

GST/ IDT Case Law Update – 2

Cancellation of registration under GST cannot take place without issuing any notice or providing an opportunity of being heard as the GST law provides for the procedure to be followed for cancellation of registration – (Allahabad High Court)

- I. Background:** The Petitioner-Assessee preferred this petition before the Honourable High Court of Allahabad on the grounds that the website depicts the registration as cancelled whereas cancellation order has not been issued and an opportunity of being heard was not provided.
- II. Disputes involved / Points of dispute:** The registration of the Petitioner-Assessee is depicted as cancelled on the GST portal without having received the order of cancellation and without providing an opportunity of being heard.
- III. Arguments**
On behalf of the Assessee: The Petitioner-Assessee contends that their registration was cancelled without providing a copy of the order cancelling the registration and without providing an opportunity of being heard.
- IV. Scope of decision:** The Honourable High Court directed the Counsel representing the Respondent-Department to seek instructions whether the Petitioner-Assessee's registration has been cancelled. If yes, then it was also directed to furnish the details of the Authority and the reasons for cancellation. The matter was posted for hearing on 05.10.2017. However, the status of the case, presently, is not known.
- V. Conclusion:** The GST law provides for the procedure to be followed for cancellation of registration. It is specified that, before cancellation of the registration an opportunity of being heard should be provided and thereafter, an order cancelling the registration should be issued to the assessee.

[Annapurna International vs. State of U.P. & 5 Others [2017 (11) TMI 1021 –Allahabad High Court]

Detention of goods merely for infraction of the procedural rules is without jurisdiction as the movement of goods from warehouse of the Petitioner-Assessee shall not qualify as supply and accordingly, was not liable to tax and any procedural lapse with GST Rules does not amount to taxable supply and, cannot result in detention of goods - Kerala High Court

I. Background: The Respondent-Department detained the goods which were being moved under the cover of delivery challan on the grounds that the document Form KER – 1 as specified under Kerala GST Act was not being accompanied during the movement. Such goods were being moved from the warehouse of the Petitioner-Assessee to the location of the various Towers where such goods were meant to be used. On receipt of the notice subsequent to detention, the Petitioner-Assessee had uploaded the details and furnished the Form KER – 1. The proper officer rejected the declaration in Form KER – 1 on the grounds that such declaration is furnished after the detention of goods and accordingly, the Petitioner-Assessee was directed to remit the applicable taxes and penalty to seek release of goods. On receipt of such communication, the Petitioner-Assessee preferred this writ petition.

II. Disputes involved/Points of dispute: The declaration furnished after detention of goods can be duly considered after the documents were detained. Whether, the goods being moved without an intention to evade the payment of taxes can be detained for non-availability of the prescribed documents.

III. Arguments

1. On behalf of the assessee:

- a. The said goods confiscated / detained were purchased from another State and accordingly, IGST were paid during such purchase based on the tax invoice.
- b. The Petitioner-Assessee pleads that the declaration in Form KER-1 was not filed by them due to an inadvertent omission of their employees. However, the details of goods being transported was uploaded and the declaration was generated after receipt of the notice which was duly filed.
- c. Such goods were transported with proper 'delivery challan' the authenticity of which was not questioned. Accordingly, it was contested that the goods should not be detained as per Section 129 of CGST Act and SGST Act.

2. On behalf of the Revenue:

- a. The petitioner has contravened the provisions of CGST and SGST Act, 2017 and hence as per the provisions of Section 129 of the CGST / SGST Act, 2017, the detention of the goods is legal.
- b. The goods were being transported without being accompanied by the declaration in Form KER-1 and the same was filed only after the goods were detained. Therefore, it was contested that there is a contravention of law at first stage itself.
- c. Detention of goods are allowed under Section 129 of CGST / SGST Act, 2017 irrespective of the fact that as to whether they are taxable or non-taxable.

IV. Legal Principles:

1. **Taxable supply:** Section 2(108) of CGST and SGST Act, 2017 defines a taxable supply as a supply of goods or services or both which is leviable to tax under the GST Act, 2017
2. **Taxable person:** Section 2(107) of CGST and SGST Act, 2017, defines a taxable person as a person who is registered or liable to be registered under the GST Act, 2017
3. **Scope of supply:** Section 7 of CGST and SGST Act, 2017 provides the scope of the Supply as:
 - a. all forms of supply of goods/services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 - b. import of services for a consideration whether or not in the course or furtherance of business;
 - c. the activities specified in Schedule I, made or agreed to be made without a consideration; and
 - d. the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
4. **Activities to be treated as supply even if made without consideration:** Schedule I of CGST and SGST Act, 2017 specifies the activities to be treated as supply even if made without consideration. Such cases are:
 - a. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets
 - b. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business
Provided that if, in a financial year a employer gives a gift to an employee for a value upto rupees fifty thousand then such gift shall not be treated as supply of goods or services or both.
 - c. Supply of goods by -
 - i. a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

ii. an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

d. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business

5. **Detention, seizure and release of goods and conveyances in transit:** Section 129 of CGST and SGST Act, 2017 provides for detention or seizure of goods in transit along with conveyance and documents in case a person transports any goods or stores such goods in contravention of the provision of the GST Act, 2017 or Rules framed thereunder, and can be only released after payment of the tax amount and penalty as prescribed. However, no such tax, interest and penalty can be imposed without issuing a notice and providing an opportunity of being heard to the concerned person further proceedings can be initiated in case of failure of payment of the amount.

6. **Confiscation of goods or conveyances and levy of penalty:** Section 130 of CGST and SGST Act, 2017 specifies the provision with respect to confiscation of the goods and imposition of penalty, if any person:

- a. Supplies any goods in contravention of the provisions of the GST Act, 2017;
- b. Non-accounting of taxable goods;
- c. Supply of goods without obtaining registration;
- d. Contravention of the provisions with intent to evade taxes under GST Act, 2017;
- e. Use a carriage to transport goods in contravention of the provisions of GST Act, 2017 and Rules framed thereunder unless the owner of the carriage proves that such movement of goods has been done without his knowledge.

Further, the concerned person may be liable to fine, tax, interest and penalty to the extent specified in this section. Moreover, other provisions shall apply accordingly.

7. Rule 138 of CGST / SGST Rules, 2017 specifies the provisions and procedures with respect to E-way to be issued prior to movement of goods exceeding value of rupees fifty thousand.

8. Rule 55 of CGST Rules, 2017 specifies the provisions and manner by which the goods shall be transported without issuance of an invoice. Further, as per Rule 55(3) of CGST Rules, 2017 specifies that in case goods are transported in lieu of delivery challan, the same has to be declared in the E-way bill specified in Rule 138 of CGST Act, 2017.

V. **Interpretations:** Going by the definition of supply in terms of Section 7 of CGST / SGST Act, 2017 and activities specified in Schedule I of CGST / SGST Act, 2017, the movement of goods from warehouse of the Petitioner-Assessee shall not qualify as supply and accordingly, was not liable

to tax.

- VI. Scope of decision:** The Honourable High Court considering the submissions made by the Petitioner-Assessee held that Section 129 of the CGST / SGST Act, 2017 talks about detention of goods only when the movement is under suspicion. Moreover, Section 130 of CGST / SGST Act, 2017 provides that confiscation of goods is contemplated under the statutes only when a taxable supply is made against the provisions contained in the statutes and the Rules made there under with an intent to evade payment of tax. Any procedural lapse with GST Rules does not amount to taxable supply and as such, cannot result in detention of goods. However, it may result in imposition of penalty. Accordingly, the order levying tax and penalty were quashed and the Respondent-Department was directed to release the goods forthwith.
- VII. Conclusion:** The goods during its movement can be detained and confiscated only if the proper officer has reason to believe that such movement is with an intention to evade payment of taxes. Detention of goods on the grounds that the e-way bill is not accompanied without questioning the other documents during the movement would not be lawful.

[M/s Indus Towers Limited vs. The Assistant State Tax Officer 018 (1) TMI 1313- Kerala High Court]

Department shall not initiate penal action against the assessee for not filing the return and payment of taxes as the assessee was unable to file the returns and pay the taxes for technical issues relating to migration - Allahabad High Court

- I. Background:** Petitioner Assessee was unable to file the returns under the GST laws and remit the taxes due to issues faced during migration of registration in GST. The Respondent Department issued user id and password which depicted the PAN of the partner instead of the firm's PAN.
- II. Disputes involved/Points of dispute:** Writ petition filed seeking rectification by the Respondent-Department and not to initiate the penal action against the Petitioner-Assessee for non-filing and non-remittance of the taxes.
- III. Arguments**
1. **On behalf of the Revenue:** The Counsel for the Respondent-Department has sought one week's time for obtaining the instructions and to ensure the mistake is rectified and a fresh ID/password with

the correct PAN number is issued to the petitioner so that there may not be difficulty in the migration of the registration certificated and consequently, filing of the return for the month of July and August, 2017.

IV. Scope of decision: The Honourable High Court directed that no penal actions shall be taken or initiated against the petitioner for non-filing of returns and non-payment of taxes under GST for the month of July 2017 and August 2017 if the petitioner files monthly returns for the said period within two weeks of issuance of correct ID / password or pays the taxes within two weeks of filing of returns

V. Conclusion: Penalty should not be imposed where the assessee is unable to file the returns and pay the taxes for technical issues relating to migration.

[M/s Manu International vs. State Of U.P. And 5 Others 2018 (2) TMI 39 - Allahabad High Court]

Non-payment of GST along with the bid fee to procure a tender would amount to non-compliance with the remittance of bid fee – bidder would be liable for disqualification- Gujarat High court

I. Background: The petitioner preferred this writ petition pursuant to the rejection of application with respect to “Development of Integrated Group Housing Facility” by Surat Municipal Corporation due to non - payment of GST @18% along with the bid fee. The application was rejected even after the applicable GST on the bid fee was remitted after effecting payment towards bid amount.

II. Disputes involved/Point of dispute: Whether a bid where the Petitioner-Assessee was willing to participate can be rejected on the grounds of non-payment of GST along with the bid amount / document fees even though the GST was remitted by the Petitioner-Assessee thereafter under the reverse charge mechanism.

III. Arguments

1. On behalf of the assessee:

- a. Non-payment of bid fee / document fee along with the applicable GST consequent to which it was considered as Petitioner-Assessee is disqualified is absolutely illegal and most arbitrary;
- b. That the Petitioner-Assessee remitted the ‘earnest money deposits’ of Rs. 93,00,000/- and also remitted the bid fee / document fee without GST since the Respondent-Corporation did not provide the GST registration details. Accordingly, the Petitioner-Assessee appropriately computed the GST liability under reverse charge mechanism and remitted the applicable taxes

thereon within the due date provided under the GST laws. Therefore, it was contested that disqualification merely on the grounds that the Petitioner-Assessee has not remitted the GST along with the bid fee / document fee is illegal;

- c. Payment of bid / document fee or tender fees cannot be said to be a condition of the tender or the eligibility and therefore, bid cannot be held to be non-responsive for non-payment of tender fee. It was submitted that in the present case as the full tender fees have been paid by the Petitioner-Assessee and then the bid is submitted;
- d. It was submitted that requirement in the tender notice can be classified into two categories those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary to the main object to be achieved by the condition. It was submitted that in the first case the authority issuing the tender may be required to enforce them rigidly, however, in the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases;
- e. It was submitted that the charges for production of bid document per se is unrelated to bid evaluation. It was therefore, submitted that non-payment of aforesaid amount in full (with GST @18%) cannot be said to be non-fulfillment / non-compliance of the essential condition relating to the eligibility and / or evaluation of the bid on merits;
- f. Non-payment of GST @18% on the amount of bid / tender fee is not considered to be “Non Responsive” in terms of the relevant clauses of the tender documents;
- g. The demand draft furnished towards the amount of GST was not accepted by the Respondent-Corporation. Accordingly, thereafter the Petitioner-Assessee remitted the applicable GST under reverse charge mechanism. Therefore, it was submitted that the Petitioner-Assessee can be said to have complied with relevant terms and conditions of the eligibility criteria;
- h. Non-payment of GST with bid fee / document fee is not supported by law, more particularly, when the Respondent-Corporation was not registered under the GST laws;

2. On behalf of the Revenue:

- a. That the mandatory condition to be eligible for the bid was to deposit document / bid fee of along with applicable GST as stipulated in the terms and condition of the tender notice. Due to failure on the part of Petitioner-Assessee to deposit such amount, the Respondent-Corporation disqualified the Petitioner-Assessee rightly. Therefore, it was submitted that such disqualification was not arbitrary and mala fide;
- b. Depositing of document fee and EMD was a mandatory requirement which was required to be complied at the entry stage itself and unless the entire amount is deposited, the persons who

submitted bid would not get entry at all. Once the aforesaid amount is deposited / paid and receipt is generated, the concerned party can be said to be tenderer / bidder whose bid is required to be considered at technical stage;

- c. As the conditions stipulated by the Respondents-Corporation were complied by all the bidders, therefore being rejected on the ground of non-compliance of essential condition of non deposit of entire bid tender document fee does not give the entry at the initial stage itself. Thus it would not be open for the petitioners to challenge the condition and / to contend that such a condition was not warranted;
- d. During the pre-bid meeting (technical) no one was present on behalf of Petitioner-Assessee to raise any query including the query with regard to GST;
- e. Further, merely being able to download the tender document is different from getting the entry after complying with the terms and conditions of the tender document. The entire tender process was done through E-Tender process and downloading of tender document was free, therefore, unless and until all the terms and conditions are satisfied, the petitioner does not get any right to consider its bid.

IV. Legal Principles:

1. Michigan Rubber (India) Limited 2012 (8) SCC 216:
 - a. Fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;
 - b. In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;
 - c. Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work;
 - d. If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government;
2. Afcons Infrastructure Limited 2016 (9) TMI 1292 - Supreme Court:
 - a. That the Constitutional Courts are concerned with the decision making process and if challenged the decision having been arrived at through a valid process, the Constitutional Courts can

interfere only if the decision is perverse;

- b. The Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority;
- c. That mere disagreement with the decision making process or the decision of the administrative authority is no reason for a Constitutional Court to interfere;
- d. That the threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the Constitutional Court interferes with the decision making process or the decision.

3. Central Coalfields Limited and Another 2016(8) SCALE 99

- a. That the Court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable.
- b. That whether a term of the tender is essential or not is a decision taken by the employer, which should be respected and soundness of that decision cannot be questioned by Court.

V. Scope of decision: The Honourable High Court dismissed the writ petition after considering the submissions made by the Petitioner-Assessee and the Respondent-Corporation on the following grounds:

1. The Petitioner-Assessee is not considered to be the tenderer at all by the Respondent-Corporation on non deposit of entire amount of bid document fee, which as such was required to be paid as per the terms and conditions of the tender document and “nProcure” document.
2. It is required to be noted that as per “nProcure” document the party who submit its bid online was required to deposit / pay within the stipulated time the bid document fee/ bid processing fee along with the applicable GST;
3. Only those parties who paid the EMD and tender fee along with GST electronically and thereafter in the physical format within the stipulated time is required to be considered the tenderers / bidders, whose bid is required to be opened and considered on merits subject to fulfilment of other terms and conditions, if any;
4. The Respondent-Corporation considered the payment of bid / document fee as an essential condition relating to the eligibility on merits and therefore, non-compliance with the same would render the Petitioner-Assessee as ineligible;

VI. Conclusion: To be eligible to participate in the bid basic conditions have to be satisfied, failure of

which shall disqualify the applicant.

[Nila Infrastructure Limited & 1 vs. Surat Municipal Corporation & 1 2017 (11) TMI 809 - Gujarat High court]

The order mentioning the State / Central GST instead of IGST provisions could not be held as bad in law as the seizure of goods under section 129 of the SGST Act exists in CGST Act as well- Allahabad High Court]

The summary is based on the interim order. The Hon'ble High Court directed to post the matter immediately after a month – however, the status of the case, presently, is not known.

I. Background: Both the cases of Petitioner-Assessee before the Hon'ble High Court of Allahabad seeking release of goods detained / seized by the Respondent-Department under Section 129 of the CGST / SGST Act, 2017 on the contention that the detention order issued by the Respondent-Department is incorrect insofar as the reference is given to the State GST law provisions when the movement was on account of inter-State supplies. The facts involved in both the judgments are more or less similar. Hence, both these judgements have been analysed together in this write-up.

II. Disputes involved/Point of dispute: Whether the seizure of goods under Section 129 of U.P.GST Act, 2017 during inter-State movement of such goods is proper. It was also contested that the Respondent-Department has mis-classified the goods as “Ghamella” instead of “Taslas”.

III. Arguments

3. On behalf of the assessee:

- a. The provisions of IGST Act, 2017 are applicable on inter-State movement of goods and not the State GST law provisions. Accordingly, the detention of goods under the provisions of State GST law is incorrect;
- b. The Petitioner-Assessee contends that the seized goods are “Taslas” which is agricultural implement and is exempt under GST Act vide Notification dated 29.06.2017 but the Respondents-Department has classified such goods as “Ghamellas” which is taxable under vide Notification dated 25.01.2018 and thus the levy of tax is incorrect;

4. On behalf of the Revenue:

- a. In respect of all the matters covered under IGST Act the provision of CGST Act applies mutatis

mutandis. The seizure of goods under Section 129 of the State GST Act exists in CGST Act as well. Therefore, order passed for seizure of such goods is not illegal.

- b. Section 20 of IGST Act specifically provides that with respect to search, seizure and inspection provisions reference should be given to the provisions of CGST Act. Therefore, the power of seizure under the IGST Act read with CGST Act is equivalent to seizure as per Section 129 of U.P.GST Act.
- c. Merely, on the ground that wrong provision has been mentioned in the order, the said order cannot be considered as bad in law.

IV. Legal Principles:

1. **Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances:** In terms of Section 20 of IGST Act, 2017, the Government may by notifications appoint the officers of State GST Act, or the Union Territory GST Act for the purposes of IGST Act, 2017 subject to exceptions and conditions, if any that would be specified on the recommendation of the Council.
2. **Application of provisions of Central Goods and Services Tax Act:** In terms of Section 20 of the IGST Act, 2017, it is specified that the 'inspection, search, seizure and arrest' provisions as specified under the CGST Act, 2017 shall mutatis mutandis apply to integrated tax it applies to central tax.
3. **Detention, seizure and release of goods and conveyances in transit:** Section 129 of CGST and SGST Act, 2017 provides for detention or seizure of goods in transit along with conveyance and documents in case a person transport any goods or stores such goods in contravention of the provision of the GST Act, 2017 or Rules thereunder, and can be only released after payment of the tax amount and penalty as prescribed. However, no such tax, interest and penalty can be imposed without issuing a notice and providing an opportunity of being heard to the concerned person further proceedings can be initiated in case of failure of payment of the amount.

- V. **Scope of decision:** The Hon'ble High Court held that the said order passed for seizure of goods shall be treated as passed under the provisions of the IGST Act, 2017 read Section 129 of CGST Act, 2017 instead of State GST Act, 2017 (UP). Further, it is directed that the said goods shall be released on furnishing of indemnity bond and security other than cash and bank guarantee of the taxable amount of the seized goods. Insofar as issue relating to mis-classification is

concerned, the Hon'ble High Court admitted the case and directed the Counsel appearing on behalf of the Respondent-Department to file counter affidavit within a month. In line with this, it was directed to list the matter for final disposal immediately after the expiry of one month.

VI. Conclusion: The detention of goods specifying the provision of Central / State GST laws instead of IGST laws would not render the detention or seizure as unlawful.

[M/s R.R Agro Industries Through Its Prop. Versus State Of U.P. Through Its Secy. And 3 Others [2018 (2) TMI 608-Allahabad High Court] and M/s Seth Prasad Agro Private Limited Through Its Director Versus State of U.P. And 3 Others [2018 (2) TMI 195 - Allahabad High Court]

The High Court cannot decide an issue relating to classification of goods s writ court cannot entertain the writ petition involving classification of goods issue:– Madras High Court]

I. Background: The Petitioner-Assessee preferred this petition against the Order-in-Original issued under Section 17(5) of the Customs Tariff Act, 1975 wherein the assessing officer re-classified the goods as liable to tax (IGST) at the rate of 18% instead of 12%. It is due to such reason the Petitioner-Assessee had contested that the assessing officer under the provisions of the Customs law is not proper officer under the provisions of GST law insofar as levy of IGST on import of goods is concerned.

II. Disputes involved/Points of dispute: The issue relates to re-classification of goods by the assessing officer under the Customs laws for levy of IGST on the goods imported in terms of the provisions of the Customs laws.

III. Arguments

1. On behalf of the assessee:

- a. The petitioner contends that while filing bill of entry for imported goods (tiller blades) the officer rejected their claim of 12% as rate of tax which was based on Schedule II of Notification No. 01/2017 28.06.2017 which was subsequently amended and charged tax at the rate of 18% (old rate).
- b. The petitioner further contends that the order was passed by the officer which does not fall under the definition of proper officer as specified under the provisions of the CGST Act, 2017.
- c. The entire process of re-assessment of bill of entry was not done as prescribed under Section 73

of the CGST Act, 2017 and the entire action initiated by the respondents is without jurisdiction.

IV. Legal Principles:

1. **Section 17(5) of Custom Act, 1975-** provides that speaking order has to be passed by the proper officer within 15 days in case any re-assessment done is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and the same is not agreed by the exporter/importer
2. **Section 128(1) of Custom Act,1975-** provides that an appeal can be filed within sixty days from the date of the communication to him of such decision or order before the Commissioner(Appeals) if any person is aggrieved by any decision or order passed by an officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs The time limit of filing appeal can be extended by the Commissioner(Appeals)
3. **Section 2(4) of CGST Act, 2017-** provides the definition of adjudicating authority as any authority appointed or authorised to pass any order under the CGST Act, 2017.
4. **Section 2(91) of CGST Act, 2017-** provides the definition of the proper officer as the Commissioner or officer under the Central Tax assigned by the Board.
5. **Section 59 of CGST Act, 2017** -provides that every registered person shall self-assess the taxes and file returns for each tax period.
6. **Section 73 of CGST Act, 2017-** provides for issuance of show cause notice by proper officer in case of taxes are short paid or not levied or erroneously refunded or input tax credit wrongly utilised or availed for reasons other than fraud, collusion or wilful misstatement or suppression of facts.
7. **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.

- V. Scope of decision:** The writ petition was dismissed on the ground that the Writ Court cannot make a fact finding exercise to ascertain, which would be an appropriate entry under which the goods are to be classified. In fact, under the normal course in respect of classification disputes, the High Court cannot entertain an appeal against an order passed by the CESTAT as appeal lies to the Hon'ble Supreme Court in respect of classification issues or matters concerning rate of tax. Accordingly, the

writ petition was dismissed leaving it open to the petitioner to file an appeal before the appellate authority.

VI. Conclusion: The Writ Court cannot entertain the writ petition involving classification of goods issue.

[M/s Jaap Auto Distributors vs. The Assistant Commissioner of Customs [2017 (10) TMI 881 – Madras High Court]

Detention of goods not sustainable when goods transported for job work is not accompanied with an e-way bill inasmuch as the authenticity of the delivery challan is not suspected - Kerala High Court

I. Background: The Petitioner-Assessee, has preferred a writ petition before the Honourable High Court of Kerala against a detention notice issued by the Respondent-Department. The Petitioner-Assessee, a manufacturer of surgical gloves sent one consignment for quality appraisal on job-work basis under the cover of 'delivery challan' as per Rule 55 of the CGST / SGST Act, 2017. The goods transported by the Petitioner-Assessee had been detained by the Respondent-Department on the grounds that the goods are not accompanied by an e-way bill as prescribed under Rule 138 of CGST/SGST Rule, 2017. It was also alleged that the goods were being transported to an unregistered person with an intention to evade payment of taxes.

II. Disputes involved/Points of disputes: The Petitioner-Assessee preferred this writ petition on the grounds that, the goods cannot be detained merely on the ground that the movement of goods was not accompanied with an e-way bill as per Rule 138 of the CGST / SGST Rules, 2017. The Petitioner-Assessee also contends that the Respondent-Department cannot suspect tax evasion merely because the goods are transported to an unregistered person.

III. Legal principles:

- 1. Rule 55 of the CGST/ SGST Rules 2017** – Provides for issue of delivery challan in cases where goods are transported without the cover of an invoice. Amongst others, transportation of goods on job work basis shall be made under the cover of an invoice.
- 2. Rule 138 of the CGST/ SGST Rules 2017** - Provides that where goods are transported by the registered person as a consignor or consignee, whether in his own conveyance or a hired one or by

railways or by air or by vessel, the said person or the recipient may generate the e-way bill electronically on the common portal, if the value of consignment exceeds Rs. 50,000/-

3. 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.

4. Section 130 of the CGST/SGST Act, 2017 – Provides for confiscation of the 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 confiscated shall be released upon payment of penalty or fine in lieu of confiscation.

IV. Scope of judgement: The Honourable High Court of Kerala held that there is no taxable supply when goods are transported under the cover of ‘delivery challan’. So far as the authenticity of delivery challan is not doubted, such goods cannot be detained under Section 129 merely due to infraction of Rule 138 of the CGST/SGST act, 2017. Also held that, detention of goods on the grounds that the recipient is unregistered is irrelevant in the context of the statutes. In case the goods are detained for reasons being, delivery challan not prepared in accordance with the provision contained in the CGST/SGST Rules, the same should have been mentioned in the detention notice. The Respondent-Department cannot be heard to support the detention of goods for a reason not mentioned in the said notice. Accordingly, the impugned detention notice was held to be illegal and the Respondent-Department is directed to release the consignment to the Petitioner-Assessee forthwith.

V. Conclusion: So long as the authenticity of the delivery challan is not doubted, detention of goods under Section 129 of the CGST/SGST Act, 2017 on account of absence of e-way bill is unsustainable. The defect, if any, in the delivery challan shall be mentioned in the detention notice. The detention of the goods cannot be sustained when the reason for such detention is not mentioned in the detention notice.

[Age Industries (P.) Ltd. Versus Assistant State tax Officer 2018 (1) TMI 1116 - Kerala High Court]

Goods detained under the provisions of CGST/ SGST Act, 2017 on the grounds that the movement was not accompanied with valid documents. In such case, the appeal may be

preferred before the respective appellate authorities only as the High court cannot entertain the matter if it involves issues relating to facts-- Allahabad High Court

I. Background: The Petitioner-Assessee has effected inter-State purchases from Delhi and the said purchases are accompanied by requisite documents such as tax invoice, Transport document (Bilty) as well as an e-way bill except for two invoices. However, the Respondent-Authorities have detained the goods and the conveyance under the provisions of UPGST Act, 2017. After physical verification of the goods, a detention notice was issued subsequently indicating therein the value of the goods and the tax demanded as calculated by the Respondent-Department aggregating Rs. 1,11,564/-. The Petitioner-Assessee aggrieved by the said proceedings, preferred this writ.

II. Disputes involved/Point of disputes: The Petitioner-Assessee had preferred the writ petition seeking writ, order or direction in the nature of Certiorari quashing the seizure order. Further, writ, order or direction in the nature of Mandamus commanding / directing the Respondent-Department was also sought to release the goods and vehicle forthwith without demanding any security.

III. Arguments/Point of disputes:

1. On behalf of the Petitioner:

- a. The goods detained by the Respondent-Department are duly accompanied with requisite documents except for few invoices as the value of invoices were below Rs. 50,000/-;
- b. Since the goods purchased were in the course of inter-State trade, the Respondent-Department, being an authority of UPGST Act, 2017 is not authorized to seize the goods as the goods were covered under the provisions of the IGST Act, 2017.
- c. Rule 138 of UPGST Rules provides for the old e-way Bill scheme, which was in effect earlier and may be continued.

2. On behalf of the Respondent: The goods accompanied with documents have already been released by the Respondent-Department. Only the goods not accompanied with valid documents have been seized under the provisions of the UPGST Act, 2017.

IV. 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.

V. Interpretations: None

VI. Scope of judgement: The Hon'ble High Court found that the issues on which writ petition was preferred were facts. In the interest of justice the Petitioner-Assessee may prefer an appeal before the First Appellate Authority in which case it was directed to decide the matter within a period of two months. It is further directed that the First Appellate Authority may not insist for deposit of any penalty amount for hearing and admission of the appeal.

VII. Conclusion: The High Court cannot entertain the matter if it involves issues relating to facts. In such case, the appeal may be preferred before the respective appellate authorities.

[Iqra Roadways (India) Thru' Its Prop. & 3 Others Versus State of U.P. & 3 Others 2017 (11) TMI 1032 - Allahabad High Court]

Penalty and seizure is not sustainable for movement of goods without Transit Declaration Form (TDF) unless there exists malafide intention to evade taxes- Allahabad High Court

I. Background: The Petitioner-Assessee has effected inter-State sale from Rajasthan to Assam, through Uttar Pradesh (UP). The goods were seized by the Respondent-Department in the State of UP on the grounds that the goods were not accompanied with TDF as prescribed under Rule 138 of the UPGST Rules, 2017 and that on physical verification, the goods were mis-described as per the invoice. Consequently an order under Section 129(3) was issued by the Respondent-Department imposing penalty. However, there were no allegations in the said order against the Petitioner-Consignor that there existed a malafide intention to evade payment of taxes.

II. Disputes involved/Points of disputes: The Petitioner-Assessee preferred the appeal on the grounds that absence of TDF is purely technical and not with an intention to evade payment of taxes. Since the goods were being transited through the State of UP, it was contested that the issue relating to mis-description of the goods may be communicated to the relevant authorities of the concerned State/s as it is not under the jurisdiction of the Respondent-Department to issue a notice under the UPGST Act, 2017 for an inter-State movement of goods.

III. Arguments/Point of disputes:

1. On behalf of the Petitioner:

- a. Mere absence of the TDF cannot interpreted by the Respondent-Department that taxes have been evaded.
- b. The only allegation made in the seizure order is that the TDF is absent and that the goods have been mis-described. There is no allegation whatsoever as to the intention of the petitioner to evade tax.
- c. In so far as the mis-description of the goods is concerned, the Respondent-Department may communicate the same to the relevant authorities of the concerned State/s as it is not under the jurisdiction of the Respondent-Department to issue a notice under the UPGST Act, 2017 for an inter-State movement of goods.

2. On behalf of the Respondent:

- a. TDF was never produced by the Petitioner-Consignor up to the stage of imposition of penalty;
- b. The Petitioner-Consignor had an intention to evade tax by unloading the goods inside the State of UP in the garb of transit through the State of UP;

IV. Legal principles:

5. Rule 138A of the CGST Rules 2017 - Prescribes the documents to be accompanied with the goods in the case of inter-state movement of goods. Following are the documents prescribed

- invoice / bill of supply / delivery challan; and
- copy of e-Way bill (TDF) / e-Way bill number (electronic form or mapped to a RFID device attached to the conveyance) [This is not required if goods are transported by air / rail / vessel]

6. 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.

7. Judicial pronouncements:

- a. In case of M/s Murliwala Agrotech Ltd.Vs. Commissioner of Trade Tax, U.P. Lucknow reported in 2005 NTN (28) 198 and in case of S.G. Express Vs. Commissioner of Trade Tax, U.P. reported in [2011] 37 VST 35(All), it was held that if on verification of the goods, it was found that a different item was identified than what is mentioned in the invoice, the officer should mention the correct

name of the goods for the proper verification but this cannot be a ground to raise any doubt that goods may not cross the transit State and cannot be alleged that there exists an intent to evade tax. Therefore, the officer has erred in refusing to issue transit pass and seizing the goods.

- V. Scope of judgement:** The Honourable High Court of Allahabad held that the Petitioner-Consignor was never alleged in the show cause notice as to why penalty may not be imposed on account of his intention to evade tax. However, in the penalty order, the Respondent-Department has recorded that the petitioner had an intention to evade tax by unloading the goods inside the State of UP. The transport of goods were accompanied by the invoice and other documents to support the fact that the goods were not unloaded in the State of UP. Therefore, the observation made in the penalty order is only an afterthought and cannot be relied upon by the State to justify the imposition of penalty. Therefore, mere absence of TDF without an intention to evade taxes, is purely a technical breach and therefore penalty is not sustainable on the said grounds.

With regard to seizure of goods on account of mis-declaration of goods it is held that the issue or question involves peculiar facts and therefore is being left open to be decided in an appropriate case.

- VI. Conclusion:** The seizure of goods under Section 129 of the CGST/SGST Act, 2017 on account of absence of TDF is not sustainable when it cannot be established that there was no intention to evade payment of taxes by the Assessee.

[M/s Ramdev Trading Company And Another Versus State Of U.P. And 3 Others 2017 (12) TMI 341 - Allahabad High Court]

Detention notice under the provisions of CGST/SGST Act, 2017 cannot be issued in case of inter-State movement of goods, as it is not under the jurisdiction of the detaining officer - Kerala High Court

- I. Background:** The Petitioner-Consignor has transported the goods from Tamil Nadu to Pattambi, Kerala. During the movement, the goods were detained by the Respondent-Officer. On verification of the goods detained, it was found that there was a mis-classification of the goods as per the invoice accompanied with the goods, giving rise to a rate difference of 28% (instead of 18%). The Petitioner-Consignor has

preferred the writ petition against the detention notice issued by the Respondent-Officer on the ground that, the said notice which is issued under CGST/SGST Act, 2017 is applicable for intra-state movement of goods only. However, the Petitioner-Consignor has effected an inter-State movement of goods in which case, IGST is applicable on the said goods.

II. Disputes involved/Point of disputes: The Petitioner-Consignor has preferred this writ petition on the grounds that, the movement of goods was from one State to another State and accordingly, SGST / CGST is not applicable. The adjudication proceedings shall be under the respective assessing officer under IGST Act, 2017 and not by the detaining officer. In view of the same, it was contested that the goods shall be permitted to be released.

II. Arguments/Point of disputes:

1. On behalf of the Petitioner:

- a. The Petitioner-Consignor has effected an inter-State movement of goods from Tamil Nadu to Kerala and IGST is applicable on the same. Generation of E-way Bill as provided in the CGST Rules, 2017 is not implemented as of now in order to support the case of inter-State movement of goods. Therefore, the goods are accompanied only with an invoice in the present case. The specific power invoked in issuing the impugned notice is under the CGST/SGST which is applicable only to the intra-state movement of goods and not in case of inter-State state movement of goods.
- b. The mis-classification insofar as the goods being described as falling under HSN Code 4601 as per the invoice, is the one used by the manufacturer at Delhi from whom the goods have been purchased by the Petitioner-Consignor. Altering the HSN code as assigned by the manufacturer would result in violation of the provisions of the tax statutes.

2. On behalf of the Respondent:

- a. The release of goods can be permitted only on the payment of amounts demanded since the Petitioner-Consignor is not a dealer within the State. The authorities appointed under the IGST and the CGST/SGST are one and the same. It is the authorities of the State, who have been empowered to implement the provisions of the GST enactments. It is also contended that the supply of goods with an invoice without proper description being made attracts penalty.

V. Scope of the judgement: There is no doubt that the authorities appointed by the State have been empowered to implement the provisions of the enactments which regulates the inter-State and also the

intra-State trade. However, the specific power invoked in issuing the impugned notice is under the CGST/SGST Act, 2017 which is applicable only to the intra-State movement of goods. Therefore, the petitioners shall be permitted to release the goods on the execution of simple bond without sureties as expeditiously as possible. Also held that, the detaining officer shall inform the assessing officer of the consignee who would be entitled to take appropriate proceedings at the time of assessment of the Consignee. Consequently, this writ petition is allowed making it clear that the impugned notice shall be deemed to be one under the IGST Act, 2017 and that the Petitioner-Consignor and the Consignee shall co-operate in the adjudication proceedings under the IGST Act, 2017 by respective assessing officer of the Consignee.

- V. Conclusion:** The detaining officer cannot issue notice under CGST / SGST Act in case of inter-State movement of goods. The recovery proceedings due to mis-classification and under valuation of goods can only be taken up by the respective assessing officers and not the detaining officer. Therefore, in such cases the detaining officer shall intimate the respective assessing officer before the release of the goods detained by him. The respective assessing officer shall take up further, the adjudication proceedings in this regard.

[M/s. Sameer Mat Industries And M/s. Kaleel Mat Industries Versus State of Kerala, The Assistant State Tax Officer, Thiruvananthapuram And Fathima Store 2017 (12) TMI 202 - Kerala High Court]

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