

S.N.	Section	Case Subject	Case	Held
1.	Section 129	<p>-Statement of the Driver for goods to be unloaded at other place</p> <p>-Goods not enroute the correct route to destination</p> <p>-Power to seize only to be exercised when goods not accompanying proper documents</p>	Om Prakash Kuldeep Kumar v. Additional Commissioner Grade-2 [2023] 155 taxmann.com 249 (Allahabad)	<p>The Court observed that the goods in question were sold by the registered dealer along with genuine documents <i>i.e.</i> tax invoices and e-way bills. At the time of interception it was alleged that driver of the vehicle made statement that goods were to be unloaded at the place which is not mentioned in the tax invoice but at Mainpuri itself. But perusal of the statement of the truck driver, which was prepared and uploaded by the revenue authority in GST MOV-01, it appeared that not a single word had been whispered in respect of the goods in question to be unloaded at the place which was not shown in the tax invoice accompanying the goods.</p> <p>The Court noted that it was alleged that since goods along with truck were not on the route of its destination, therefore, there was intention to evade tax. The Court observed that under the GST Act, there was no specific provision which bound the selling dealer to disclose the route to be taken during transportation of goods or while goods are in transit however there was a provision under VAT Act to disclose the rout during transportation of goods to reach its final destination. Once the legislature itself in its wisdom had chosen to delete the said provision, the Court opined that authorities were not correct in passing seizure order even if the vehicle was not on regular route or on different route.</p> <p>The power of detention as well as seizure can be exercised only when the goods were not accompanying with the genuine documents provided under the Act. The genuineness of the documents has not been disputed at any stage. Observation/allegation was made that at the time of interception/detention of the goods in question, the driver of the vehicle had only produced one tax invoice and away bill dated 16-3-2020 but none of the documents as prescribed under the Act was referred or brought on record before the Court in support of the said contention. Once the documents accompanying the goods were found to be genuine the goods ought not to have been seized.</p> <p>Cases Referred- Gujrat High Court in Special Civil Application No. 19549 of 2021 (<i>M/s Karnataka Traders v. State of Gujrat</i>) decided on 6-1-2022, Telengana High Court in W.P. No. 2869 of 2021, <i>Vijay Metal v. Deputy Commercial Tax Officer</i>, decided on 28-4-2021</p>
2.	Section 10 of IGST Act, 2017 and Section 16(4) of CGST Act, 2017	<p>-Tax paid under CGST and SGST cannot be claimed as ITC in IGST</p> <p>-Mere declaration by supplier to treat tax paid under CGST and SGST as IGST not sufficient as Revenue already distributed</p> <p>-Since invoice pertained to 17-18 but writ filed in 2021, claim of ITC barred by time limit provided in enabling provision in Section 16(4)</p>	Vishwanath Iron Store v. Union of India [2023] 155 taxmann.com 248 (Patna)	<p>The petitioner firm was registered in the state of Bihar. They purchased goods in auction from East Central Railways. The invoice levied CGST and SGST. The petitioner contended that when tax consultant was apprised of the delivery/sale invoice, it was pointed out that since goods were taken possession of in Jharkhand and moved to outside the State, what was to be levied was IGST and not CGST and SGST and in the above circumstances, the petitioner was denied the input tax credit, is the claim raised.</p> <p>The Court observed that admittedly, goods were delivered at Jharkhand and sale was shown to be a local sale, as evidenced from delivery/sale release order itself. If the petitioner had intended to move the material out of the State, the petitioner should have specified it and also insisted that the sale be treated as an Inter-State one. The auction though conducted in Samastipur, the sale was to be effected from Jharkhand and unless the sale occasioned the movement of goods outside the State, it could not be termed as an Inter-State sale. Further, there was absolutely nothing to prove in the writ petition as well that the movement of goods to the State of Bihar.</p> <p>The mere statement of Railways that the invoice issued should be deemed to have been issued under the IGST Act, could not enable the petitioner to seek input tax credit. The transaction between the Railways and the petitioner would not regulate the tax liability and in any event, the tax levied and collected as CGST and SGST would have been credited to the respective head of account. There can be no understanding between the parties to the transaction that what has been paid as SGST and CGST is to be deemed to be paid as IGST without due compliance of the provisions of the taxation enactment. Such understanding cannot also regulate an input tax credit without such credit being shown in the ledger account maintained by the assessee with the Department.</p> <p>It was also noticed that the invoice was one issued in assessment year 2017-18. The petitioner had filed the writ petition in the year 2021 when the enabling provision in Section 16(4) for claiming input tax credit would not have been available in any event. The present invoice is dated 23-10-2017 and hence, ITC was to be claimed before 28-11-2017 or furnishing of the annual return for the year 2017-18, whichever is earlier. The Court thus held that there was absolutely no possibility of the ITC being availed of at this point.</p>
3.	Section 107	When High Court, at outset, stated that petitioner had an alternative statutory remedy, it ought not to have proceeded to make observations on the merits	Dhan Prakash Gupta v. Central Goods and Service Tax Department [2023] 155 taxmann.com 227 (SC)	<p>The High Court in the given matter had stated that petitioner had alternative remedy but also further stated that since material based upon which assessment was completed was taken from URLs owned by petitioner and petitioner was also confronted with the material so gathered and that material was, in any case, in public domain, therefore there was no justification in principles of natural justice being violated.</p> <p>The Apex Court held that when the High Court, at outset, stated that the petitioner had an alternative statutory remedy, it ought not to have proceeded to make observations on the merits of the case and thereafter, state that the petitioner would not be precluded from pursuing alternative remedies. It was further stated that any observation made on merits of the case in the impugned order shall not come in the way of the appellate authority considering the case of the petitioner on merits.</p>