

**SUMMARY OF IMPORTANT JUDICIAL PRONOUNCEMENTS
FROM THE CHAMBERS OF ADVOCATE ANKIT KANODIA**
REFERENCE NO- SKKA-101-22

BASIC INFORMATION

IN THE MATTER OF	SATYAM SHIVAM PAPERS PVT. LIMITED & ANR.
NAME OF Authority	SUPREME COURT OF INDIA
Petition/Appeal No.	Special Leave to Appeal (C) No(S) 21132/2021
Link to Judgement	CLICK HERE
Date of Order	12-01-2022
Relevant Section/Rule	Section 129 of CGST Act, 2017

FACTS IN BRIEF

M/S Satyam Shivam Papers Pvt. Ltd (the respondent), engaged in trading business of paper had generated the e-way bill for transportation of goods (by auto trolley) for intra-state supply on 04/01/2020. But, the goods could not reach the recipient before the expiry of the EWB as the road was blocked on account of procession. On the next day when goods started the journey, Deputy state tax officer detained the goods as e-way bill had expired. Goods were stored at private premises of officer. Against demand order passed by the officer, M/s. Satyam Shivam Papers had filed a writ petition before the High Court of Telangana wherein the Hon'ble HC imposed a cost of Rs. 10000/- against the officer for passing arbitrary order on 06/10/21 and ordered for refund of penalty imposed. In due course, department had filed the appeal to the Supreme Court in defiance of this order issued by High Court of Telanagana.

JUDGEMENT/ORDER OF THE AUTHORITY

The Hon'ble Supreme Court(SC) held as -
 - The contention on the part of petitioner department that the writ petitioner was evading tax because the e-way bill had expired, had not only been baseless but even the intent behind the proceedings against the writ petitioner was also questionable. The Court noted that the act of storing the goods strangely, in the house of a relative of the petitioner department for 16 days and not at any other designated place for their safe custody was itself questionable. It has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. **The State alone remains responsible for not providing smooth passage of traffic.**
 - The Apex Court stated that submission made in appeal do not give rise to even a question of fact then what to say regarding question of law. **Having found no question of law being involved, the Hon'ble SC imposed a further sum of Rs. 59000/- on petitioner No. 2. towards cost, to be payable to writ petitioner within four weeks which would be over and above the sum of Rs. 10000/- already awarded by the High Court and thus the petition of the department was dismissed with additional costs.**

OUR COMMENTS

Section 129 of CGST Act, 2017 gives vide powers to the proper officer (PO) to detain the goods, if transported in contravention of provision of the act or rules made thereunder. But, some officers are misusing their powers and responsibility leading to harrasemet of genuine tax payers. This judgement will be helpful in upcoming litigations of Section 129 where tax evasion has been presumed on mere non-extension of validity of e-way bill. In this judgement, SC also praised the HC of Telangana, as Hon'ble HC has conscientiously examined whether intent to evade tax has been involved or not on the part of writ petitioner. For detailed order of HC of Telanagana, one may refer our summary of important judicial pronouncement (Reference No. SKKA/21-22/31). Also, new provisions of amended Section 129 w.e.f. 01/01/2022 seems to be very harsh to the bonafide tax payers as quantam of penalty has been doubled to 200 percent of tax involved. Therefore, department should use this power as given under section 129 in reasonable manner and cureable defects should be let off with small penalty as proposed by Board Circular No. 64/38/2018-GST Dated 14th September, 2018.