पत्र संख्या-वाद-अनुभाग/परिपत्र /2024-25/ 2038 /राज्य कर

प्रेषक,

आयुक्त. राज्य कर,

उत्तर प्रदेश,लखनऊ।

सेवा में,

अपर आयुक्त, राज्य कर, गौतमबुद्धनगर, जोन-नोएडा।

समस्त अपर आयुक्त ग्रेड-1, राज्य कर, उ0प्र0।

समस्त अपर आयुक्त ग्रेड-2, राज्य कर, उ0प्र0।

(वाद-अनुभाग) **लखनऊ::दिनांक::** 11 **मार्च,2025**

महोदय,

कृपया मा0 उच्च न्यायालय, इलाहाबाद में दाखिल रिट टैक्स संख्या-1022/2021 सर्वश्री जया ट्रेडर्स बनाम एडी0कमि0 ग्रेड-2(अपील) व 2 अन्य में पारित निर्णय का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा दिनांक-03/03/2025 (प्रति संलग्न) को पारित निर्णय के माध्यम से व्यापारियों की विभिन्न रिट याचिकाओं रिट टैक्स संख्या-1019/2021 सर्वश्री दुर्गा ट्रेडर्स, रिट टैक्स संख्या-1020/2021 सर्वश्री आरती ट्रेडर्स, रिट टैक्स संख्या-1021/2021 सर्वश्री कामाख्या ट्रेडर्स, रिट टैक्स संख्या-1023/2021 सर्वश्री दृष्टि ट्रेडर्स को डिसमिस कर दिया गया है। यह रिट याचिकाएँ मुख्यतः माल परिवहन के साथ परिवहित वस्तुओं हेतु प्रयुक्त टैक्स इनवाइस में माल की उचित मूल्य अंकित किये जाने विषयक है, जिसमें यदि जानबूझकर माल का अवमूल्यन किया जाता है तो माल का अभिग्रहण किया जा सकता है। निर्णय के बिन्दु संख्या-36 में कहा गया है कि विधायिका की मंशा यह है कि पंजीकृत विक्रेता को टैक्स इनवाइस पर माल का सही और वास्तविक मूल्य प्रदर्शित करना होगा लेकिन, यदि माल का सही मूल्य घोषित नहीं किया जाता है तो प्रपत्र/टैक्स इनवाइस मूल्यांकन के संदर्भ में सही नहीं माना जाएगा। विधायिका ने यह अधिकार प्रदान किया है कि यदि परिवहन के दौरान माल अधिनियम के प्राविधानो के विरुद्ध पाया जाता है, तो माल को अभिग्रहीत किया जा सकता है।

निर्णय के मुख्य अंश निम्नवत् हैः-

"33. Section 129 of the GST Act refers that any person transports any goods while they are in transit in contravention of the provisions of this Act or the rules made there under, the said goods shall be liable to be detained or seized.

34. Under the GST Act, the tax invoice has to be issued in terms of Section 31 of the Act, which prescribes every registered dealer supplying the taxable goods before or at the time of removal of such supply of goods shall issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.

35. Rule 46 (j) and (k) of GST Rules also prescribe the particulars to be mentioned in the tax invoice i.e. total value of supply of goods and taxable value of supply of goods.

36. On bare reading of said Sections as well as the Rules, it clearly shows that the intent of the legislature is that the registered dealer shall furnish the true and correct value of the goods on the tax invoice. But failing to declare the true value of the goods would result in the document being held not be to proper in the context of valuation.

The legislature has conferred the power of seizure of goods, if the goods in transit are in contravention of the provisions of Act as well as the Rules framed there under.

37. Rule 138 empowers for dispensing the requirement of e-way bill along with the goods less than Rs. 50,000/-

38. The record clearly shows that dealer has intentionally undervalued the goods to take wrong advantage of Rule 138 which dispense the requirement of e-way bill accompany the goods, cannot be spared.

39. This Court in the identical set of facts in the case of M/s Radha Fragrance Vs. Union of India and others (Writ tax No. 427 of 2019) has dismissed the petition vide judgement and order dated 14.2.2023 in which the petitioner had challenged the seizure of goods on the ground of under valuation. The relevant paragraphs of the judgement are quoted hereunder:-

"16. The question, which arises for consideration is, whether in the garb of certain protection given under Rule 138 dispensing requirement of E-Way bill for goods valuing below Rs.50,000/-, a dealer who is a manufacturer, can be allowed to send his goods to different consignees undervaluing the goods and the Tax Authorities not to proceed taking action under the Act.

17.….. ...

18. The Taxing Authorities, on fair valuation, found that the goods, which were in transit both Pan Masala and Tobacco accounted for Rs.7,12,766/- while the proper disclosure was not made by the dealer. It was on this undervaluation of goods that the authorities proceeded and imposed IGST and penalty.

19. The very purpose of downloading E-Way bill is that every goods, which are in transit, is recorded in the Web Portal and the Government has a clear picture of the goods which are manufactured and sold by the dealers either Inter-State or Intra-State.

20. It is only to protect small trade where the value is minimal that the necessity of downloading E-Way bill is dispensed with by the Government. The purpose of dispensing E-Way bill for the goods below Rs.50,000/- does not allow the dealer to undervalue his goods so as to escape it from bringing to the notice of the Government and the Taxing Authorities by uploading the same on the Web-Portal.

21…....

22. From the transaction carried out by the petitioner it is clear that huge amount of Pan Masala and Tobacco were being transported undervaluing the goods, without downloading the mandatory E-Way bill. In the garb of technicalities, no benefit can be given to a dealer who has intentionally undervalued his goods to escape from the eyes of law.

23….

24…..

25. This Court finds that it is a case of grossly undervaluing the 3,84,000 pouches of Pan Masala being sent by the dealer disclosing its price as Rs.69,600/-. The only conclusion, which can be drawn is that to avoid downloading E-Way bill and brining the transaction on record that the goods were undervalued to such an extent.

42. A Division Bench of this Court in the case of M/s Shiv Shakti Trading Company Vs. State of UP and others (Writ Tax No. 756 of 2011) decided on 24.5.2011, has an occasion to upheld the seizure of the goods being made on the ground of under valuation. The Division Bench has held that it is incumbent on a person, who is transporting goods, to declare the true value of the goods and failure to declare the same, would result non proper document in the context of the valuation, therefore, the power of seizure of goods has correctly been exercised against the petitioner.

43.Section 129 (3) read with Section 31 of GST Act as well as Rule 46 of GST Rules is analogous of Section 48 and 50 of the VAT Act.

45. In view of the aforesaid two judgements one by Division Bench in the case of Shiv Shakti Trading Company (supra) and other by the co-ordinate Bench of this Court in the case of Radha Fragnance (supra), it has been held that the seizure can be made even on the ground of under valuation, if under valuation is deliberate for the purpose of avoiding payment of tax or to defeat the provisions of the Act"

अतः उक्त महत्वपूर्ण निर्णय को इस पत्र के साथ संलग्न कर इस निर्देश के साथ प्रेषित किया जा रहा है कि स्वयं से अवगत होते हुए अपने अधीनस्थ समस्त अधिकारियों को भी उक्त निर्णय से अवगत कराये तथा मा0 उच्च न्यायालय द्वारा दिये गये उक्त निर्णय का संज्ञान लेते हुए कार्यवाही सुनिश्चित की जाए।

संलग्नकः उपरोक्तानुसार।

(डा0 नितिन बंसल)
आयुक्त,राज्य कर,
उत्तर प्रदेश, लखनऊ।

पृ०प०सं० व दिनांक उक्त।

प्रतिलिपि-1- अपर आयुक्त ग्रेड-1/2, (उच्च न्यायालय कार्य) राज्य कर, प्रयागराज/लखनऊ को इस आशय से प्रेषित कि विभागीय पैरवी में उपयोग किया जाए।

2-संयुक्त आयुक्त (आई0टी0) राज्य कर, मुख्यलाय लखनऊ को इस निर्देश के साथ प्रेषित कि उक्त परिपत्र को विभागीय वेबसाईट पर प्रकाशित करने का कष्ट करें।

11.3.25

अपर आयुक्त (विधि),राज्य कर,
उत्तर प्रदेश, लखनऊ।

AFR

Neutral Citation No. - 2025:AHC:29062

Reserved on 17.2.2025
Delivered on 3.3.2025

Court No. - 2

Case :- WRIT TAX No. - 1022 of 2021
Petitioner :- M/S Jaya Traders Through Its Proprietor Mr. Vishwanath Tiwari
Respondent :- Additional Commissioner Grade-2 And Another
Counsel for Petitioner :- Aditya Pandey
Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 1019 of 2021
Petitioner :- M/S Durga Traders
Respondent :- Additional Commissioner Grade-2 And Another
Counsel for Petitioner :- Aditya Pandey
Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 1020 of 2021
Petitioner :- M/S Arti Traders Through Its Proprietor Mrs. Arti Agarwal
Respondent :- Additional Commissioner Grade-2 And Another
Counsel for Petitioner :- Aditya Pandey
Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 1021 of 2021
Petitioner :- M/S Kamakhya Traders Through Its Proprietor Shri Santosh Kumar Srivastava
Respondent :- Additional Commissioner Grade-2 And Another
Counsel for Petitioner :- Aditya Pandey
Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 1023 of 2021
Petitioner :- S/S Dristy Traders Through Its Proprietor Mrs. Arti Agarwal
Respondent :- Additional Commissioner Grade-2 And Another
Counsel for Petitioner :- Aditya Pandey
Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Mr. Aditya Pandey, learned counsel for the petitioner and Mr. Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the State-respondents.

2. Similar controversy is involved in all the writ petitions, therefore, with the consent of the parties, all the aforesaid writ petitions are being decided by a common judgement treating Writ Tax No. 1022 of 2021, as leading case.

Writ Tax No. 1022 of 2021

3. By means of this writ petition, the petitioner is assailing the order dated 25.10.2021 passed by respondent no. 1 in Appeal No. GST/110/2020-21 (A.Y. 2021-22) under Section 129 (3) of IGST/CGST Act.

4. Learned counsel for the petitioner submits that petitioner is a proprietorship firm having GSTIN No. 18BPUPT4581B1ZB and is engaged in the business of trading of pan masala and scented tobacco. He submits that in the normal course of business, the petitioner has received an order for supply of pan masala and scented tobacco from various registered dealers situated at Delhi and in pursuance of the aforesaid order tax invoice dated 15.9.2021 was raised on which IGST, cess was charged. Since the value of the goods was less than the prescribed limit, therefore, e-way bill was not generated and through tax invoice nos. 41 to 45 dated 15.9.2021, the goods were transported from West Bengal/ Assam to New Delhi and during its onward journey the same was transshipped at Kanpur where the same was intercepted. The statement of the truck driver was recorded wherein he stated that the goods were loaded from Kanpur and on the said premise, show cause notice was issued to which the petitioner submitted its reply that crossing challan prescribed under the

Act was accompanying the goods showing that the goods were transshipped at Kanpur during its onward journey to Delhi and since the value of the goods was less than Rs. 50,000/- e-way bill was not required to accompany the goods, hence the proceedings cannot be initiated. He submits that the goods were seized on the ground of under valuation, which is beyond the power of the detaining/seizing authority. He submits that against the penalty order, an appeal was filed, which has been dismissed without considering the material on record.

5. He submits that the authorities have misperceived certain facts, which are beyond the record. In the seizure proceeding under Section 129 of the Act, the authority cannot seize the goods on the ground of under valuation.

6. In support of his contention, he relied upon the judgements of this Court in the following cases :-

(i) S/s S.K. Trading Co. and another Vs. Additional Commissioner Grade -2 (Appeal) and another (Writ Tax No. 1464 of 2022) decided on 16.3.2023,

(ii) M/s Maa Aabe Vs. State of UP, Neutral Citation No. 2024: AHC: 158372 -DB

(iii) M/s Shamhu Saran Agarwal and company Vs. Additional Commissioner Grade -2, Neutral Citation

7. He further relied upon the judgements of other High Court :-

(i) Chhattisgarh High Court in the case of **K.P. Sugandh Ltd. Vs. State of Chhattisgarh, 2020 NTN (Vol. 74) 372;**

(ii) Kerala High Court in **Best Sellers (Cochin) Private Ltd. Vs. Assistant State Tax Officer, 2021 NTN (Vol 75) -360** and **Sameer Mat Industries and another Vs. State of Kerala and others, 2018 NTN (vol 66) -69.**

8. *Per contra*, learned Additional Chief Standing Counsel supports the impugned order and submits that it is simply a case of tax evasion. He submits that goods were detained and seized not only on the ground of under valuation but also on the ground of non-genuine documents accompanying with the goods. He submits that on perusal of the documents accompanying with the goods, it shows that the movement of the goods had started from West Bengal / Assam to Delhi but the statement of the driver of the vehicle was that the goods were loaded from Kanpur.

9. He further submits that petitioner has failed to bring any material on record, even before this Court, in order to prove

that the actual movement of the goods started from West Bengal / Assam. He further submits that neither any truck number nor any toll receipt has been mentioned/ shown at any stage of the proceeding to prove that actual movement of the goods had taken place from West Bengal / Assam, however when the vehicle was detained at Kanpur then on physical verification, the movement of the goods was not found genuine, therefore, the proceedings were rightly initiated.

10. He further submits that the petitioner has utterly failed to bring on record any cogent material in order to prove the movement of the goods in question from West Bengal / Assam to Delhi. He further submits that the statement of Driver has not been rebutted at any stage of the proceedings.

11. In support of his submission, learned ACSC has relied upon the judgement of this Court in the case of **M/s Ghata Mehandipur Balaji Grinding Works Pvt. Ltd. Vs. Commissioner Commercial Tax, UP Govt. Lucknow (Trade Tax Revision No. 15 of 2014) decided on 25.3.2014.**

12. Rebutting to the aforesaid submission, learned counsel for the petitioner submits that even assuming without admitting that the goods were loaded from Kanpur, still, no adverse inference can be drawn against the petitioner on the ground of under valuation.

13. After hearing learned counsel for the parties, the Court has perused the records.

14. It is admitted between the parties that the goods in question was accompanying with the tax invoice and cross challan but on the statement of the truck driver that the goods were loaded from Kanpur, the proceedings have been initiated. The accompanying document shows the movement of the goods from West Bengal / Assam to Delhi, whereas in the statement of the truck driver the goods were loaded at Kanpur. The record further shows that the petitioner had neither submitted any reply nor contradicted the statement made by the truck driver.

15. It is also admitted that the goods in question was manufactured at Kanpur. In order to prove the genuineness of the document accompanying with the goods, the petitioner was required to complete the chain i.e. the truck / vehicle number on which the goods were transported from West Bengal / Assam, toll receipts of the toll plazas crossed during its journey up to Kanpur.

16. The record further shows that the petitioner has utterly failed to bring on record the actual movement of the goods from the West Bengal / Assam to Kanpur. For claiming the genuineness of the document, the petitioner was duty bound to

spell out the detail of mode of transport as well as details of vehicle used for transportation of the goods in question up to Kanpur. In the absence of any detail being furnished by the petitioner, the proceedings cannot be said to be illegal.

17. The record further shows that while issuing MOV-7, findings have been recorded, which are quoted hereunder :-

> *"वाहन चालक द्वारा दिये गये सशपथ बयान माल के भौतिक सत्यापन एवं प्रपत्रों की जांच के आधार पर निम्नलिखित प्रतिकूल बिन्दुओं पर स्पष्टीकरण अपेक्षित हैः- परिवहन के समय चेकिंग पर प्रस्तुत प्रपत्रों के अनुसार माल का परिवहन असम व पश्चिम बंगाल से दिल्ली हेतु किया जा रहा है जबकि वाहन चालक द्वारा सशपथ बयान में स्वीकार किया गया है कि प्रश्नगत माल उनके द्वारा दादानगर, कानपुर नगर से लोड किया गया है। उल्लेखनीय है कि भौतिक सत्यापन में प्रश्नगत माल गगन ब्रांड पान मसाला एवं सेन्टेड जर्दा के पाउच पर कानपुर के निर्माणकर्ता फर्म सर्वश्री ग्रीन्सवर्थ इण्टरप्राइजेज प्रा० लि० (GSTIN-09AAJCG0608CIZZ) पता-C9, A/2, A-5 AND A-6 SIDE-1, PANKI INDUSTRIAL AREA, KANPUR NAGAR अंकित पाया गया है जिससे स्पष्ट है कि प्रश्नगत माल का निर्माण कानपुर में ही किया गया है। इस सम्बन्ध में माल के परिवहन में प्रयुक्त वाहन की EWAY OFFICER APP पर VEHICLE PASSAGE DETAIL चेक किये जाने पर प्रश्नगत वाहन को इन तिथियों में पश्चिम बंगाल व असम से कानपुर आना प्रदर्शित नहीं पाया गया। उपर्युक्त तथ्यों के आधार पर यह स्पष्ट है कि कानपुर में निर्मित माल पान मसाला एवं सेन्टेड जर्दा को कानपुर से प्रश्नगत वाहन में लोड कर पश्चिम बंगाल एवं असम की फर्मों द्वारा जारी कूटरचित प्रपत्रों के आधार पर दिल्ली की फर्मो को आपूर्ति दिखाते हुए उत्तर प्रदेश माल एवं सेवा कर अधिनियम/केन्द्रीय माल एवं सेवा कर अधिनियम/एकीकृत माल एवं सेवाकर अधिनियम 2017 के सुसंगत प्रावधानों का उल्लंघन करते हुए करापवंचन की मंशा से माल का परिवहन किया जा रहा है।"*
>
> *(Emphasis supplied by this Court)*

18. Further while passing the order in MOV-6 following findings have been noted:-

> *"8. माल के स्वामी द्वारा प्रस्तुत आपत्ति का अवलोकन किया गया जिसे*

निम्न कारणों से स्वीकार/अस्वीकार किया जाता है। जारी नोटिस के क्रम में विक्रेता फर्म सर्वश्री जया ट्रेडर्स असम (GSTIN- 18BPUPT4581B1ZB) के अधिकृत प्रतिनिधि श्री अमित कुमार पुत्र श्री राम गोपाल, निवासी- 133P/105, ट्रांसपोर्ट नगर, कानपुर नगर उपस्थित हुए एवं फर्म की तरफ से जारी अधिकार पत्र, फर्म का REG- 06 एवं नोटिस का लिखित उत्तर दाखिल करते हुये 60 बैग गगन पान समाला एवं 15 बैग गगन सेन्टेड जर्दा माल के स्वामित्व का दावा प्रस्तुत किया। लिखित उत्तर के बिन्दु सं०-1 में <u>विक्रेता फर्म द्वारा प्रश्नगत माल के स्वामित्व का दावा तो प्रस्तुत किया गया है, किन्तु नोटिस में उठाए गए बिन्दु कि प्रश्नगत माल कानपुर में ही निर्मित है एवं वाहन चालक के सशपथ बयान के अनुसार कानपुर से ही लोड किया गया है, के सम्बन्ध में कोई उत्तर दाखिल नही किया गया है। कानपुर में निर्मित माल को कानपुर से लोड कर असम में स्थित फर्म द्वारा दिल्ली की फर्म हेतु जारी इनवाइस के आधार पर माल को परिवहित क्यों किया जा रहा है, इस बिन्दु पर उत्तर प्रस्तुतकर्ता मौन हैं, जो कि प्रश्नगत फर्म के कानपुर के नॉन बोनाफाईड डीलर के साथ दुरभि संधि कर छद्म/कूटरचित प्रपत्रों का प्रयोग करते हुए करापवंचन की मंशा से माल का परिवहन किए जाने की पुष्टि करता है।</u> दाखिल उत्तर के बिन्दु सं०-2 में कहा गया है कि माल प्रपत्रों के अनुसार है एवं कोई भिन्नता नहीं है। जारी नोटिस में इंगित तथ्य कि प्रश्नगत माल के भौतिक सत्यापन में माल के कानपुर की निर्माणकर्ता फर्म सर्वश्री ग्रीन्सवर्थ इण्टरप्राइजेज प्रा०लि० (GSTIN-09AAJCG0608CIZZ) पता-C9, A/2, A-5 AND A-6 SIDE-1, PANKI INDUSTRIAL AREA, KANPUR NAGAR द्वारा निर्मित होने तथा माल को कानपुर से ही लोड किये जाने के तथ्य, के साथ यह भी इंगित किया गया है कि प्रश्नगत मामले में सुनियोजित ढ़ंग से वास्तविक मूल्य से कम मूल्य घोषित करते हुए कुछ इस प्रकार टैक्स इनवाइस जारी की जा रही है कि क्रेता फर्म को रू० 50000.00 मूल्य से अधिक मूल्य के माल की आपूर्ति भी हो जाए एवं सी०जी०एस०टी० रूल 2017 के नियम 138 के प्रावधानों का उल्लंघन भी न होने पाए। अतः माल की मात्रा तो प्रपत्रों के अनुसार अवश्य है, किन्तु प्रपत्रों मे की गई घोषणा के विपरीत न तो प्रश्नगत माल को असम से लोड किया गया है एवं न ही प्रश्नगत माल प्रस्तुत टैक्स इनवाइस के मूल्य से आच्छादित है। इस प्रकार के छद्म/कूटरचित प्रपत्रों की रचना करते हुए प्रश्नगत वाहन में लोड माल की मात्रा भी प्रपत्रों के अनुसार सुनिश्चित करना विक्रेता फर्म की करापवंचना की विधि (MODUS OPERANDI OF TAX EVASION) को स्पष्ट करता है तथा उनके द्वारा यू०पी०जी०एस०टी०/सी०जी०एस०टी० एक्ट 2017 के सुसंगत प्रावधानों का उल्लंघन करते हुए करापवंचन की मंशा को प्रमाणित करता है।"

(Emphasis supplied by this Court)

19. The record further shows that finding of facts recorded by the respondent authority against the petitioner have not

specifically been assailed in the appeal filed by the petitioner. On perusal of the grounds of appeal annexed as Annexure No. 5 of the writ petition, which runs from paragraph no. 1 to 20, it shows that in none of the grounds, any detail of vehicle or mode of transport has been whispered in order to explain as to how the goods were moved from West Bengal / Assam to Kanpur. Once the findings of fact recorded against the petitioner have not been assailed in the appeal, the proceedings cannot be said to be illegal or arbitrary in any manner.

20. The petitioner harped that the proceeding is illegal only on the ground of under valuation but in the present case, the goods were not only detained and seized on the basis of under valuation but also on the statement of the truck driver that the goods were loaded from Kanpur whereas the documents accompanying the goods shows that it was being transported from West Bengal / Assam.

21. Under the taxing statute, in the original proceeding or in the summary proceeding, the primary burden is to be discharged by the assessee by bringing on record the cogent material. The burden of proof is shifting to the department only in the re-assessment proceeding or subsequent proceeding not being the original proceeding. In other words, the assessee in the original proceeding is duty bound to bring the material on

record in support of its claim but in the subsequent proceeding i.e. re-assessment proceedings, the burden shifts on the revenue.

22. In the present case, the petitioner has utterly failed to bring on record any cogent material for transporting the goods from West Bengal / Assam to Delhi via Kanpur. Once the petitioner has failed to prove the true/ actual movement of the goods from West Bengal / Assam to Delhi, the seizure proceedings cannot be said to be unjustified.

23. The Hon'ble Apex Court in the case of **State of Karnataka Vs. M/s Ecom Gill Coffee Trading Pvt. Ltd. (Civil Appeal No. 230 of 2023) decided on 13.3.2023** has held that burden was upon the dealer to prove beyond doubt its claim. Further, the Apex Court has emphasised in the said judgement that if the dealer is claiming any exemption, then burden to prove the genuineness of the transaction is upon the person claiming the benefit. On that background, the Hon'ble Apex Court has held that dealer has to prove the actual physical movement of the goods.

24. Following the said judgement, this Court in the case of **M/s Shiv Trading Vs. State of UP and others (Writ Tax No. 1421 of 2022) decided on 28.11.2023** has held that onus to prove and establish beyond doubt the actual transaction,

physical movement of the goods as well as genuineness of transaction is required.

25. The said judgement passed in **M/s Shiv Trading (supra)** has been confirmed by the Apex Court in **Special Leave to Appeal (C) No. 3345 of 2024** decided on 12.2.2024.

26. In the case in hand, the petitioner was duty bound to establish beyond doubt the actual physical movement of the goods from West Bengal / Assam to Delhi via Kanpur but the petitioner has failed to do so, therefore, accompanying tax invoices and other documents cannot said to be genuine. In other words, it is a clear case of contravention of Act as well as the Rules.

27. It is a glaring example of organized tax evasion. The petitioner has failed to bring on record any material to show actual movement of the goods from West Bengal / Assam. The details of truck number or toll receipt crossed during its journey from West Bengal / Assam to Kanpur have not been filed at any stage.

28. Various findings have been recorded against the petitioner as quoted herein above but the same have not been assailed at any stage even before this Court. **The findings of fact recorded against the petitioner have not been assailed**

and the petitioner chose in its wisdom to assail only some part of the finding i.e. on the ground of under valuation, the seizure cannot be held to be justified.

29. The record further shows that at the time of detention, the truck driver made a statement that the goods were loaded from Kanpur whereas the accompanying documents shows that movement of the goods from West Bengal / Assam thus at the very first instance, the petitioner ought to have produce the material showing the movement of the goods from West Bengal / Assam. Therefore, the statement of the truck driver which was taken at the first instance should be given more sanctity.

30. This Court in the case of **M/s Ghata Mehandipur Balaji Grinding Works Pvt. Ltd. (supra)** has held as under :-

> *"The Court feels that neither the papers were available with the revisionist nor they were produced within a reasonable period. The statements of the Driver which is obtained at the first instance should be given more sanctity than the explanation which are produced by the managers and proprietors later-on."*

31. The record further shows that orders have not only been passed on the ground of under valuation but otherwise.

32. The petitioner even failed to bring on record any cogent material to show actual movement of the goods. Once the

actual journey as claimed by the petitioner was not proved, the proceedings cannot be said to be illegal or arbitrary.

33. Section 129 of the GST Act refers that any person transports any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, the said goods shall be liable to be detained or seized.

34. Under the GST Act, the tax invoice has to be issued in terms of Section 31 of the Act, which prescribes every registered dealer supplying the taxable goods before or at the time of removal of such supply of goods shall issue a tax invoice showing the description, quantity and **value of goods**, the tax charged thereon and such other particulars as may be prescribed.

35. Rule 46 (j) and (k) of GST Rules also prescribe the particulars to be mentioned in the tax invoice i.e. **total value of supply of goods and taxable value of supply of goods.**

36. On bare reading of said Sections as well as the Rules, it clearly shows that the intent of the legislature is that the registered dealer shall **furnish the true and correct value of the goods on the tax invoice.** But failing to declare the true value of the goods would result in the document being held not be to proper in the context of valuation. The legislature has conferred the power of seizure of goods, if the goods in transit are in contravention of the

provisions of Act as well as the Rules framed thereunder.

37. Rule 138 empowers for dispensing the requirement of e-way bill along with the goods less than Rs. 50,000/-

38. The record clearly shows that dealer has intentionally undervalued the goods to take wrong advantage of Rule 138 which dispense the requirement of e-way bill accompany the goods, cannot be spared.

39. This Court in the identical set of facts in the case of **M/s Radha Fragrance Vs. Union of India and others (Writ tax No. 427 of 2019)** has dismissed the petition vide judgement and order dated 14.2.2023 in which the petitioner had challenged the seizure of goods on the ground of under valuation. The relevant paragraphs of the judgement are quoted hereunder:-

> *"16. The question, which arises for consideration is, whether in the garb of certain protection given under Rule 138 dispensing requirement of E-Way bill for goods valuing below Rs.50,000/-, a dealer who is a manufacturer, can be allowed to send his goods to different consignees undervaluing the goods and the Tax Authorities not to proceed taking action under the Act.*
>
> *17. ...*
>
> *18. The Taxing Authorities, on fair valuation, found that the goods, which were in transit both Pan Masala and Tobacco accounted for Rs.7,12,766/- while the proper disclosure was not made by the dealer. It was on this undervaluation of goods that the authorities proceeded and imposed IGST and penalty.*
>
> *19. The very purpose of downloading E-Way bill is that every goods, which are in transit, is recorded in the Web Portal and the Government has a clear picture of the goods*

which are manufactured and sold by the dealers either Inter-State or Intra-State.

20. It is only to protect small trade where the value is minimal that the necessity of downloading E-Way bill is dispensed with by the Government. The purpose of dispensing E-Way bill for the goods below Rs.50,000/- does not allow the dealer to undervalue his goods so as to escape it from bringing to the notice of the Government and the Taxing Authorities by uploading the same on the Web-Portal.

21...

22. From the transaction carried out by the petitioner it is clear that huge amount of Pan Masala and Tobacco were being transported undervaluing the goods, without downloading the mandatory E-Way bill. In the garb of technicalities, no benefit can be given to a dealer who has intentionally undervalued his goods to escape from the eyes of law.

23 ...,

24.....

25. This Court finds that it is a case of grossly undervaluing the 3,84,000 pouches of Pan Masala being sent by the dealer disclosing its price as Rs.69,600/-. The only conclusion, which can be drawn is that to avoid downloading E-Way bill and brining the transaction on record that the goods were undervalued to such an extent.

26. Moreover, the Taxing Authorities have also found that one of the consignee situated at Jharkhand was actually registered with the Taxing Authorities disclosing his nature of business as "Works Contract and Suppliers of Services' and not in the business of trading. These actions of the dealer lead to the only conclusion that the transactions being not recorded with the Revenue so as to escape payment of due tax in the garb that E-Way bill is only required in case value of goods is more than Rs.50,000/-.

27. Thus, from the above, it can be safely said that the action of the State Authorities in detaining the goods and imposing tax and penalty, which have been affirmed by the first Appellate Authority, needs no interference of this Court as the dealer cannot be permitted to take shelter of the fact that no E-Way bill is required in case of goods valued less than Rs.50,000/-.

28. It is clear case of undervaluation of goods by the dealer who was transporting huge quantity of Pan Masala and

Tobacco showing negligible value of goods."

40. The record further reveals that purchasing and selling firm have not shown any purchase of Pan Masala / Scented Tobacco in the A.Y. 2021-22. The said fact has been recorded in GST MOV 07 dated 22.9.2021, which is quoted hereunder:-

> *"प्रश्नगत संव्यवहार में सभी विक्रेता फर्मो की आनलाइन विभागीय पोर्टल पर खरीद विक्री की जांच करने पर पाया गया की वर्ष 2021 -22 में इन फर्मो द्वारा पान मसाले एवं तम्बाकू की कोई खरीद प्रदर्शित नहीं है। प्रस्तुत प्रपत्रों की जांच में यह भी प्रकाश में आया की आसाम व पश्चिम बंगाल के पंजीकृत फर्मो द्वारा दिल्ली के पंजीकृत फर्मो को माल के वास्तविक मूल्य से कम मूल्य घोषित करते हुवे इस प्रकार सुनियोजित ढंग से इनवॉइस जारी किये जा रहे है की प्रत्येक कर्ता फर्मो की रू 50 हजार से अधिक मूल्य के माल की आपूर्ति भी हो जाये एवं सीजीएसटी रूल 2017 के नियम 138 के प्राविधानों का उल्लंघन भी न हो पाए। "*

41. Same finding has been recorded in demand order dated 24.9.2021, which is quoted hereunder:-

> *"प्रश्नगत संव्यवहार में सभी विक्रेता फर्मो की आनलाइन विभागीय पोर्टल पर खरीद विक्री की जांच करने पर पाया गया की वर्ष 2021 -22 में इन फर्मो द्वारा पान मसाले एवं तम्बाकू की कोई खरीद प्रदर्शित नहीं है। "*

42. A Division Bench of this Court in the case of **M/s Shiv Shakti Trading Company Vs. State of UP and others (Writ Tax No. 756 of 2011)** decided on 24.5.2011, has an occasion to upheld the seizure of the goods being made on the ground of under valuation. The Division Bench has held that it is incumbent on a person, who is transporting goods, to declare the true value of the goods and failure to declare the same, would result non proper document in the context of the valuation, therefore, the power of

seizure of goods has correctly been exercised against the petitioner.

The relevant paragraphs of the said judgement are quoted hereunder:

> *"2. The petitioner, by means of the present writ petition, has impugned the seizure order dated 07.05.2011 on the following grounds:-*
>
> > *"(i) Section 50 of U.P. Value Added Tax Act does not permit seizure of a consignment being imported into the State of U.P. on the ground of undervaluation; the entire proceedings suffer from an inherent lack of jurisdiction and are void ab initio.*
> >
> > *.....*
>
> *4.....As it was alleged in the notice that the goods were undervalued, the petitioner demanded, from the respondents, the basis for alleging the same. The petitioner denied that the goods were undervalued and contended that the charge of undervaluation was unsustainable. The power to seize goods on the ground of undervaluation was not available under the U.P. VAT Act. It was, therefore, contended that the proceedings are void ab initio. .....*
>
> *7. ....A perusal, therefore, of the above provisions would show that, any person who imports into the State from any place outside the State any goods, shall obtain the prescribed form of declaration in such manner as may be prescribed from the Assessing Authority having jurisdiction over the area, where his principal place of business is situated or, in case there is no such place, where he ordinarily resides. Sub-section (4) of Section 50 confers power in the officer, making the search or inspection under this Section, who finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by the proper and genuine documents referred to in the preceding sub-sections and for the reason to be recorded, if he is satisfied, after giving such person an opportunity of being heard, that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods. By virtue of sub-section (5) of Section 50, various provisions of Section 48 of the U.P. VAT Act, which are the machinery provisions, have been made applicable to the goods under sub-section (4). One such provisions is sub-section (7) of Section 48, under which the officer seizing the goods, can release the goods on calling upon the dealer or the person in charge, and indicating the amount not exceeding the*

amount which will be sufficient to cover the penalty likely to be imposed, to deposit the said amount in cash. Under the first proviso to this sub-section, the Commissioner or such other officer, not below the rank of a Deputy Commissioner, as may be authorised by the Commissioner, for sufficient reasons to be recorded in writing, can direct for release of the goods without any deposit or on depositing such lesser amount, or furnishing security in such form other than cash or indemnity bond, as he may deem fit.

A consideration of this Section would indicate that the goods have to be imported by filling in the prescribed declaration form, and indicating the quantity or measure and value of the goods. This contemplates that the quantity, measure or value are the real quantity, measure or value and not short quantity or measure or being undervalued. If this is so read, then sub-section (4) of Section 50 can be correctly understood, as the expression used is 'proper and genuine documents'. A document, which does not correctly state the value cannot be said to be a proper document.

8. .....In our opinion, it would not be possible for us to follow the judgment of the learned Judge in Delhi Calcutta Carrying Corporation (supra) rendered under the provisions of the U.P. Trade Tax Act. The reasons being that it is incumbent on a person, who is importing goods, to declare the true value of the goods. Failure to declare the true value of goods would result in the document being held not to be a proper document in the context of the valuation.

9.....The legislature itself has conferred power of detention in respect of goods being imported under Section 50, if not covered by proper and genuine documents and by virtue of Section 50 (5) has incorporated the machinery provisions of Section 48 into Section 50. We, therefore, have no hesitation to hold that under Section 50 (4) of the U.P. VAT Act, the officer making search has power to detain goods not covered by a proper and/or genuine documents.

We, therefore, have no hesitation in holding that the power to seize goods imported into the State without proper or genuine document is located in Section 50 (4)."

(Emphasis supplied by this Court)

43. Section 129 (3) read with Section 31 of GST Act as well as Rule 46 of GST Rules is analogous of Section 48 and 50 of the

VAT Act.

44. If the petitioner wants to take any advantage of tax invoice accompanying the goods then primary duty of movement of goods from West Bengal / Assam to Delhi have not been discharged.

45. In view of the aforesaid two judgements one by Division Bench in the case of **Shiv Shakti Trading Company (supra)** and other by the co-ordinate Bench of this Court in the case of **Radha Fragnance (supra)**, it has been held that the seizure can be made even on the ground of under valuation, if under valuation is deliberate for the purpose of avoiding payment of tax or to defeat the provisions of the Act.

46. Therefore, the judgements relied upon by the petitioner of Kerala High Court as well as Chhattisgarh High Court are of no aid to the petitioner as the jurisdiction High Court has given the judgement on the issue which squarely covers the present case.

47. Further the other judgments relied upon by the petitioner in the cases of **S.K. Trading (supra), M/s Shamhu Saran Agarwal and company (supra)** has not noticed the earlier judgment given in the case of **M/s Radha Fragrance (supra)**, hence the same are *per incuriam* and of no aid to the petitioner.

48. However, so far as the Division Bench judgment relied upon by the petitioner in the case of **M/s Maa Aabe (supra)** is