

E-way no way

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UNDER

the GST regime, the check posts have gone, but there are mobile check posts all around. The flame is not extinguished, it is only merged. GST officers of the State kind can be seen on the roads looking for unsuspecting trucks, with some mistake under the GST law, rolling in. Vehicles and goods are routinely seized and huge amounts of money are extracted. Here is one such story which recoiled on the GST Department

'Satyam Shivam Paper' (we will call them SSP/petitioner) is in the business of trading paper and in the course of its business, it has the inevitable activity of engaging a transporter to deliver the goods to the buyer. Such traders often offer prayers to favourite gods and live in constant anxiety till the goods are delivered at the consignee's place, without being stopped by the GST officers on the roads. One stoppage by the Good and Simple Tax officers would mean wiping out the profits for a month.

On 04.01.2020, our SSP made an unfortunate sale and the goods were delivered to an auto trolley for transporting under the cover of an e-way bill dt.04.01.2020

The auto trolley started for delivery of the paper at 04:33 p.m. on 04.01.2020 but on its way, on account of a rally by certain political parties opposing Citizenship Amendment Act (CAA) and National Register of Citizens (NRC), traffic was blocked and the road got jammed from all corners and the auto trolley could not move forward or backward. This continued till 08:30 p.m. and by that time, the shop of the buyer could be closed, and so the auto trolley driver took the trolley to his residence with the goods so as to deliver them on the next working day, which was 06.01.2020.

On 06.01.2020, the auto trolley was on its way for delivery but it was detained by the Deputy State Tax Officer, at 12:35 p.m and a Detention Notice was served alleging that the validity of the e-way bill had expired, proposing to impose tax and penalty.

SSP made representation on 07.01.2020 to the officer and sought release of the detained goods by explaining reasons which resulted in expiry of the e-way bill. He also submitted representation on 08.01.2020 by enclosing copy of the Rule 138 of the CGST Rules that the validity period of the e-way bill for more than 20 kms can be extended for one more additional day and also enclosed copy of the decision of the Allahabad High Court in Writ Tax No. 1471 of 2018 ([2018-TIOL-2965-HC-ALL-GST](#)). The Tax officer received the said letter dt.08.01.2020, but did not acknowledge receipt of the same and did not also release the goods.

They waited for release of the detained goods till 19.01.2020 and since it did not seem likely in spite of submitting explanation for release, made payment amounting to Rs. 69,000/-, and also submitted a letter dt. 20.01.2020 in the GST office. In the meantime it seems, some of the paper packets in the boxes had gone missing.

The GST officer passed an order on 22.01.2020 ignoring the representations submitted by SSP on 07.01.2020 and 08.01.2020 and also the decision of the Allahabad High Court, and mentioning that SSP admitted that tax and penalty are payable, which is factually incorrect since they had never admitted the same.

Only after payment of the amount of Rs.69,000/- on 22.01.2020, release order was issued by the Senior Assistant attached to the Office of the Tax Officer.

SSP alleges that the order has been passed by the Senior Assistant on behalf of the Tax Officer and he is not authorized to pass such an order.

And SSP approached the High Court. The High Court observed ([2021-TIOL-1338-HC-TELANGANA-ST](#))

- As rightly contended by counsel for petitioner, Form GST MOV-07 (notice under Section 129(3) of the CGST Act) on 4.1.2020 to petitioner mentions on the first page, the name and description of the 2nd respondent as the proper officer who detained the vehicle, but on the last page thereof the rubber stamp of the Assistant Commissioner Tax Officer is mentioned. This is not explained by the 2nd respondent.
- The order of demand of tax and penalty in Form GST MOV-07 issued on 22.01.2020 is signed by the Senior Assistant attached to the Office of 2nd respondent, and not by the 2nd respondent, by wrongly stating therein that petitioner had no objection to pay proposed tax and penalty in spite of the petitioner giving representations on 08.01.2020 and 20.01.2020 to the contrary.
- Why the 2nd respondent has not chosen to refer to these two explanations offered by petitioner is nowhere mentioned in the counter-affidavit filed by 2nd respondent.
- The 2nd respondent merely states in the counter affidavit that there is clear evasion of tax and so he did not consider the explanations.
- This is plainly arbitrary and illegal and violates Article 14 of the Constitution of India, because there is no denial by the 2nd respondent of the traffic blockage due to the anti CAA and NRC agitation on 4.1.2020 up to 8.30 pm preventing the movement of auto trolley for otherwise the goods would have been delivered on that day itself. He also does not dispute that the next working day was only 06.01.2020.
- How the 2nd respondent could have drawn an inference that petitioner is evading tax merely because the e-way bill has expired is also nowhere explained in the counter-affidavit.

The High Court further observed:

- There has been a blatant abuse of power 85 by the 2nd respondent in collecting from the petitioner tax and penalty both under the CGST and SGST and compelling the petitioner to pay Rs. 69,000/-.
- We deprecate the conduct of 2nd respondent in not even advertent to the response given by petitioner to the Form GST MOV-07 in Form GST MOV - 09, and his deliberate intention to treat the validity of the expiry on the e-way bill as amounting to evasion of tax without any evidence of such evasion of tax by the petitioner.

The High Court ordered:

- The order dt. 22.01.2020 passed by the Senior Assistant and levying tax and penalty of Rs. 69,000/- on the petitioner, is set aside.
- The respondents are directed to refund the said amount collected from petitioner within four (04) weeks with interest@ 6% p.a from 20.1.2020 when the amount was collected from petitioner till date of repayment.
- The 2nd respondent shall also pay costs of Rs.10,000 to the petitioner in 4 weeks.

Incidentally, Allahabad High Court in the judgement cited by SSP before the tax officer had observed, ([2018-TIOL-2965-HC-ALL-GST](#)).

It may be pertinent to point out that the Act and the Rules do not provide any time period within which a seizure memo of the intercepted goods and the vehicle has to be prepared by the Tax Authorities and is to be issued to the person in charge of the vehicle. This gives an ample handle to the Officers not to enter the actual time of interception and to prepare the seizure memo at leisure making the dealer of the goods to suffer and more particularly the transporter whose vehicle unnecessarily for no fault of his remains seized depriving him of his business of transport being carried through the said vehicle.

Anyway, coming back to our case, all that the department had collected was Rs.69,000/-, which the High Court ordered to be repaid with interest in addition to a cost of Rs.10,000.

What did the Department do? Obviously, they were seriously aggrieved and did what they were best in. Continue litigation. So, they took the matter in SLP to the Supreme Court - for a royal sum of Rs. 69,000/-. The Office of the Commissioner, GST and many offices below him; several advocates and clerks, several employees of the Supreme Court and two hon'ble judges of the Supreme Court had to spend time and energy, so that the State could recover an amount of Rs.69,000/-

What do you call the officers of the State who are responsible for such irresponsible waste of national wealth and the time of the Apex Court - all to recover a meagre amount of 69,000 rupees. No, no, you are mistaken; it is not about money or tax; it's all about Law. When the State feels that the High Court's knowledge of Law is not up to the expectations of the bright babus of the government, all that they are forced to do, is approach the Supreme Court and that's exactly what they did. Don't find fault with them.

What happened in the Supreme Court?

The Supreme Court observed: [2022-TIOL-07-SC-GST](#)

- The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner.

- However, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No. 2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.

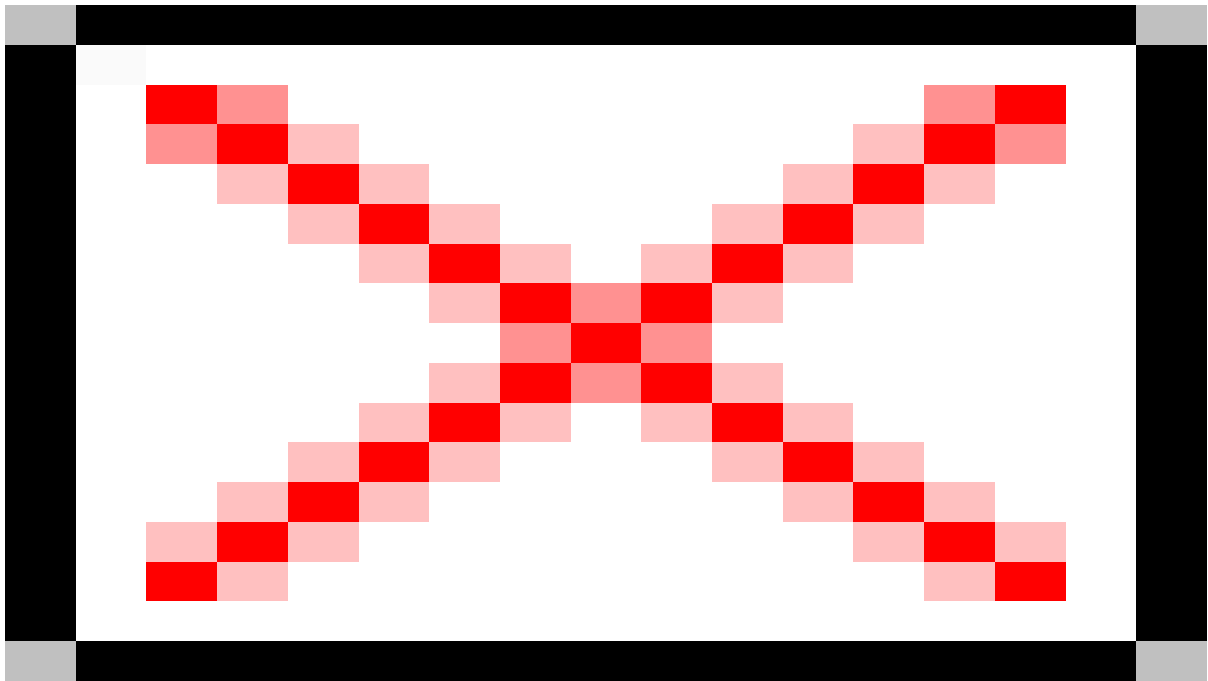
- On the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic⁸⁵

- Having said so; having found no question of law being involved; and having found this petition itself being rather mis-conceived, we are constrained to enhance the amount of costs imposed in this matter by the High Court.

The Supreme Court imposed a further sum of Rs. 59,000/- towards costs. This would be over and above the sum of Rs. 10,000/- already awarded by the High Court. The Court further made it clear that the State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person/s responsible for this entirely unnecessary litigation.

In this good and simple tax, the taxpayers are regularly and routinely put to such uncivil harassment, all because there are too many officers chasing too little work armed with tremendous ignorance of law and with total impunity as they know well that no action would be taken against them for all illegal seizures and unnecessary litigation.

Along with the check posts, they should have removed the officers from the roads for a hassle-free transport of goods. After all, under Central Excise, there was no system of waybills and goods did move across the country. And you can stop goods on the road and harass the taxpayers and transporters, but you can't stop services.



Until Next Week