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GST E-Waybill & Vehicle Detention: Issues & Disciplines:

It is witnessed that there is a surge in Vehicle detention cases under GST in the past few months. The Finance Act 2021 also amended Section 122 and Section 129 by which it is understood that movement of goods under GST would become all the more stricter. However various Court decisions in the GST Era lay down certain important Principles and Precedents which taxpayers can take shelter under. These Courts Decisions lay down various disciplines which the Department should generally keep in mind before passing detention orders.

The various important decisions which lay down Disciplines for Detention of Vehicles are as under -

DETENTION: GOODS CAN BE OFFLOADED AS PER CONVENIENCE OF THE TRANSPORTER

VIJAY METAL Vs THE DEPUTY COMMERCIAL TAX OFFICER (TELENGANA)

There is no prohibition for a consignor to unload the consignments to two different destinations intended for two different parties in two different States on a single conveyance; and also there is no rule that consignments intended for a party at a shorter distance should be offloaded first.

E WAYBILL GENERATED BEFORE DETENTION ORDER

In a case where E-Waybill had allegedly expired at the time of detention but was renewed before detention order was passed, the following position was also taken by **The HIGH COURT AT PATNA** in the case of **RAM CHARITRA RAM HARIHAR PRASAD**. In the instant case, The Hon'ble Court held inter-alia that –

“.. that there is no change in the nature of goods or the mode of conveyance and the generation had been done by the petitioner on 26.04.2019 i.e. before the detention order then in absence of any prescription in the Rule which debars a dealer from generating such E-WAY BILLS on its expiry, where is the default to invite a proceeding..

...For the reasons so recorded, we quash the proceedings in its entirety together with the demand dated 07.05.2019 impugned at Annexure-5 which is accordingly quashed and set aside.. ”

DETENTION DURING RETURN FROM JOB WORKER

P.H.MUHAMMAD KUNJU AND BROTHERS Vs ASSISTANT STATE TAX OFFICER_ (KERELA HC)

GST - Detention of consignment for mis-match in the value of the goods as in the e-way bill and job work invoice - detention of the goods during the return journey from the job-workers premises to the petitioner's premises.

The Kerala High Court held that the consignment was covered by the job-work invoice, an e-way bill as also the delivery challan that originally accompanied the goods on its transportation to the job worker's premises. There could be no doubt with regard to the identity of the goods that were being transported and the difference in the value shown in the e-way bill was only on account of the requirement of maintaining uniformity in the value shown in the tax invoice raised by the job worker and the e-way bill generated by him - the detention in this case is wholly unjustified and set aside. Therefore, the writ petition is allowed.

PENALTY OF RS.10000 DUE TO E-WAYBILL EXPIRY

M/S SRI GOPIKRISHNA INFRASTRUCTURE PVT LTD VS THE STATE OF TRIPURA AND ORS._TRI HC

GST - Sec. 122(xiv) & 126 - **Quantum of penalty for transportation the taxable goods without the cover of valid e-way bill**

Petitioner case that goods carrying vehicle had broken down and during trans-shipment, the e-way bill could not be amended due to COVID 19 situation and consequential countrywide lock-down

The Tripura High Court held that **the petitioner has committed gross negligence by not upgrading or amending the e-way bill when the regular e-way bill had expired in transit - the breach definitely falls within the ambit of Section 122(xiv) of the CGST Act and as such the petitioner is liable to penalty. However, for the breach which falls under Section 122(xiv), the penalty is Rs.10,000/- only.**

SHIP TO LOCATION WRONG DUE TO SALE IN TRANSIT

M/S SREE RAMA STEELS VS THE DEPUTY STATE TAX OFFICER - TELENGANA HC

Noticing the conveyance at a wrong destination' without anything more cannot be said to be a contravention of the CGST Act, 2017 and that by itself not an taxable event.

There is no prohibition to sale of goods in transit by the purchaser to a third party, it is a well recognized trade practice – there is no suspicion of the bona fides of transaction merely because the e-Way Bill was generated along with a tax invoice in favour of purchaser in about two hours after the vehicle's detention and cannot be construed that petitioner had an intention to unload the goods.

If the intention of the petitioner to unload the goods is pursuant to instruction from its purchaser to deliver at the latter's Job work site and not to evade the tax or contravene any provision of law, no adverse inference can be drawn against the petitioner.

INVOICE NOT IN CONSECUTIVE SERIAL NO.

DEVICES DISTRIBUTORS VS THE ASSISTANT STATE TAX OFFICER - KERALA HC

Detention of goods on the ground that the invoices accompanying the goods were not in consecutive serial no. – detaining authority suspected that the invoices carrying the serial numbers between the two sets of invoices indicates possible evasion.

Further, the doubt entertained by the respondents were in respect of goods that may have been transported under cover of the invoices that numerically fell between the numbers

shown in the invoices that were carried along with the goods, and in that sense, pertained to goods other than those that were actually detained.

WRONG VEHICLE NO.

M/S L.G. ELECTRONICS INDIA PVT LTD - GSTAA

Though the appellant has made an error in mentioning the vehicle number, they himself admitted that due to sudden change in vehicle plan by the transporter they could not change the vehicle number. Since the appellant himself admitted their mistake by not correcting the vehicle number. Therefore, they are liable for a penalty of ten thousand under Section 125 of the CGST Act, 2017. The impugned order passed by the adjudicating authority is set aside and the appeal is allowed.

DETENTION DUE TO UNDER VALUATION

K.P. SUGANDH LTD VS STATE OF CHHATTISGARH

AND

SAKUL NAZAR MOHMD VS STATE OF GUJARAT

Detention of the goods and vehicle on ground of undervaluation of goods in the invoice – sale of goods at a price lower than the MRP. As held by the High Courts that merely because the manufacturer sells his products to its customer or dealer at a price lower than the MRP, as such cannot be a ground on which the product or the vehicle could be seized or detained

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The entire proceedings for detention of the vehicle and the seizure of the goods being in total contravention to the GST law.

THE VIDEO FOR THE ABOVE ARTICLE CAN BE ACCESSED AT THE FOLLOWING LINK

LINK FOR THE VIDEO - https://youtu.be/pls_UzDmJbA

BRIEF ABOUT THE AUTHOR :

Vivek Jalan, from Tax Connect, is a Chartered Accountant & a qualified L.L.M & LL.B. He is The Chairman of The Ease of Doing Business Committee therein. He is the member of The Confederation of Indian Industries (CII)- Economic Affairs & Taxation Committee. He is the Member of The Consultative Committee of The Commissioner of SGST. He is also The Member of The Regional Advisory Committee of The Chief Commissioner of CGST. He is advising Large MNCs, PSUs & PAN India Organizations in GST & Income Tax and has offices in Kolkata, Delhi, Bangalore, Mumbai & now Surat.

He is a regular Columnist and guest expert in Economic Times, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Indirect Taxes and Direct Taxes which reaches more than 70000 professionals.

He is also a visiting faculty for Taxes in The Confederation of Indian Industries (CII), The Institute Of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 15 years of experience in the field of Indirect & Direct Taxation. He was also an All India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books on taxation include the following –

- **COMMENTARY ON UNION BUDGET 2021 – Feb 2021**
- **SECTION-WISE COMPENDIUM ON GST – Oct 2020**
- **INTEGRATED APPROACH TO GST E-INVOICE, E-WAYBILL & RETURN E-FILING – Oct 2020**
- COMMENTARY ON UNION BUDGET 2020– Feb 2020
- COMMENTARY ON DIRECT TAX VIVAAD SE VISHWAS SCHEME – Feb 2020
- SECTION-WISE COMMENTARY ON GST – SEPTEMBER 2018
- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- "SERVICE TAX AND VAT IN WORKS CONTRACT: A COMPREHENSIVE TECHNICAL GUIDE".

He is a regular speaker at various professional forums on the various key areas in Indirect & Direct Taxes and has delivered more than 300 lectures on various topics under GST, Customs, Foreign Trade Policy of India, Income Tax, etc.