GST is really Good and Simple- if you are the tax collector

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ON
20.02.2020, an exporter-taxpayer filed an application seeking refund of GST of an amount of Rs.1,84,17,252/- on the tax paid on the inputs of the Goods, which were ultimately exported.

A show cause notice was issued on 07.04.2020 as to why the application for grant of refund should not be rejected. The allegations in the Show Cause Notice were:

1. They had claimed the Input Tax Credit in the form of GST against the supply received from three Tax Payers named therein.

2. That as per the E-way Bill Rules contained in Chapter XVI of the CGST **Rules 2017**
, the information was required to be furnished prior to the commencement of the movement of the goods and generation of e-way bill by the registered person, which has not been done.

3. This fact was revealed to the department on the scrutinizing of GSTR-2A return filed by the taxpayer.

4. That all these three suppliers named above had done huge volume of business in a very short span of time and subsequently their registration was cancelled.

The Show Cause Notice naturally led to the passing of the order dated 24.04.2020 against the taxpayer. In the said order, it has been recorded that the taxpayer did not respond to the charges raised in the show cause notice and neither did the taxpayer appear on the personal hearing date and thus agreeing with the allegations levelled in the show cause notice.

The Deputy Commissioner held that the suppliers to the taxpayer had actually not supplied the goods in the absence of their being any e-way bill generated in favour of the taxpayer and thus the refund was rejected. Not only was the refund rejected, but he also imposed penalties amounting to about 2.4 crore rupees.

The taxpayer-exporter appealed to the Additional Commissioner (Appeals) CGST, Lucknow wherein it was specifically stated that the inputs received by them were sent from Surat to their own warehouse at Surat where they were processed and subsequently the goods were exported through ICD Kanpur after transporting the goods from Surat to Kanpur. They placed reliance upon the notification No.GSL/GST/Rule-138 (14)/B.19 dated 19.09.2018 issued by the Commissioner of State Tax, Gujarat State, Ahmadabad wherein the authority had issued a notification providing that e-way bill was not required to be generated for intra-city movement of any goods irrespective of the value. The Notification stated:

In exercise of the powers conferred by clause (d) of sub-rule (14) of rule 138 of the Gujarat Goods and Services Tax Rules, 2017, in supercession of the Notification No.GSL/GST/RULE-138(14)/B.12 dated the 11th April, 2018, the Commissioner of State Tax, after consultation with Chief Commissioner of Central Tax, Ahmedabad, hereby notifies that no E-Way Bill is required to be generated for the movement of the goods as mentioned in the Table below:

Sr. No.	Area and purpose	Description of Goods	Consignment Value of Goods
(1)	(2)	(3)	(4)
1	Intra-city movement	All Goods	Any value
2	xx	xx	xx

Placing reliance on the said notification, the taxpayer argued before the Additional Commissioner (Appeals) that the foundation for passing of the order, namely non-generation of e-way bills had no basis as the goods were received by the taxpayer from suppliers at Surat at their office at Surat and thus there was no requirement of the generation of e-way bill by the suppliers. The Commissioner (Appeals) agreeing with the contentions as raised by the taxpayer allowed the appeal by his order dated 13.08.2021 whereby, the order under challenge was set aside and further directions were issued to sanction the refund.

The department preferred a writ petition before the High Court challenging the said order in view of the fact that the appellate tribunal has not been created as prescribed under the statute and the petitioner (government) cannot be left remedy-less in the absence of creation of the statutory tribunal.

The poor government is remedy-less, because the government did not create the Tribunal even five years after GST litigation started. The Government knew pretty well, when GST was launched, that there would be litigation and it could have launched the Tribunal within a few months of launching the GST. But the Tribunal is till at the pre-discussion stage in the GST Council. The resultant tragedy is that not only the taxpayers, but also the government is constrained to clog the High Courts with writ petitions.

Subsequent to the filing of the writ petition, a supplementary affidavit was filed duly sworn by a Revenue officer wherein he had specifically stated that no e-way bills were ever annexed with the appeal and they were not produced before the learned Additional Commissioner (Appeals).

The High Court, finding contradictions in the supplementary affidavit filed by the department and the stand taken by the taxpayer had called for and perused the records of the case before the Additional Commissioner (Appeals) and found that the supplementary affidavit filed by the Revenue Officer prima-facie does not appear to be correct. Counsel for the GST Department clarified that the affidavit was filed based upon the copy of the memo of the appeal served by the taxpayer to the department and there was no deliberate error or misleading of the facts. The court accepted the said explanation offered by the Counsel with an advice that the department should be careful in future in filing such affidavits.

Thus, the department files a sworn affidavit, based on the appeal memo of the other party, which the High Court finds to be incorrect. Hello, what's happening?

The High Court observed that the show cause notice issued to the taxpayer had made precise allegations that the supplier of the goods to the taxpayer had supplied the goods without generation of the e-way bills which was contrary to the E-Way Bill Rules and thus, the claim of the taxpayer was liable to be rejected. That being the nature of the allegations levelled in the show cause notice, the submission of the GST Counsel that the goods sent from Surat to Kanpur for export did not carry e-way bills as admitted by the taxpayers in their memo of appeal, cannot be accepted as it is well settled that the allegations as levelled in the show cause notice should be clear and specific and the findings cannot go beyond the allegations as levelled in the show cause notice.

Should the High Court teach the mighty tax administrators that findings cannot go beyond the allegations as levelled in the show cause notice?. Elementary my dear taxman!

The High Court further observed - **2022-TIOL-1242-HC-ALL-GST**,

It is well settled that the show cause notice is issued to make the noticee understand the allegation and facts as are levelled in the show cause notice and it is aimed that putting the noticee to whom the show cause notice is issued on guard.

In the present case, the show cause notice is confined to the allegations against the taxpayer receiving the supplies of goods without the e-way bills, which fact has been dealt with by the appellate authority after perusing the invoices that the goods were supplied to the taxpayer from Surat to Surat and thus, the notification dated 19.09.2018 was clearly in favour of the taxpayer.

In the present case, no allegations were levelled in the show cause notice to the effect that the taxpayer had transferred the finished goods for export from Surat to Kanpur without e-way bill as such the arguments of the Counsel for GST on that count are without any foundation and thus liable to be rejected.

In view of the specific finding by the Commissioner (Appeals) that the goods were received by the taxpayer within the same city, there was no requirement of generation of e-way bills as provided under the notification dated 19.09.2018, the said finding has not been shown to be perverse or in any way arbitrary or illegal in the arguments as raised by the Counsel for Revenue.

In view thereof, the High Court found that no interference is called for in the appellate order and ordered,
"The writ petition lacks merit and is dismissed."

See the enormous powers and the ways that they can be misused. A Deputy Commissioner can reject a claim of refund of Rs. 1.84 Crore and impose a penalty of Rs. 2.4 crore. An Additional Commissioner could overrule this and order refund. But Revenue Department would not take such judicial audacity lying down and the Commissioner above the Additional Commissioner took the matter to the High Court. The High Court could understand the matter was simple and agreed with the Additional Commissioner and dismissed the Revenue appeal. All this confusion because a Deputy Commissioner thought that an e-way bill is required for intra-city transport of goods, when as per the Departmental notification itself, it was not so required.

Strangely, in this case, the taxpayer did not respond to the show cause notice and did not attend personal hearing. Maybe they were shocked out of their equanimity only when stuck with a penalty of Rs. 2.4 crores instead of a refund!

Now, what will the department do? The normal course would be to approach the Supreme Court. There is also the option to agree that the Deputy Commissioner was bound to grant the refund and the Additional Commissioner was right in ordering the same.

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Until Next week