

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 9617 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA  
and  
HONOURABLE MR.JUSTICE D.N.RAY**

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Approved for Reporting	Yes	No
		No

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**M/S BORON RUBBERS INDIA  
Versus  
UNION OF INDIA & ORS.**

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**Appearance:****MR PARESH V SHETH(3998) for the Petitioner(s) No. 1  
MR ANKIT SHAH(6371) for the Respondent(s) No. 1  
MS SHRUNJAL SHAH, AGP for the Respondent Nos.2,3  
NOTICE SERVED for the Respondent(s) No. 2,3**

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**CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA  
and  
HONOURABLE MR.JUSTICE D.N.RAY****Date : 27/03/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr.Paresh V. Sheth  
for the petitioner, learned advocate Mr.Ankit  
Shah for respondent No.1 and learned Assistant  
Government Pleader Ms.Shrunjal Shah for the

respondent Nos.2 and 3.

2. **Rule,** returnable forthwith. Learned advocate Mr.Ankit Shah and learned Assistant Government Pleader Ms.Shrunjal Shah waive service of notice of rule for and on behalf of the respective respondents.

3. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order dated 30<sup>th</sup> August, 2022 passed by the Appellate Authority-Deputy Commissioner of State Tax, Appeal-9, Bhavnagar.

4. The brief facts of the case are as under :

4.1. The petitioner is a partnership firm engaged in manufacturing of rubber sheet and related products and is registered under the

provisions of the Central/State Goods and Services Tax Act, 2017 (for short 'the GST Act').

4.2. On 7<sup>th</sup> August, 2018, the petitioner issued one Delivery Challan No.0012/18-19 for delivery of its raw material to job worker based in Maharashtra. The goods were being transported in Vehicle No.GJ04X8145 under LR No.282 and E-Way Bill No.631030834459.

4.3. When the goods were being removed for the purpose of job work, the same were intercepted by the respondent No.3 on 08.08.2018 at Vasad at 10:50 PM and statement of the driver was recorded. The respondent No.3 issued the Form GST MOV-01 followed by the order of detention under Section 129(1) of the GST Act in form GST MOV-06 dated 08.08.2018.

4.4. It is the case of the petitioner that as the petitioner was required to transport the goods for job work, the petitioner paid an amount of Rs.7,36,490/- on 09.08.2018 to release the goods. The petitioner also filed reply to the show-cause notice which was issued in Form GST MOV-07 on the same day i.e. on 09.08.2018 contending that no tax is required to be paid under Section 143 of the GST Act and there was no intention of the petitioner to evade the payment of tax. It was also submitted that the petitioner had provided a copy of the Delivery Challan and Lorry Receipt and there was only a clerical mistake of not updating Part-B of the E-Way Bill.

4.5. It appears that the respondent No.3 in

view of the provisions of Section 129(5) of the GST Act, passed an order dated 13.08.2018 without waiting for the hearing fixed on 14.08.2018 confirming the demand of Rs.3,68,245/- on the ground that the petitioner had come forward and made payment of tax and penalty proposed, rejecting the objections raised by the petitioner on the ground that in view of the payment made by the petitioner, the vehicle and the goods are released.

4.6. Being aggrieved, the petitioner preferred an Appeal under Section 107 of the GST Act before the Deputy Commissioner, State Tax, Appeal-9, Bhavnagar who by the impugned order dated 30<sup>th</sup> August, 2022 dismissed the Appeal on the ground that the petitioner has violated the provisions of Rule 138 of the

Central/State Goods and Services Tax Rules, 2017 (for short 'the GST Rules') read with Section 68 of the GST Act.

5.1. Leaned advocate Mr.Paresh Sheth for the petitioner submitted that in absence of the Tribunal, the petitioner has no option but to challenge the impugned order passed by the Appellate Authority by this petition.

5.2. It was submitted that it is not in dispute that the goods (in question) were being transported for job work at Maharashtra by the petitioner along with the Delivery Challan dated 07.08.2018 wherein, the vehicle number of the conveyance, in which the goods were transported was also mentioned as GJ04X8145.

5.3. It was submitted that the only lapse on part of the petitioner is that the Part-B of the E-way Bill was not generated as according to the petitioner, the same was required to be generated by the transporter. It was therefore submitted that non-generation of Part-B is nothing but a clerical mistake/lapse on part of the petitioner and therefore, the penalty ought not have been imposed upon the petitioner equivalent to the value of the goods as the petitioner was not liable to pay any tax as the goods were not the supply as per the provisions of the GST Act and as the same were sent for job work purpose and the petitioner was following the provisions of Section 143 of the GST Act as stated in the objections filed by the petitioner on 09.08.2018 before the respondent No.3.

5.4. It was therefore submitted that the petitioner, under compulsion paid the amount of penalty which was stated in the Form GST MOV-07 issued by the respondent No.3 on 09.08.2018.

5.5. It was therefore submitted that the respondent-Appellate Authority ought to have considered the facts of the case and reduced the penalty amount paid by the petitioner by refunding the excess amount in accordance with law. In support of his submissions, learned advocate Mr.Paresh Sheth has referred to and relied upon the decision of this Court in case of ***Dynamic Rubbers Pvt. Ltd. versus Deputy Commissioner (AE) CGST*** reported in ***(2024) 24 Centax 293 (Guj.)***



6.1. On the other hand, learned Assistant Government Pleader Ms.Shrunjal Shah for the respondent Nos.2 and 3 submitted that the respondent-Authorities are bound by the provisions of Section 129(1)(a) of the GST Act which prescribes the penalty to be levied at the rate of 200% of the value of the goods for breach of the provisions of the Act and the Rules while transporting the goods.

6.2. It was submitted that as per the Rule 138 of the CGST Rules, 2017, the petitioner was transporting the goods other than by way of supply and was required to generate the E-Way Bill entirely i.e. part-A as well as Part-B. It was pointed out by learned Assistant Government Pleader Ms.Shrunjal Shah that admittedly, the petitioner has not generated the E-Way Bill Part-B and as such, the

petitioner has violated the provisions of Rule 138 of the GST Rules and accordingly, the provisions of Section 129(1)(a) of the GST Act would be applicable for levy of the penalty at the rate of 200% of the value of the goods.

6.3. It was further submitted that the Circular No.64/38/2018-GST dated 14<sup>th</sup> September, 2018 would also not be applicable in the facts of the case as none of the errors specified in paragraph No.5 thereof, is present but the petitioner has not generated the Part-B of the E-Way Bill which is a mandatory requirement under Rule 138 of the CGST Rules.

6.4. It was further submitted that as per the provisions of Section 143 of the GST Act which provides for the procedure for job work,

the petitioner is required to generate the E-Way Bill while sending the goods to the job worker along with the Delivery Challan.

6.5. Learned Assistant Government Pleader Ms. Shrunjal Shah also referred to and relied upon the Circular No.38/12/2018 dated 26<sup>th</sup> March, 2018 with regard to clarification on issue related to job work issued by CBIC and submitted that Rule 138(1) of the CGST Rules provides that E-Way Bill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by principal located in one State/Union territory to a job worker located in another State/Union territory. It was therefore submitted that the petitioner has failed to generate the E-Way Bill as per the Rule 138(1) of the CGST Rules,

as Part-B of the E-Way Bill was not generated and as such, there is a clear breach of the provisions of the Act and the Rules and therefore, no interference may be made in the impugned order for levy of the penalty passed by the respondent-Authorities.

7. Considering the submissions made by the learned advocates for the respective parties and taking into consideration the provisions of the Act and the Rules, it appears that it is not in dispute that the petitioner has issued the Delivery Challan for job work dated 07.08.2018 and E-Way Bill was also generated but only Part-B of the E-Way Bill was not generated by the petitioner which stipulates for mentioning of the vehicle number in which the goods were to be transported.

8. The respondent-Authorities have issued the show-cause notice in Form GST MOV-07 fixing the date of hearing on 14.08.2018 and only because the petitioner has paid the entire amount of the penalty as mentioned in the said show-cause notice along with the objections raised in response to the show-cause notice, the respondent-Authorities could not have passed an order by invoking Sub-section (5) of Section 129 of the GST Act ignoring the objections raised by the respondent-Authorities prior to the date of hearing fixed on 14.08.2018 as the respondent No.3 has passed an order in Form GST MOV-09 on 13.08.2018 without granting an opportunity of hearing to the petitioner for the same. The Appellate Authority has also not taken into consideration this aspect and dismissed the Appeal by observing as under :

"I have given ample opportunities of hearing to both the parties and perused the available record of the case. It appears that there is a controversy regarding Part-B of E-way bill was not generated at the time of stopping the vehicle. The goods were sent from Bhavnagar to Vasai (Maharashtra). The appellant has presented the Delivery Challan for job work at the time of stopping the vehicle but due to non-presentation of E way bill Part-B not generated, vehicle has been stopped by the officer. The concerned authority issued demand notice Mov-07 dtd. 08/08/2018 for Rs.7,36,490/- which was paid by the appellant on 09/08/2018.

In the view of the above facts, the State Tax Officer, Mobile Squad, Division-6, Vadodara. has rightly made his decision. The appellant has presented the bill while intercepting the vehicle but did not present the e-way bill Part-B generated. The appellant has violated the provision made under

*Rule 138 of CGST and Section 68 of CGST Act, 2017. Demand notice and order are issued accordingly by State Tax Officer, Mobile Squad, Division-6, Vadodara.*

*I believe that we cannot deny the intention of tax evasion in this case. The order passed by State Tax Officer, Mobile Squad, Division-6, Vadodara. vide Mov-09 dtd.13/08/2018 of Rs.7,36,490/- is valid in the circumstances of the case and legal position."*

9. Thus, from bare perusal of the above reasons assigned by the Appellate-Authority, we are of the opinion that the same are totally without application of mind in the facts of the case and the petitioner, who is not a 'supplier' as defined under Section 2(105) of the GST Act and who has only transported the goods other than by way of supply for job work, could not have been

saddled with the penalty of Rs.7,36,490/- for not generating Part-B of the E-Way Bill. We are therefore of the opinion that the respondent-Authorities have passed the impugned order without considering the facts of the case that the contravention of the Rule 138 of the GST Rules is lineal and technical for not generating Part-B of the E-Way Bill, more particularly, when the goods (in question) were accompanied by a valid Delivery Challan for job work which is not in dispute and only non-generation of Part-B of the E-Way Bill by the petitioner stating the vehicle number, cannot be considered as a gross negligence on part of the petitioner and the penalty as prescribed in clause (a) of Section 129(1) of the GST Act could not have been levied but the same as per the Circular No.64 of 2018 dated 14<sup>th</sup> September, 2018 issued by



the CBIC, ought to have been resorted wherein, it is observed as under :

"3. Section 68 of the CGST Act read with rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules') requires that the person in charge 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 that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST 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 document for the movement of goods by

road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto fifty kilometres 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.

4. Whereas, section 129 of the CGST Act 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 CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section

*129 of the CGST Act may be initiated.*

*5. Further, 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.*

*6. In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be*

*sent by the proper officer to his controlling officer on a weekly basis."*

10. Considering the above circular issued by the CBIC, it is true that the case of the petitioner does not fall in any of the situations specified in clauses (a) to (f) of the paragraph No.5 of the said Circular. However, in the facts of the case, as the petitioner has generated Part-A of the E-Way Bill which also contains the GST Number and name of the transporter accompanied by the Delivery Challan for job work stating the vehicle number which is not disputed by the respondent-Authorities, we are of the opinion that the benefit of the Circular No.64/38/2018-GST is required to be given to the petitioner too. However, we are of the opinion that as the petitioner is not falling within any of the situations specified in

clauses (a) to (f), the petitioner may be saddled with a penalty of Rs.25,000/- only as the goods (in question) were not liable to tax under the provisions of the GST Act and therefore, we consider the same at par with the exempted goods though technically the tax could be leviable when the goods are returned by the job worker but for the purpose of interpretation of the levy of the penalty, the petitioner is saddled with the penalty of Rs.25,000/- only in the facts of the case.

11. In view of the foregoing reasons, the petition is partly allowed. The impugned order dated 13<sup>th</sup> August, 2018 passed in Form GST MOV-9 is hereby modified by reducing the penalty to Rs.25,000/- only and the respondents are directed to refund the balance amount paid by the petitioner either in

Electronic Cash Ledger or by Electronic Credit Ledger in accordance with the provisions of the Act and Rules. Rule is made absolute to the aforesaid extent. No orders as to cost.

**(BHARGAV D. KARIA, J)**

**(D.N.RAY,J)**

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