

Detention of vehicles / goods without following procedural norms is in gross contravention of the statutory provisions of GST

The Hon'ble Madras High Court in *Tvt. LAF Enterprises v. Commissioner of Commercial Tax [W.P. No. 14374 of 2022 dated June 10, 2022]* held that, detention/seizure of the vehicle and goods without issuing proper notice or detention order by the proper officer is in gross contravention of the statutory provisions.

Facts:

M/S. Tvt. LAF Enterprises ("**the Petitioner**") purchased iron scrap from various dealers and in the process of transporting the same from Guwahati to Coimbatore, on accounts of mechanical difficulty, the driver of the vehicle was forced to deviate from the planned route leading to the place of destination to identify a service shop for addressing the issue.

The vehicle was intercepted by the Deputy Tax Officer, Roving Squad, ("**the Respondent**") who upon a perusal of the documents carried by the driver, arrived at the conclusion that the goods were being re-routed without proper e-way bill. The interception was justified by the Respondent relying upon a statement of the driver that was different from that of the Petitioner. However, no such copy of the statement was commissioned to the driver or the Petitioner.

Being aggrieved, this writ petition has been filed on the grounds of procedural lapse by the Respondent against which no notice of detention followed by consequential order was issued to the Petitioner.

Issue:

Whether detention and seizure of vehicle by the Respondent is justified without proper commissioning of procedures stated under the Central Goods and Services Tax Act, 2017 ("**the CGST Act**")?

Held:

The Hon'ble Madras High Court in ***W.P. No. 14374 of 2022 dated June 10*** held as under:

- Analyzed the provision of Section 129 of the CGST Act and noted that an order of detention/seizure shall be passed at the time of detention/seizure, and duly served upon the person transporting the goods.
- Observed that, no order of detention for the vehicle has been issued to the Petitioner. Moreover, the proper officer detaining or seizing the goods also abstained from issuing a notice specifying the penalty payable and thereafter pass an order.
- Stated that, the act of the Respondent is in gross contravention of the statutory provisions.
- Held that, the Petitioner is entitled to the relief on account of procedural lapse by the Proper Officer.
- Directed the Respondent to release the vehicle along with the goods within 24 hours.

Relevant Provision:

Section 129 of the CGST Act:

“Detention, seizure and release of goods and conveyances in transit.–

Detention, seizure and release of goods and conveyances in transit

129. (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 penalty equal to two 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 penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, 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 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.

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).

(4) No 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 such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further 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 fifteen days may be reduced by the proper officer.”

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