

Check Posts gone - not harassment

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By Vijay Kumar

GOODS belonging to a trader were detained in a parcel godown by the GST Officers, on the grounds that:

1. The value quoted in the invoice that accompanied the goods was low when compared to the Maximum Retail Price (MRP) of the goods.
2. The HSN code of the goods was wrongly entered.

The trader approached the Kerala High Court. The High Court observed:

1. None of the reasons stated in the order justify detention of the goods.
2. There is no provision under the GST Act which mandates that the goods shall not be sold at prices below the MRP declared thereon.
3. Further, there is nothing in the order that shows that, on account of the alleged wrong classification of the goods there was any difference in the rate of tax that was adopted by the assessee.
4. The statutory scheme of the GST Act is such as to facilitate a free movement of goods, after self-assessment by the assessee concerned, the respondents cannot resort to an arbitrary and statutorily unwarranted detention of goods in the course of transportation.
5. Such action on the part of department officers can erode public confidence in the system of tax administration in our country and, as a consequence, the country's economy itself.

Under such circumstances, the High Court quashed the detention order and directed the respondents to forthwith release the goods belonging to the petitioner.

The High Court also directed the Commissioner, Kerala State Taxes Department, Thiruvananthapuram to issue suitable instructions to the field formations so that such unwarranted detentions are not resorted to in future.

This happened in 2019 - the judgement of the Kerala High Court dated November 18, 2019 was reported by us in [2019-TIOL-2701-HC-KERALA-GST](#).

The Kerala Commissioner responded - 29 months later - and issued a Circular No.6/2022, dated 06/04/2022, in which he observed:

1. The goods belonging to the petitioner was detained in a parcel godown by the Intelligence Squad on the ground that the value quoted in the invoice that accompanied the goods was low when compared to the Maximum Retail Price (MRP) and that the HSN code of the goods was wrongly entered.

2. While disposing of the above case, the Hon'ble High Court of Kerala has found that **there is no provision under the Goods and Services Tax Act that mandates that the goods shall not be sold at prices below the MRP declared thereon. Also, there is nothing in the GST MOV-06 detention order to show that, on account of the wrong classification, there was any difference in the rate of tax adopted by the assessee.**

3. The Hon'ble High Court observed that the respondents cannot resort to arbitrary and statutorily unwarranted detention of goods in the course of transportation. The goods were hence ordered to be released to the petitioner forthwith.

And he directed:

1. In the light of the above-said facts and in compliance with the direction of the Hon'ble High Court, all concerned are hereby directed not to detain or issue any Show Cause Notice to the goods under transport or stored in parcel agencies, raising the sole reason for undervaluation of the goods compared to the Maximum Retail Price (MRP).

2. If any undervaluation cases are suspected in such cases, the officers are directed to upload the details of such invoices using the option provided in the Mobile App and send a report to the jurisdictional Officer, marking a copy to the jurisdictional district Joint Commissioner.

And he concluded:

The Judgement of Hon'ble High Court of Kerala in WP(C). No. 30798 of 2019(Y) stands complied with.

The High Court could understand within a few minutes that the GST law does not provide for detention if the value is less than MRP or if the classification is not correct. But why couldn't the learned officers of the department not understand this? Because they don't understand the law, they go ahead and detain goods in transit. Do they ever understand the agony of a small businessman whose goods are detained on the way to destination? He has to go to that strange place and satisfy all kinds of officers to get his goods released, which were detained illegally in the first place. Who is responsible for the huge COSTS? Will he not perceive government as an aggressive adversarial agency with the sole intention of making his life miserable?

It took the Commissioner two and a half years to issue directions to his unleashed staff. How much time will it take for a poor trader to get his goods released?

In another case, a consignment of areca nuts was intercepted by a GST officer on 20th November 2021. The statement of the driver/person in charge of the vehicle was recorded. The necessary documents i.e. E-way bill and Tax Invoice were produced before the officer. No discrepancy was noted by the officer with regard to the description of goods as per invoice and conveyance nor any anomaly was found with regard to quantity as per invoice and physical verification undertaken by the officer.

The officer noticed two discrepancies:

(i) Vehicle was intercepted while it was travelling to the different direction than the direction of destination or way to the destination. So, it is clear that the goods was not moving to the place destined for. Hence it appears that the goods is being transported with intention to evade tax.

(ii) The value of goods being transported is shown Rs.286/- which is too low compared to its Real Market Value i.e. 330/-."

The Gujarat High Court observed - [2022-TIOL-43-HC-AHM-GST](#)

1. There cannot be any mechanical detention of a consignment in transit solely on the basis of the two reasons as stated in the impugned notice.
2. Merely the direction preferred by the petitioners for delivery of consignment to the place destined for, an inference cannot be drawn with regard to the intention of the petitioners to evade tax.
3. As held by this Court as well as other High Courts, it is a settled legal position that undervaluation cannot be a ground for seizure of goods in transit by the inspecting authority.
4. The vehicle as well as the goods shall be released at the earliest and handed over to the writ applicants.

The High Court clarified that it has quashed the entire confiscation proceedings keeping in mind two things:

1. First, mere change of route without anything more would not necessarily be sufficient to draw an inference that the intention was to evade tax.
2. In the same manner, mere under valuation of the goods also by itself is not sufficient to detain the goods and vehicle far from being liable to confiscation.

Should I take the GST officer's permission to choose the road I want to drive in? In the days of the infamous check-posts, truck drivers used to take a detour to avoid the check posts, more to escape the harassment and delay at check posts than to evade taxes. Now specifically located check posts have gone, not the harassment, because every inch of the road is now a check-post.

Infosys Narayana Murthy once shared an interesting story:

If I wanted to travel abroad even for a day, I had to apply to the Reserve Bank of India, wait for about 15 days, get the permission and then travel. There is a joke. Not really a joke. It is a very hilarious incident that happened in the case of one of the earlier entrepreneurs. He was going to Paris for two days and Frankfurt for a day. So, he applied to the Reserve Bank of India branch in Chennai saying,

"I am going to Paris for two days to meet these two prospects and I am going to Frankfurt for a day to meet a prospect."

It so happened that when he reached Paris, the prospect that he was supposed to meet the second day had to go to Frankfurt. He told my friend, ***"Why don't you come and meet me in Frankfurt?"***

The result was my friend spent one day in Paris and two days in Frankfurt. And those days when we came back, we had to submit a report to the Reserve Bank of India on how we actually spent the money - the hard currency dollars that was released to us. So, my friend sent a report saying,

"As against the approval for two days of stay in Paris and one day in Frankfurt, I spent one day in Paris and two days in Frankfurt." He promptly got a show cause notice from the Reserve Bank.

Unfortunately, these detentions are not stray cases, nor limited to a particular region. From Thiruvananthapuram to Tripura, we come across such atrocious deeds. Take this case from Tripura.

A vehicle carrying construction material developed some technical problems and could not move. By the time it became mobile, the e-way bill expired. Promptly, the truck and the goods on it were seized by the ever-vigilant GST officers on 18.03.2022.

The Tripura High Court observed - [2022-TIOL-534-HC-TRIPURA-GST](#)

1. Any impact on the free-flow of goods and services (***bona fide***) ought to be encouraged and not discouraged since the free flow and movement of goods and services throughout the Union of India is meant to be for the purpose of development of the nation.
2. Balance has to be brought between transportation of goods as well as the taxing event i.e. the sale or purchase of goods or service. In a case where there is no doubt that a transaction is made between two registered dealers and is covered by the

necessary documents including the e-way bill even if the e-way bill has expired just prior to the date of entry into the State, such goods ought not to be stopped and instead an undertaking should be taken from the buyer or the seller and intimation should be provided to the assessing officer of both the parties before whom the buyer or seller may appear to make necessary compliance. **Any hindrance in the movement of goods amounts to an obstacle of the development of the nation.**

3. It would be appropriate also to take note of the fact that the vehicles stranded for which the department has been charging additional higher charges, but the equipment loaded on the truck remains unutilized and the buyer is prevented from using that machinery for the contracts which have been given to him by the state and others. Therefore, to enhance the ease of business it is also necessary for the rule making authority to reconsider in their best wisdom whether the requirement of fixation of the period of time in the e-way bill is at all appropriate requirement in the circumstances?

The High Court ordered release of the truck and goods on 29.3.2022. For more than ten days, the vehicle and goods were under detention. Even after ten days, the vehicle could move only because the victim moved the High Court.

Is this the celebrated 'One Nation - One Tax'?

Was GST meant to be this?

Until Next week