

## **Non-speaking order under GST is not valid: Calcutta HC**

The Hon'ble Calcutta High Court ("**the High Court**") in the case of *Maxxcab Wires & Cables Pvt Ltd & Anr vs State Tax Officer [W.P.A. 24558 of 2022 dated November 24, 2022]* held that the Non-speaking Order under Goods and Services Tax ("**GST**") is not valid.

### **Facts:**

Maxxcab Wires & Cables Pvt Ltd & Anr ("**the Petitioner**") challenged the Show Cause Notice ("**SCN**") dated October 27, 2022 and subsequent Order dated November 4, 2022 under Section 129(3) of the West Bengal Goods and Services Tax Act, 2017 ("**the WBGST Act**") on the ground that the Order was a Non-Speaking Order and the SCN was issued without application of mind because the SCN was issued on October 27, 2022 and the Petitioner was asked to appear before the Adjudicating Authority ("**the Respondent**") on October 3, 2022 which had already been expired long back.

### **Issue:**

Whether the Order passed is a Non-Speaking Order and is valid or otherwise.

### **Held:**

The High Court held as under:

- The non-speaking Order dated November 4, 2022 was set aside and remanded back to the adjudicating authority to pass fresh speaking order after giving opportunity of hearing along with allowing the Petitioner to make fresh appropriate representation against the SCN dated October 27, 2022.

### **Relevant Provisions:**

#### **Section 129 of the WBGST Act**

***Detention, seizure and release of goods and conveyances in transit***

*(1) Notwithstanding anything contained in this Act, 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, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-*

*(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;*

*(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;*

*(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:*

*Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.*

*(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.*

*(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).*

*(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

*(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.*

*(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:*

*Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.*

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