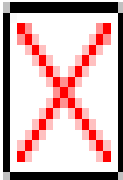


Two metres tea, please

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By Vijay Kumar

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"TWO metres of tea please"

A foreigner on a visit to a South Indian town saw a tea vendor making tea by pouring the tea from one glass to another with his hands at 180 degrees. The foreigner thought that he was measuring tea; so, he came to the shop and asked, **"please give me two metres of tea"**.

How you measure your goods, is a very important aspect of GST that you should be aware of lest your goods should get detained by overanxious GST officers, as this recent case in a High Court would show. - [2023-TIOL-50-HC-ALL-GST](#)

The petitioner is engaged in the business of sale and purchase of old batteries. On that fateful day of 18th February 2022, he sold 793 pieces of large damaged battery and 7538 pieces of small damaged battery with a tax invoice. The goods were being sent in a truck and enroute, it attracted the attention of a GST Mobile Squad (they have replaced check posts with mobile squads now, so that you don't become smart and take a detour to avoid the check post), which promptly detained the truck. On 26.2.2022, a notice was served upon the driver of the truck, granting five days' time to file reply. A reply was submitted. The very learned Assistant Commissioner of GST vide order dated 1.3.2022 imposed a penalty of Rs.9,70,542/- and the petitioner deposited the entire amount of penalty. Thereafter, the truck along with goods were released on 1.3.2022.

Against the order of the Assistant Commissioner, an appeal was preferred before the Additional Commissioner. The more learned Additional Commissioner was more than pleased to reject the appeal vide order dated 30.4.2022, served on 6.6.2022. (The Additional Commissioner, being a higher officer **shall** be deemed to be more learned.)

The seller of old batteries who had already deposited Rs.9,70,542/- had no other go except to approach the High Court at Allahabad.

In the High Court, the learned Standing Counsel for the GST Department, while defending the order of the Adjudicating Authority as well as the First Appellate Authority submitted that the petitioner was trying to **evade** payment of tax and the battery was sold in terms of per piece and not according to weight. He contended that Rule 46 of the Central Goods and Services Tax Rules, 2017 would be applicable in the present case.

The High Court found that:

1. The description of the batteries given in the tax invoice is under two headings, i.e., large damaged battery and small damaged battery.
2. In the reply furnished by the petitioner, it has been stated that the battery is purchased and sold on the basis of per piece and not on the basis of weight.

3. The Adjudicating Authority while passing the order dated 1.3.2022 has not recorded any finding as to how the explanation accorded by the petitioner cannot be accepted and the trade practice of purchase and sale of battery is according to weight and not per piece.

4. Similarly, the First Appellate Authority has failed to record any finding as to how it has arrived to the conclusion that the trade practice required the battery to be sold is according to the weight and not per piece, when the specific case of the petitioner was that he was purchasing and selling the battery on the basis of per piece and was maintaining the Books of Account, which has not been denied by the Taxing Authority.

Further, the High Court found that Rule 46 of CGST [Rules, 2017](#)

, which has been relied heavily by the State, also does not provide for the stand taken by the State, and it only provides the description which the seller is to give while the goods are sold, which, in the present case, has been done by the petitioner.

Considering the facts and circumstances of the case, the High Court found that the Assistant Commissioner had **wrongly** detained the truck along with the goods of the petitioner and imposed a penalty of Rs.9,70,542/- and the adjudication order dated 1.3.2022 and the appellate order dated 30.4.2022 have no legs to stand on as no reasoning has been accorded by either of the authorities in consonance with the law so as to hold that the old and damaged batteries are to be sold according to the weight and not per piece.

Both the orders dated 1.3.2022 and 30.4.2022 were set aside.

The authorities were directed to refund the amount of penalty charged from the petitioner within a period of one month.

The grave offence committed by the battery seller was that he sold the batteries in numbers and not by weight. Nobody knows where it is legally required that old batteries can be sold only by weight and not by number. See his ordeal:

1. The GST officers found this lapse and detained the goods and the truck for more than a week;
2. Imposed and collected a penalty of nearly ten lakhs of rupees;
3. He had to go in appeal and the appellate authority passed his order on 30.4.2022, but served it on 6.6.2022;
4. He had to approach the High Court, which costs good money;
5. The High Court found that the detention, adjudication order and appellate order were wrong and ordered refund of the penalty amount paid.

But who will pay for the unjust, unfair, illegal trauma that a taxpayer was made to suffer? How much physical and fiscal damage must have been caused to him, just because some well-paid government officers did not know the law?

There was a case in the Bombay High Court recently in which a Show Cause Notice was given to the petitioner to file a reply within seven days and on the eighth day, the impugned order was passed. A taxpayer who is issued a notice has 30 days time to voluntarily pay the tax, but the adjudicating authority here gave him only seven days and, on the 8th, day casually condemned him to a tax. In this case, the Government Counsel fairly conceded that that the order is erroneous because in the show-cause notice only 7 days was given to reply to the notice and on the 8th day the impugned order came to be passed. Therefore, the question of not paying within 30 days of the issue of the notice will not arise.

The High Court observed, - [2022-TIOL-1276-HC-MUM-GST](#)

We are constrained to note that such orders without application of mind are being passed contrary to the basic provisions of the Act and the Rules framed thereunder. These acts/omissions of Respondents' officers is adding to the already overburdened dockets of the Court. Valuable judicial time is wasted because such unacceptable orders are being passed by Respondents' officers.

The officers do not seem to understand or appreciate the hardship that is caused to the general public. In this case, Petitioner could afford (we have assumed) to spend on a lawyer and approach this Court but for every Petitioner, we would hazard a guess, at least ten would not be able to afford a lawyer and approach the Court

and their registrations may get cancelled by the very same officers who have passed such patently illegal orders.

A copy of this order shall be forwarded to the CBIC and to the Chief Commissioner of State Tax, Maharashtra, so that they could at least hold some kind of training and/or orientation session/course, etc. to apprise and educate its officers on the prevailing law and rules framed thereunder and also explain to them what 'principles of natural justice' mean. This would in fact be in the interest of the Authorities, because this would then ensure that otherwise meritorious cases are not defeated on technicalities. It is also necessary that the authorities must be mindful of the grave prejudice that is caused to the assessee on account of such patently illegal orders.

Authorities must be sensitive to this fact and the impact and consequences that their orders have on the public .

If only the officers are efficient and accountable, the Government's vision of ease of doing business in India may fructify.

What is this about weight and numbers?

As per Rule 46 (i) of the CGST Rules, tax invoice issued by the registered person should contain:

(i) quantity in case of goods and unit or Unique Quantity Code thereof.

But what is the Unit Quantity Code or the Unique Quantity Code? Both are called UQC. That, we will discuss some other time, but for the present, be appalled that a truck carrying old batteries can be detained for a week and a penalty of about 10 lakh rupees can be imposed, just for selling the batteries by number and not weight. Where are we in this good and simple tax regime?

Until Next week