

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SHEEL NAGU**

**AND**

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

**ON THE 22<sup>nd</sup> OF JULY, 2022**

**WRIT PETITION No.6736 of 2022**

**Between:-**

- 1. AMARA RAJA BATTERIES LIMITED THROUGH ITS AUTHORIZED SIGNATORY PRASAN F SINGH, S/O LATE SHRI FATEH BAHADUR D SINGH, AGED ABOUT 46 YEARS, R/O 806, 8<sup>th</sup> FLOOR, BUILDING NO.9, SHIVBHUMI CHS LTD. OFF WEH, SEHANKARWADI, JOHESHWADI (EAST), MUMBAI, MAHARASTRA.**

**.....PETITIONER**

***(BY SHRI SAHIL SHARMA, ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, DEPARTMENT OF COMMERCIAL TAX, VALLABH BHAWAN, MANTRALAYA, BHOPAL (M.P.)**
- 2. COMMISSIONER, STATE GST, MOTI BUNGALOW, COMMISSIONER OFFICE, INDORE (M.P.)**
- 3. JOINT COMMISSIONER, STATE TAX CUM APPELLATE OFFICER STATE GST, DIVISION-2, BHOPAL (M.P.)**

**4. STATE TAX OFFICER, OFFICE OF  
ASSITANT COMMISSIONER,  
COMMERCIAL TAX ANTI-EVASION  
BUREAU, BHOPAL (M.P.)**

**.....RESPONDENTS**

**(BY SHRI PIYUSH DHARMADHIKARI,  
GOVERNMENT ADVOCATE)**

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*This petition coming on for order this day, Justice Sheel Nagu  
passed the following:*

**ORDER**

This petition under Article 226 of the Constitution of India assails Annexure P/6 by which the State Tax Officer invoking its power u/S 68 read with Section 129 of the Central GST Act, has levied tax as well as penalty on the ground of the petitioner's transporter on being intercepted was found to carry GST paid goods to petitioner's office at Jabalpur whereas e-way bill generated showed destination at Indore. Further challenge is to the appellate order Annexure P/7 by which the appeal of petitioner has been rejected.

2. Learned counsel for the rival parties are heard on the question of admission so also on final disposal.

3. The sole ground raised by learned counsel for the petitioner in support of the challenge to the aforesaid two orders Annexure P/6 and Annexure P/7, by referring to the e-way bill (Annexure P/5), is that due to inadvertence during generation of the e-way bill, a clerical error took place due to which the registered address of the petitioner at Indore was mentioned in the e-way bill instead of the address at Jabalpur. It is

submitted that since the address which was earlier shown as Indore as default address in the online option could not be manually changed and therefore continued to show the destination of goods as Indore instead of Jabalpur. Learned counsel for the petitioner relied upon a Coordinate Bench decision rendered in WP No.12913/2020 (***Robbins Tunnelling and Trenchless Technology (India) Pvt. Ltd. vs. State of M.P. and others***).

4. Learned counsel for the Revenue on the other hand relying upon the executive instruction dated 14.09.2018 (Annexure P/9) of the Department of Revenue, Ministry of Finance, Government of India, in particular clause 5, submits that exemptions from the rigour of Section 129 of the GST Act can be availed on arising of contingencies as enumerated therein. For ready reference, Clause 5 is reproduced hereinbelow:

*“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 or tax mentioned is correct;*
- f) Error in one or two digits/characters of the vehicle number.”*

5. Relying upon the Clause 5 of the aforesaid circular dated 14.09.2018, learned counsel for the Revenue Shri Piyush Dharmadhikari submits that one of the contingencies which may make extend immunity against Section 129 of the GST Act is that the error in address of the consignee subject to locality and other details of consignee is mentioned correctly. It is submitted by Shri Dharmadhikari that bare perusal of the e-way bill (Annexure P/5) demonstrate that the details of locality and other details of the consignee are incorrectly mentioned and therefore the benefit of clause 5 in the circular dated 14.09.2018 is not available to the petitioner. It is further submitted by Shri Dharmadhikari that the possibility of tax evasion on the part of the petitioner cannot be ruled out. It is further submitted that the immunity of clause 5 in the circular dated 14.09.2018 (Annexure P/9) is unavailable to persons who do not come with clean hands and the mistake in the address is not purely inadvertent with no ulterior motive of evasion of tax.

6. From the above discussion, it is evident that strictly going by the terminology used in the immunity provision under Clause 5 of the circular dated 14.09.2018, the benefit flowing wherefrom may not be available to the petitioner but this Court hastens to add that in penal provision such as Section 129 of the GST Act, the element of intention to evade tax must be present to sustain an order of penalty. To gather the intention of the petitioner an inquiry has to be undertaken to ascertain whether the mistake was inadvertent with no element of malice or intention to evade tax.

7. It does not appear that either the Taxing Authority or the appellate authority has undertaken the said exercise of conducting an inquiry to

ascertain the real intent behind the act of petitioner to mention wrong address.

8. The reliance placed by the learned counsel for the petitioner on the decision of Coordinate Bench of this Court in the case of *Robbins Tunnelling and Trenchless Technology (India) Pvt. Ltd. (supra)* and another decision of this Court rendered on 16.03.2022 in WP No.344/2022 (*M/s Create Consults vs. State of MP and others*) and dated 30.03.2022 in WP No.6118/2002 (*Technosteel Infraprojects Pvt. Ltd. vs. State of MP and others*) do not assist the petitioner as they are distinguishable in as much as the facts in the said three decisions reveal that mistake therein was that the name of cosigner and consignee happened to be same but the address and other details were correct and therefore immunity available in clause 5(c) of the circular dated 14.09.2018 was available to the petitioners therein. The present case is attended with distinct facts of address and other details also not being correct.

9. In the conspectus of above discussion, this Court has no manner of doubt that an inquiry needs to be conducted at the level of appellate authority to ascertain whether there was any malicious intention to evade tax on the part of the petitioner or not.

10. Consequently, the present petition stands **partly allowed** to the following extent:

(i) The impugned appellate order dated 18.12.2019 (Annexure P/7) stands quashed.

(ii) The appellate authority is directed to reconsider the appeal solely on the question of presence or absence of any malafide intention to evade tax on the part of the petitioner and pass appropriate orders within the outer limit of three months.

**(SHEEL NAGU)**  
**JUDGE**

**(DWARKA DHISH BANSAL)**  
**JUDGE**

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