details. Thus, the impugned order has been passed contrary to the statutory requirements which do not require production of a lorry receipt by the person in-charge of a conveyance as well as contrary to the instructions issued by the Board in the above referred circular.

18. It may be pertinent to note that subsequently, in the affidavit-in-reply filed on their behalf, the respondents have improved upon their original case, and have come up with totally new grounds which are not reflected in the order made under section 129(1) of the CGST Act, namely that the conveyance in question was carrying TMT bars and MS Angles, Round Bars and square bars from Bhavnagar to Virar-Thane, Mumbai, whereas the petitioner was registered for dealing in waste, parings and scrap of plastic as per the commodity disclosed in FORM GST REG-01 as per rule 8(1) of the CGST Rules. Therefore, though the petitioner had a valid GST registration, the commodity which was being transported was not disclosed in the registration application. The second ground is that in case of one of the conveyances, the driver had stated that the goods were being transported from Sihor to Aurangabad.

19. Insofar as the additional grounds raised in the affidavit-in-reply are concerned, it is settled legal position as held by the Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner**, (supra) that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may, by the time it comes to court on account of challenge, get validated by additional grounds later brought out. The court referred to the following extract of its earlier decision in **Commissioner of Police v. Gordhandas Bhanji**, AIR 1952 SC 16.

*"Public orders, publicly made, in exercise of a statutory*

*authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.*

*Orders are not like old wine becoming better as they grow older."*

20. Thus, it is not permissible for the respondents to try to supplement the grounds set out in the order under section 129(1) of the CGST Act in the affidavit-in-reply filed on their behalf. Nonetheless for the purpose of clarifying the legal position, the said grounds may also be dealt with.

21. Insofar as the second ground based on a subsequent so-called statement of driver of one of the conveyances bearing No.GJ-04-AT-9302 is concerned, it may be noted that such statement is said to have been recorded on 2.4.2019, wherein the driver has stated that he had loaded the goods at Sihor in Bhavnagar and was to unload them at Aurangabad. It may also be noted that FORM GST MOV-01 has been issued by the proper officer on 2.4.2019, wherein against column 4, it has been recorded thus:

*"4. I am transporting the goods from Bhavnagar (GJ) to Virar, Thane (MH)."*

22. Thus, in the statutory form, the statement of the driver has been recorded stating that the goods were being transported from Bhavnagar to Virar, Thane, but the respondents seek to place reliance upon some unverified statement produced on record with the affidavit-in-reply, which

is not permissible in law. Besides, there is force in the submission made by the learned advocate for the petitioner that the destination of the goods will have no bearing on the tax liability of the petitioner, provided the destination is outside the State of Gujarat and, therefore, no mala fide intention can be imputed to the petitioner as the petitioner as well as the recipient of goods, are registered under the GST Acts and both the invoice and e-way bill are found to be in order.

23. Insofar as the first additional ground is concerned, reference may be made to rule 8 of the CGST Rules, which reads thus:-

***“8. Application for Registration***

*(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as “the applicant”) shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

*Provided that a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone:*

*Provided further that every person being an Input Service*



*Distributor shall make a separate application for registration as such Input Service Distributor.*

*(2) (a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes.*

*(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and*

*(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.*

*(3) On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.*

*(4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.*

*(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.*

*(6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) shall be issued electronically only after the said deposit."*

24. Under sub-rule (4) of rule 8 of the CGST Rules, the person seeking registration is required to submit an application in Part-B of FORM GST REG-01, reference may, therefore, be made to Part-B of the said form. A perusal of Part B of FORM GST REG-01 shows that column 18 thereof requires the person seeking registration to give details of the goods supplied in the

business and requires him to specify the top five goods with description of the goods and corresponding HSN Code (four digits). Thus, a person is required to specify the top five goods which he wants to supply, but is not prohibited from supplying goods other than those mentioned in the form. Therefore, merely because the petitioner had specified goods like waste, parings and scrap of plastic (HSN Code 3915 taxable at 5%) and the vehicle was carrying TMT Bars and MS Angles, round bars and square bars (HSN Code 7214 taxable at 18%) is no ground to detain such goods, more so, when the goods are correctly described in the invoice and GST payable is computed at 18%. It would have been a different matter if the above goods were shown in the invoice to be waste, parings and plastic scrap taxable at 5%, but when the goods are correctly described at the appropriate taxable rate, there is no violation of any provision of law merely because such goods are not specified in Part B of FORM GST REG-01, inasmuch as the person who seeks registration is required to specify only the top five goods and not all the goods which he seeks to supply. Indubitably, many suppliers would be dealing with more than five goods; however, in terms of column 18 of the prescribed form, a supplier is required to specify only the top five goods with description of the goods and corresponding HSN Code, therefore, the contention that as the petitioner was not registered qua the goods which were being transported there was breach of any provision of law, does not merit acceptance. Moreover, the learned Assistant Government Pleader is not in a position to pinpoint the provision which has been contravened by the petitioner by transporting goods other than those specified in the registration form.

25. Besides, the petitioner has immediately thereafter, amended the registration and specified the goods in question. It may also be noted that rule 19 of the CGST Rules which provides for amendment of registration requires verification at the end of the proper officer in case of change in the legal name of business, change in address of the principal place of business or any additional place(s) of business or addition/deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for the day to day affairs of the business, which does not warrant cancellation of registration under section 29. However, insofar as any change relating to any particulars other than those specified in clause (a) of the proviso to sub-rule (1) of rule 19 is concerned, the certificate of registration shall stand amended upon submission of the application in FORM GST REG-14 on the common portal.

26. FORM GST REG-14 is the form prescribed under rule 19(1) of the CGST Rules and provides the format for application for amendment in registration details. Below the form, instructions for submission of application for amendment are provided. Reference may be made to Instructions No.2 and 3 thereof, which read as under:-

*“2. Changes relating to Name of Business, Principal place of Business, additional place(s) of business and details of partners or directors, karta, Managing Committee, Board of Trustees, Chief Executive Officer, or equivalent, responsible for day to day affairs of the business which does not warrant cancellation of registration, are core fields which shall be approved by the Proper Officer after due verification.*

3. *For amendment in Non-Core fields, approval of the Proper Officer is not required."*

27. Thus, change in specification of goods is a non-core field and, therefore, does not require the approval of the proper officer while making amendment in the registration form. The respondents in the affidavit-in-reply rely upon the fact that on 8.4.2019, the petitioner, by way of an amendment, added the commodity which was being transported, to submit that the disclosure of the commodity in the registration was mandatory on the ground that had it not been mandatory, the petitioner was not required to carry out the amendment. Such submission on the part of the respondents who are responsible officers of the State Government is quite perturbing, inasmuch as, the officers under the Act are required to make submissions based upon the legal provisions and not on the conduct of the party. Merely because the petitioner subsequently amended the registration cannot be a ground to submit that reflecting such goods in the registration was mandatory, without referring to the statutory provision which mandates such requirement.

28. From the facts and circumstances noted hereinabove, it is evident that the person in-charge of the conveyance carrying the goods in question had in his possession, the invoice as well as the e-way bill in respect thereof, and both such documents were produced before the proper officer when the conveyance in question came to be intercepted. It is not the case of the respondents that any discrepancy was found in the aforesaid two documents. Under the circumstances, in the light of the instructions contained in Circular dated 13.4.2018 issued by the Board, it was incumbent upon the second

respondent to issue a release form in FORM GST MOV-05 and allow the conveyance to move further. However, the conveyance in question has been detained on the ground of discrepancy in transport certificate which is not a requirement prescribed under the statute. Under the circumstances, the second respondent was not justified in passing the order of detention under section 129(1) of the CGST Act.

29. Insofar as the two additional grounds raised in the affidavit-in-reply are concerned, as discussed hereinabove, apart from the fact that it was not permissible for the respondents to supplement the original order by additional reasons in the affidavit-in-reply, even otherwise such reasons have no statutory basis. Under the circumstances, the impugned orders of detention passed by the second respondent under section 129(1) of the CGST Act and other connected statutes as well as the notices issued under section 129(3) of the CGST Act and other connected statutes cannot be sustained.

30. For the foregoing reasons, the petitions succeed and are, accordingly, allowed. The impugned orders of detention dated 2.4.2019 as well as the impugned notices dated 2.4.2019 in each of the petitions, are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

**(HARSHA DEVANI, J)**

**(SANGEETA K. VISHEN, J)**

Z.G. SHAIKH