

GST/ IDT Case Law Update – 1

A writ petition cannot be entertained under Article 226 of the Constitution of India for reimbursement of the additional burden due to implementation of GST which was not part of the original contract to maintain status-quo anti of the contract as there is absence of any cause of action arising by way of an impugned action / order – Karnataka High court.

- I. Background:** The Petitioner had entered into a contract with the South Western Railways during the erstwhile regime which did not specifically provide for reimbursement of GST. With the introduction of GST from 1st July, 2017 the Assessee, who was now liable to pay GST, sought reimbursement from Railways towards the additional burden incurred as a result of implementation of GST.
- II. Disputes involved / Points of dispute:** The Petitioner-Assessee had preferred the writ petition on the following grounds:
 - a) Issue a writ of Certiorari or order or direction in the nature of a writ restraining the Respondent Railways not to undertake a false declaration arbitrarily.
 - b) Direct the Respondent Railways to reimburse the additional burden due to implementation of GST which was not part of the original contract to maintain status-quo anti of the contract.
 - c) Restrain the GST Authorities enforcing any penalties on the Petitioner-Assessee for non-payment of GST till the writ petition is disposed off to maintain status-quo anti of the contract.
- III. Legal Principles:** Article 226 of the Constitution of India which confers the power on the High Court specifies that a High Court has the power to admit and issue the writs where the cause of action has taken place.
- IV. Interpretations:** The reference was made to Article 226 inasmuch as the writ petition was filed without a cause of action having taken place by way of an impugned action notice or order by the department. Accordingly, the writ petition was dismissed for want of cause of action on the grounds that it would be constitutionally incorrect to issue a writ in the instant case.
- V. Scope of decision:** A plain reading of the writ petition filed before the Hon'ble High Court clearly indicates that it may be filed based on a cause of action either by way of an impugned order or impugned action. A writ petition filed on the grounds that authorities may possibly enforce payment in future cannot be admitted and is liable to be dismissed as pre-mature.
- VI. Conclusion:** A writ petition can be preferred only on a cause of action arising or on account of

an impugned action, notice or order by the Respondent-Department in terms of Article 226 of the Constitution of India.

[M/s Global Agency vs The Director General Goods And Services Tax (Respondent) [2018 (3) TMI 389 - Karnataka High Court]

The adjudication proceedings on the goods detained / seized should be completed expeditiously Where the registered person complies with filing of bond and security, the Proper Officer should release the goods forthwith. - Kerala High Court]

- I. Background:** Both the cases of Petitioner-Assessees before the Hon'ble High Court of Kerala seeking release of goods detained / seized by the Respondent-Department under Section 129 of the CGST / SGST Act, 2017 are more or less similar on facts. Hence, both these judgements have been analysed together in this write-up.
- II. Disputes involved / Points of dispute:** The Petitioner-Assessees seek expeditious release of the goods detained by the Respondent-Department.
- III. Legal Principles:**
 1. **Section 129 of the CGST / SGST Act, 2017** – Provides for detention, seizure of goods or conveyances carrying goods in transit for contravening the provisions of CGST / SGST Act, 2017 or Rules made therein. It also specifies that the goods seized / detained shall be released on payment of applicable tax, penalty or upon furnishing the security by way of bond in the Form GST INS – 04.
 2. **Section 67(6) of the CGST / SGST Act, 2017** – Stipulates conditions for release or provisional release, as the case may be, of goods seized which amongst others includes execution of a bond along with the security for release or provisional release of goods seized respectively.
 3. **Rule 140 of CGST / SGST Rules, 2017** – Prescribes execution of a Bond in FORM GST INS-04 for the value of the goods and Bank Guarantee equivalent to the amount of applicable tax, interest and penalty payable for provisional release of seized goods apart from imposing an obligation on the Assessee-dealer to produce the goods as and when demanded.
 4. **Cases referred in these judgements:**

The Commercial Tax Officer and The Intelligence Officer (Petitioner) vs. Madhu MB

(Respondent) 2017(9) TMI 1044 – Kerala HC: In this case the Petitioner preferred the writ appeal, aggrieved by the judgment in the writ petition preferred by the Respondent wherein it was held that the goods shall be released on payment of 50% of the tax along with interest and penalty and furnishing a bond for the balance amount. The goods were seized on the grounds that the quantity on physical verification during the movement were found in excess of what was mentioned in the invoice. The Hon'ble High Court setting aside the judgment in the writ petition, issued directions to the Petitioner Department, to conclude the adjudication on the Respondent Assessee within one week and release the goods on provisional basis. In this regard, the Hon'ble High Court did give due reference to Section 129(2) and Section 67(6) read with Rule 140 wherein it is specified that seized goods may be released on provisional basis upon execution of bond in Form GST INS – 04. The Hon'ble High Court did take cognizance of the said provisions and set-aside the judgment pronounced in the writ petition.

IV. Interpretations: The GST law and Rules made thereunder provide for a mechanism for adjudicating the issue involving detention and seizure of goods. The relevant provisions also permit provisional release of goods on furnishing of the bond in Form GST INS – 04.

V. Scope of decision: The Hon'ble High Court considering the relevant provisions of the law directed the Respondent-Department to complete the adjudication proceedings within one week. Further, directions were also issued to the Respondent-Department to release the goods on provisional basis if the Petitioner-Assessee complies with filing of a bond for the value of goods and security in the nature of bank guarantee for the value of tax, interest and penalty thereon.

VI. Conclusion: In case of detention and seizure of the goods or conveyances, the adjudication of the tax, interest and penalty payable thereon should be completed expeditiously. Where the registered person complies with filing of bond and security, the Proper Officer should release the goods forthwith.

[M/s. Vajra Rubber Products (P) Ltd. (Petitioner) Vs. The Commercial Tax Officer, Irinjalakuda, Asst. State Tax Officer And Superintendent of Central Tax & Central Excise, Irinjalakuda (Respondent) [2018 (3) TMI 972 - Kerala High Court] and Shankar Mohan (Petitioner) Vs. Intelligence Inspector, The Intelligence Officer, Commissioner Goods & Service Tax Authority, State Of Kerala (Respondent) [2018 (1) TMI 179]

Policy formulation in relation to bringing petroleum and diesel within the ambit of GST is beyond the jurisdiction of the High Court and it is the prerogative of the Goods and Service Tax Council as it is well settled in law that it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy or particular decision taken in the fulfilment of that policy is fair and a policy decision can be interfered with only if it is found to be

I. Background: The Petitioner preferred this Public-Interest-Litigation (PIL) on the grounds that IGST / CGST Act is implemented with an objective of ‘One Nation One Tax’ and accordingly, petrol and diesel should be brought within the ambit of the said law. This apart, the Petitioner also stated that the price of the petrol and diesel is fixed on a daily basis and has reached an all time high. However, when compared to the price of crude oil in the international market which is too low bringing these commodities into the GST net would result in drastic reduction in their selling price and as a consequence of which, prices of goods and essential commodities would reduce, ultimately benefitting the common man, especially the poor and the down trodden.

II. Disputes involved / Points of dispute: Whether the Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can issue a positive direction to the Goods and Central Services Tax council to bring petroleum and diesel within the ambit of Goods and Service Tax?

III. Arguments

1. On behalf of the Assessee:

- a. The GST law was introduced with the stated objective of implementing the idea of “One Nation One Tax”. However, the said object was not being met as petrol and diesel having not been brought within the purview/control of the Goods and Service Tax Act;
- b. The price of per litre of the said fuels has hit an all-time high, despite the fact that the international market price of crude oil per barrel is very low.
- c. An exorbitant increase in the selling price of petroleum products, directly affects the common man for the reason that most of the goods are transported, through road / service transport and any increase in price of the fuel was bound to increase the selling price of the commodities, especially essential commodities and thus, petrol and diesel prices should be brought within the ambit of GST.
- d. It was also pointed out that the Petitioner had submitted a representation to the Respondents but no response was forthcoming and thus, he is constrained to approach this Court by filing a Writ Petition.

2. On behalf of the Revenue: None

IV. Legal Principles:

1. **Section 9 of the CGST Act, 2017** specifies the levy and collection of GST. Sub section (2) of the said Section states that “*the Central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council*”
2. **Section 11 of the CGST Act, 2017** empowers the Government to grant either absolute or conditional exemption on certain goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification on the recommendations of the Council.
3. **Cases referred to in this judgement: Centre for Public Interest Litigation (Petitioner) vs Union of India (UOI) and Ors. (Respondents) [(2016) 6SCC 408]:**

The Petitioner alleged that the amount at which the license for voice telephony was granted for a pittance inasmuch as in normal course grant of this license would have fetched a whopping sum of Rs. 25,000 crores approximately. This insinuation was based upon a draft report of the Comptroller and Auditor General of India (CAG) which report estimated the aforesaid license fee/entry fee. It is also alleged that Respondent No. 1, while allowing voice telephony to Respondent No. 2, has not revised the Spectrum Usage Charges (SUC) matching with the charges which are paid by other operators who bought voice telephony. Thus, the Respondent sought interference by the Court by way of directions to the Government. The Hon’ble Supreme Court held that a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the Courts in exercise of power of judicial review.

Akhtar Hasan Khan and others Vs. Federation of Pakistan and others reported in 2012 (5) SCC (FJ) 12 - it was held that “*it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken and the extent of the duty to act fairly will vary from case to case*”

- V. **Interpretations:** Section 9 of the CGST Act, 2017 specifically provides that petroleum and diesel would be brought within the ambit of GST from such date as the Council may deem fit and issue a notification in this regard. Additionally, the Government, vide Section 11 of the CGST Act, 2017, is empowered to exempt certain supplies on the recommendations of the GST

Council. Thus, the law has cast a responsibility on the GST Council to determine levy and taxability of supplies under the GST Regime.

Further, the Hon'ble Supreme Court of India, in the case of Centre for Public Interest Litigation Vs. Union of India and others reported in 2016 (6) SCC 408 held that policy decision can be interfered with only if the same is arbitrary or based on an irrelevant consideration or malafide or against any statutory provisions.

VI. Scope of decision: The Court is not in a position to issue any positive direction to the Respondents since it is for the Central Government to act on the recommendations of the Goods and Service Tax Council as to bring the petrol and diesel within the ambit of the Goods and Service Tax net. It is a well-settled position of law that it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair and a policy decision can be interfered with only if it is found to be arbitrary or based on an irrelevant consideration or malafide or against any statutory provisions.

VII. Conclusion: The Government may notify the levy of GST on petroleum crude oil, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel on the recommendation of the GST Council. This being a policy matter, courts cannot interfere.

[K.K. Ramesh (Petitioner) vs. The Union of India, The Secretary, Office of the GST Council Secretariat, New Delhi And The Commissioner, Commercial Tax Officer, Cheupakkam, Chennai (Respondent) [2018 (3) TMI 1451 - Madras High Court]

The Petitioner was allowed to furnish the fresh application for registration subsequent to rejection of the earlier application on account of discrepancies in documents- Kerala High Court.

I. Background: The Petitioner preferred this writ petition pursuant to the rejection of the registration application by the competent authority under the GST law on the grounds that the Petitioner failed to provide explanation sought as regards the discrepancies in the documents.

II. Disputes involved / Points of dispute: Petitioner being aggrieved by the rejection of registration application has preferred this writ petition before the Hon'ble High Court.

III. Arguments

1. On behalf of the Assessee: The Respondent submitted that if the Petitioner submits a fresh application with the requisite documents, the competent authority would consider the same.

IV. Scope of decision: As per the submissions of the Respondents, the Hon'ble High Court held that the Petitioner is free to prefer a fresh application for registration with the requisite documents. If the Petitioner prefers a fresh application, the same shall be considered and appropriate decision shall be taken thereon by the competent authority.

V. Conclusion: An applicant whose application for GST registration has been rejected previously may subsequently file a fresh application for obtaining registration.

[Rajeevan V.N. (Petitioner) vs The Central Tax Officer -1 Circle, Cochin And Jose Thomas, Kottayam, (Respondent) 2018 (2) TMI 1717 (Ker)]

Non-migration of registration and non-filing of returns since provisional ID and password are not functioning - no coercive action to be initiated: – *Allahabad High Court.*

The summary is based on the interim order. The matter was posted on 04.10.2017 – however, the status of the case is not known.

- I. Background:** The Petitioner-Assessee was unable to file the returns under the GST laws since, the provisional ID and password allotted, were not functioning. The Petitioner-Assessee was also unable to migrate the registration.
- II. Disputes involved / Points of dispute:** Petitioner-Assessee is not able to migrate the registration and file the return under the GST law for the reason that the provisional ID and password issued to him are not functioning.
- III. Scope of Order:** The Hon'ble High Court directed the Respondent-Department to not initiate coercive recovery measures till the judgment is pronounced after observing the instructions sought by the Respondent-Department on the peculiar issue.
- IV. Conclusion:** We are given to understand that the Hon'ble High Court is yet to pronounce the judgment. However, it has issued directions to the Respondent-Department not to initiate coercive actions against the registered persons who was not able to comply with the provisions of the GST laws for non-functioning of the provisional ID and password.

[M/s Radhey Lal Jaiprakash Neadarganj Dadri (Petitioner) vs. State Of U.P. And 5 Others 2017 (11) (Respondent) TMI 1022 – Allahabad High Court]

Government directed to reopen the portal for filing of declaration in Form GST TRAN-1 or accept manual filing of the said form as due to technical issues may not be a reason to disallow the transitional credit that an assessee would be entitled for. – Allahabad High Court.

- I. Background:** Despite his best and continued efforts, the Petitioner was unable to file Form GST TRAN-1 on the last date, owing to the GST portal being unresponsive, likely to result in the Petitioner having to suffer loss of eligible transitional credit by passage of time.
- II. Disputes involved / Points of dispute:** Whether a writ of mandamus can be issued to the Government or the GST Council to extend the time period for filing of GST Tran-1 in the case of the Petitioner because his application was not entertained on the last date?
- III. Arguments**
- 1. On behalf of the Assessee:** Despite making several efforts on the last date for filing of the application, the electronic system of the Respondent did not respond, as a result of which the Petitioner is likely to suffer loss of the credit that it is entitled to by passage of time.
- 2. On behalf of the Revenue:**
- The Respondents have been served with a notice of this writ petition two days ago.
 - The Government is considering the setting up of a new committee which will look into resolution of individual cases probably within next two weeks from the date of hearing the matter.
 - However, an exact date for setting up of the said committee could not be confirmed at the time of hearing.
- IV. Legal Principles:** None (*The due date for filing transitional declaration in Form GST TRAN-1 was 27th December 2017¹*).
- V. Scope of decision:** The Respondents are directed to reopen the portal within two weeks from today. In the event they do not do so, they will entertain the application of the Petitioner

¹ Order No.9/2017 dated 15.11.2017

manually and pass orders on it after due verification of the credits as claimed by the Petitioner. They will also ensure that the Petitioner is allowed to pay its taxes on the regular electronic system also which is being maintained for use of the credit likely to be considered for the Petitioner

- VI. Conclusion:** Non-filing of Form GST TRAN – 1 due to technical issues may not be a reason to disallow the transitional credit that an Assessee would be entitled for.

[M/s KTL (P) Ltd. (Petitioner) vs Union of India, (Respondent) 2018 (3) TMI 679 (All)]

Non-submission of Form GST-TRAN 01 due to technical glitches – the Department should re-open the portal or entertain the application manually as the department cannot deny the transitional credit when the registered taxable person was unable to file the Form GST TRAN – 01 due to technical issues : Allahabad High Court dated 24 January 2018

Note for the above 2 judgements: The Central Board of Indirect Taxes and Customs has set-up an IT Grievance Redressal Mechanism to address the grievances of taxpayers due to technical glitches on GST portal. Such grievances may relate to filing of any return or form as prescribed under the law or amending any form or return already filed (Refer Circular No. 39/13/2018-GST dated 03.04.2018).

- I. Background:** The Petitioner-Assessee was not able to furnish the Form GST TRAN – 01 since, the electronic system of the Respondent-Department was not responding. Accordingly, the Petitioner-Assessee preferred this writ of mandamus seeking to issue directions to extend the time limit for filing Form GST TRAN – 01.
- II. Disputes involved / Points of dispute:** The transitional credit cannot be denied to the Petitioner-Assessee who was not able to furnish Form GST TRAN – 01 due to the issues relating to electronic system of the Respondent-Department.
- III. Legal principles:** None (*The due date for filing transitional declaration in Form GST TRAN-1 was 27th December 2017²*).

² Order No.9/2017 dated 15.11.2017

IV. Scope of judgement: The Respondent-Department are directed to reopen the portal and enable the Petitioner-Assessee to furnish the Form GST TRAN – 01 within two weeks from date of the order passed by the Honourable High Court. In the event the portal is not reopened, the Respondent-Department should entertain the application of the Petitioner-Assessee manually and pass orders after due verification of the credits as claimed by the Petitioner. The Petitioner shall be allowed to pay taxes on the regular electronic system which is being maintained for use of the credit likely to be considered for the Petitioner.

V. Conclusion: The Department cannot deny the transitional credit when the registered taxable person was unable to file the Form GST TRAN – 01 due to technical issues. The department should ensure such registered taxable person should be entitled for transitional credit either by way of re-opening the portal or by way of manually processing the transitional credit application.

[M/s Continental India Private Limited And Another (Petitioner) vs Union of India Thru Secy. And 3 Others, (Respondent) 2018 (1) TMI 1245 –: Allahabad High Court dated 24 January 2018]

Rule 44A of the CGST Rules, 2017 is discriminatory and unreasonable in as much it specifies restrictions in claiming transitional credit of countervailing duty paid on import of dore bars only.

This is only an interim order of the Honourable Court and the final arguments were to be concluded on 25.09.2017 which we understand are yet to be concluded (emphasis supplied). -Delhi high court

I. Background:

The Petitioner in the instant case challenged the impugned amendment by way of insertion of Rule 44A by the Fifth Amendment Rules with effect from 17.08.2017 wherein it is specified that the countervailing duty paid under Section 3(1) of the Customs Tariff Act, 1975 paid on the import of gold dore bars which was eligible as transitional credit shall be reversed to the extent of five-sixth even though such dore bars are held in stock or contained in semi-finished goods or finished goods lying in stock as on 01.07.2017.

II. Disputes involved / Points of dispute:

Whether, Rule 44A which restricts five-sixth of the transitional credit of countervailing duty paid under Section 3(1) of Customs Tariff Act, 1975 despite such gold dore bars are held in stock, contained in semi-finished goods or finished goods as on 01.07.2017 is discriminatory and unreasonable inasmuch as restrictions as specified therein are applicable to gold dore bars.

III. Arguments

1. On behalf of the assessee:

- a. The Petitioner contends that in terms of Section 140 of CGST Act, 2017, transitional credit of countervailing duty paid under Section 3(1) of the Custom Tariff Act, 1975 at the time of import of gold dore bars is allowed in full if such dore bars are held in stock or contained in semi-finished goods or finished goods as on 1st July 2017 subject to conditions specified therein;
- b. The Petitioner contends that the conditions prescribed in Section 140 of CGST Act, 2017 were satisfied and thus, they are entitled to claim transitional credit of CVD paid thereon;
- c. Issuance of notification to substitute the provision which specifies the disallowance of transitional credit to the extent of five-sixth of the credit only on the gold dore bars is discriminatory and unreasonable which would result in imposition of a higher burden of tax when compared to other similar domestic goods. On such lines it was contested that the impugned notification is ultra-vires to Section 140 and Section 164 of the CGST Act, 2017.
- d. The Petitioner further pleaded before the Hon'ble High Court to grant interim relief as the credit of CVD already availed and utilized for payment of tax on finished goods would be electronically reversed and there may arise a situation to deposit the cash which would be severely prejudicial to the interest of the Petitioner.

2. On behalf of revenue: None

IV. Legal Principles:

1. Rule 44A of the CGST Rules, 2017 specifies that a taxable person shall reverse five-sixth of transitional credit relating to Section 3(1) of the Customs Tariff Act, 1975 claimed in terms of Section 140 of the CGST Act, 2017 on the gold dore bars held in stock, contained in semi-finished goods or finished goods as on July 01, 2017. It further specifies that such reversal shall be by way of debiting the electronic credit ledger at the time of supply of the gold dore bars or

the gold or the gold jewellery. In case where the supply was effected on the date of insertion of such Rule, it is specified debit towards reversal of transitional credit shall be within one week from the effective date of amendment viz., August 17, 2017.

2. Section 140(3) of the CGST Act, 2017 specifies that a registered person is entitled to claim transitional credit on the inputs held in stock or inputs contained in the semi-finished goods or finished goods as on July 01, 2017 subject to conditions specified therein.
3. Section 164 of the CGST Act, 2017 empowers the Central Government to issue notification or prescribe rules in terms of the recommendations received from the Goods and Service Tax Council.

V. Conclusion: The Hon'ble High Court considering the submissions of the Petitioners contentions granted the interim relief in favour of the Petitioner and directed the Respondent not to initiate coercive steps to recover the credit already availed.

[Salasar Synthetics, M.D. Overseas Ltd. (Petitioner) vs Union of India & Another (Respondent) 2017 (6) GSTL 396 (Del)]

Penalty and seizure is not sustainable for movement of goods without e-way bill unless there exists malafide intention to evade taxes: - Allahabad High Court

- I. **Background:** The Petitioner-Assessee did not comply with the condition of generating an e-way bill for the movement of goods on account of inter-State inward supplies. However, an e-way bill was generated and furnished before the authority after seizure of the goods with some delay but before the seizure order was issued. Subsequently, a seizure order was issued to the Petitioner-Assessee on the grounds that the e-way bill was not found accompanying the goods at the time of movement.
- II. **Disputes involved / points of dispute:** The Petitioner-Assessee has preferred this writ petition against the seizure order levying penalty on the grounds that the e-way bill was furnished before concluding the orders and the movement of goods was not with an intent to evade payment of taxes.
- III. **Scope of Judgement:** In the instant case, the notice was issued proposing to levy penalty on the

grounds that the goods were not accompanied with an e-way bill and not on the grounds that such non-compliance is with an intention to evade payment of taxes. Accordingly, the Hon'ble High Court allowed the writ petition and set-aside the seizure order as non-sustainable. Reference was also drawn to the provisions relating to e-way bill. It was observed that the trade was facing certain difficulties to download the e-way bill and instances where e-way bill is applicable was not clear.

- IV. Conclusion:** Penalty for non-compliance with an e-way bill provisions without any intention to evade the payment of taxes is not sustainable.

[M/s Raj Iron & Building Materials (Petitioner) Vs. Union Of India Thru' Its Secy. & 3 Others (Respondent) 2018 (1) TMI 949 - Allahabad High Court]

Movement of goods under the cover of an invoice when the law does not prescribe any other document – not liable for detention - - Kerala High Court

Note: *With effect from 01.04.2018, this judgment may not be relevant since the provisions of Section 68 of the CGST / SGST Act, 2017 read with Rule 138 of the CGST / SGST Rules, 2017 has been made effective from 01.04.2018. Accordingly, movement of goods on account of inter-State sales should be under the cover of an invoice / bill of supply and e-way bill.*

- I. Background:** The Petitioner-Assessee was challenging the detention notices issued in relation to four consignments being shipped on account of inter-State supplies on the grounds that Petitioner-Assessee is not moving the goods under the cover of the documents specified under the CGST / SGST Act, 2017 read with IGST Act, 2017. Amongst the four consignment, one consignment was detained on the grounds that the movement was under the cover of challan and not an invoice although such movement was on account of inter-State sale.
- II. Disputes involved / Points of disputes:** The Petitioner-Assessee preferred the writ petition on the grounds that the CGST / SGST Act, 2017 read with IGST Act, 2017 do not specify the documents for movement of goods on account of inter-State sales.
- III. Scope of judgement:** There is no other document except tax invoice prescribed under the CGST / SGST Act, 2017 read with IGST Act, 2017 and Rules made therein that are required for the purpose movement of goods on account of inter-State supplies. Therefore, in as much as the

detention of the first three consignments are concerned, it is not valid and justified on the part of the Respondent-Department to detain the goods when the goods were being moved under the cover of an invoice. However, in case of the fourth consignment, the movement was under the cover of delivery challan and not an invoice although the movement was on account of inter-State supplies. As such, the Hon'ble High Court held that the detention of goods in case of fourth consignment is justified. Accordingly, the directions were issued to complete the adjudication proceedings within a period of one week from the date of furnishing the copy of the judgment.

- IV. Conclusion:** The Department cannot invoke the detention and seizure provisions during the movement of goods on the grounds that the movement is not covered by the documents which are not prescribed by the law. The movement if covered by the invoice in the absence of any other document which is not prescribed would be in compliance with the provisions of the law.

[M/s. Bhima Enterprises (Petitioner) Vs. The Assistant State Tax Officer, Neyyattinkara and 3 others (Respondent) 2018 (1) TMI 1149 - Kerala High Court]

The State Government decision to cancel the tenders on account of introduction of GST cannot be said to be illegal or arbitrary– MP High Court]

- I. Background:** The Petitioner-Assessee was one of the participants for a tender invited by the Respondent-Government and was awarded such tender pending letter of acceptance. The Respondent-Government issued a communication to the Petitioner-Assessee on 18.08.2017 for cancellation of the tender on the grounds that the GST has been made applicable with effect from 1.7.2017 and it is decided that for the future contracts, tenders should be invited by excluding the amount of GST. The Petitioner-Assessee preferred this writ seeking right to grant of contract on the basis of an offer made to the Respondent-Government earlier.
- II. Disputes involved / Points of disputes:** The Petitioner-Assessee has preferred the writ petition on the grounds that the tender has already been awarded by the Respondent-Government and cancellation of the tender on account of introduction of GST with effect from 01.07.2017, is illegal and arbitrary. Accordingly, the Petitioner-Assessee seeks right to grant of contract on the basis of an offer made to the Respondent-Government at one stage.
- III. Scope of judgement:** Communication made to the Petitioner-Assessee for cancellation of the tender in which Petitioner-Assessee had participated, and to not act upon the tenders invited from 01.07.2017 to 05.08.2017 is not illegal or arbitrary as the cancellation was on account of introduction of GST with effect from 01.07.2017. Since the acceptance of the offer is not

communicated to the Petitioner-Assessee, it cannot be construed as a concluded contract. In the absence of concluded contract, the Petitioner-Assessee cannot claim right to seek grant of contract only on the basis of the offer submitted by the Petitioner-Assessee at one stage.

IV. Conclusion: The act of cancellation of a contract on account of introduction of GST by the Government cannot be held as arbitrary or illegal.

[Nirmal Constructions (Petitioner) vs The State of Madhya Pradesh (Respondent) [2017 (12) TMI 514 – MP High Court]

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