

Issues in E-way bill and important HC decisions

On introduction of GST in the year 2017, the concept of check posts was abolished. However, within a year, the concept of the e-way bill was introduced which is mandatory whenever the consignment value of goods moving through motorized conveyance is exceeding Rs.50,000. There are few exceptions to this limit. In addition to regular tax invoices or delivery challans, it is necessary to have an e-way bill for the movement of goods. As the waybills would have the details of the transporter as well including vehicle details, they are subject to change, especially, in long-distance travel. Minor or trivial errors can always be expected in these cases. However, it is unfortunate that the taxpayers are being penalized heavily for such errors or there are genuine transactions wherein waybills are not generated/expired, inadvertently. In this article, few issues and important high court decisions which could come to the rescue of taxpayers have been discussed.



Penal provisions

In terms of Section 129 of CGST Act 2017, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, then all such goods and conveyance would be liable to detention or seizure and after detention or seizure.

On payment of penalty which is presently the applicable tax and penalty equal to 100% GST payable on such goods, such goods detained can be released. In the case of exempted goods, the penalty would

be 2% of the value of goods or Rs.25,000 whichever is less. If the owner does not come forward, then the goods can be released on payment of applicable tax and a penalty equal to 50% of the value of the goods reduced by the tax amount paid.

This provision is amended through Finance Act, 2021 to levy a penalty equal to 200% of the tax payable on such goods in case of taxable goods where the owner of the goods comes forward for payment of such penalty. In other cases, a penalty would be equal to 50% of the value of the goods or 200% of the tax payable on such goods, whichever is higher. However, this provision would come into effect on notification to give effect to this provision.

Important HC decisions

✓ **Human errors not be capitalized to collect the penalty**

In the case of *Rai Prexim India Private Limited Vs State Of Kerala (High Court Kerala) WP(C): 39022 of 2018*, the high court held that if a human error which can be seen on the naked eye is detected, such human error cannot be capitalized for penalisation. In this case, the taxpayer has wrongly mentioned the amount as Rs.388220 instead of Rs.3882200 with all other correct information.

It is also relevant to note that CBIC circular no.64/38/2018-GST, dated 14-9-2018 was issued allowing few minor issues with a lesser penalty of not exceeding Rs.1000/-. There are specified situations provided in the circular which does not cover the error in the value. Therefore, if there are any other errors that are 'minor' in nature, then a decision can be relied upon.

✓ **No seizure if waybill produced after interception but before the seizure**

In the case of *Modern Traders Vs State of UP, Writ Tax No. 763 of 2018*, the Allahabad high court held that when the e-way bill was produced on the same day of the interception of goods along with documents indicating payment of GST, however before the seizure order is passed, there is no justification for passing orders of seizure and levy of penalty.

Sometimes, goods may be transported without accompanying the e-way bill inadvertently, then in such cases also waybill can be generated before seizure order relying on this decision. However, it is important to prove the authenticity of the transaction.

✓ **Expiry of the waybill and issuing fresh waybill before detention order**

In the case of *Ram Charitra Ram Harihar Prasad Vs State of Bihar (Patna High Court) WP No.11221 of 2019*, the high court held that when the waybill provisions allow to extend the validity period of the e-way bills on its expiry after updating the details in part B of form GST

EWB-01 and there is no bar on generating the waybill on expiry of waybill which is before the detention order, there is no default.

This decision would be useful in the case where there is an expiry of the waybill which is not extended within the allowed time. A new waybill can be generated. Even in this case, it would be important to prove the authenticity of the transaction and payment of tax wherever applicable.

✓ **Seizure of goods for reasons such as undervaluation, wrong classification**

In the case of *K.P. Sugandh Ltd vs State Of Chhattisgarh 53 dated 16 March 2020, WP No. 36 of 2020*, the high court held that goods cannot be seized for the wrong valuation though the officers have the option of intimating such mistake to assessing authority. When the prescribed documents such as tax invoice and waybill are accompanying the goods at the time of interception with all correct details matching in records, goods cannot be seized.

This decision would be very relevant as there could be a situation wherein due to different valuation mechanisms there can be a difference or there could be cases where classification is wrong but the rate of GST is proper with no short payment of taxes. A similar view was held in the case of *Hindustan Coca Cola Pvt. Ltd. Vs Assistant State Tax Officer (Kerala High Court), W.P.(C) No. 5384 of 2020* where the high court held that the squad officer may intercept the goods and detain them for the purpose of preparing the relevant papers for effective transmission to the judicial assessing officers and nothing beyond.

✓ **Seizure of goods as the goods delivered to a different place than specified**

In the case of *Tvl. R K Motors Vs State Tax Officer (Madras High Court) WP (MD)No. 1287 of 2019*, the high court held that when there is no intention to evade tax, the officers should have guided the driver to take the goods to the destined location instead of being harsh and vindictive. The court also expressed that when the petitioner is a registered dealer and the tax in respect of the goods have already been remitted, and when the transportation of goods is duly covered by proper documentation, the respondent officer ought to have taken a sympathetic and indulgent view of the lapse committed by the driver of the vehicle in taking goods to a different place.

This decision would also be relevant when there is a requirement to change the place of delivery at the last movement.

There are many other decisions of the high court wherein procedural lapses have been condoned after genuineness of transactions were proved with no intention to evade taxes.

Conclusion

GST being a new law, it is important for professionals to go through all the important decisions of the high court and supreme court decisions in the past indirect tax regime wherein decisions were taken to

waive off penalties for procedural lapses. Whenever the transactions are genuine without the intention of tax evasion, the lapses in waybills can be contested though it is time taking exercise. Also, we can hope that the government takes all these different issues into consideration and covers in minor lapses category to levy a penalty of Rs.1000/- in circular no.64/38/2018.

Feedback/suggestions can be provided at mahadev@hiregange.com for improvements.