

Directed the assessee to approach the appellate authority w.r.t. order detaining 'Teak Sawn Timber'

The Hon'ble Calcutta High Court in *Md. Yusuf v. State Tax Officer, Bureau of Investigation [MAT 1426 of 2022 with IA No. CAN 1 of 2022 dated September 28, 2022]* has held that the assessee cannot approach the High Court when the first remedy is still available. Directed the assessee to approach the State Tax Authority who passed the detention order and seek to revoke it by answering all the allegations.

Facts:

This appeal has been filed by Md. Yusuf ("**the Appellant**") challenging the order of detention dated August 10, 2022 ("**the Detention Order**") passed by the State Tax Authority ("**the Respondent**") under Section 129 of Central Goods and Services Tax Act, 2017 ("**the CGST Act**") for alleged mismatch between the goods in movement and documents tendered and that the Appellant had obtained GST Registration by means of fraudulent documentation. Further, it was alleged that the tax invoices generated in support of movement of the goods are fabricated and has no legal basis and the teak sawn timber was transported without valid documents in a concealed manner in contravention of Section 68 read with Section 138A of the CGST Act.

Earlier, the Appellant, filed a writ petition before the Hon'ble Calcutta High Court in *WPA 18885 of 2022 dated August 30, 2022* wherein the petition was dismissed on the ground that the registration of the "Teak Sawn Timber" was not tallying with the declaration made in the E-way bill and invoices and further there is no existence of consignor at his registered place of business.

Being aggrieved, this appeal has been filed by the Appellant.

The Appellant contended that he is the owner of the goods and had a transit permit issued by the Forest Department along with invoices and E-way bill and that the Appellant has got sufficient material to show that GST Registration was obtained by placing valid documents.

Issue:

Whether the goods were erroneously detained by the Respondent?

Held:

The Hon'ble Calcutta High Court in **MAT 1426 of 2022 with IA No. CAN 1 of 2022** held as under:

- Noted that, goods have not yet been confiscated till date, therefore, the first remedy available to the Appellant is to approach the Respondent who passed the Detention Order and seek to revoke it by answering all the allegations which have been found and recorded in the Detention Order.
- Stated that, the Appellant would be free to produce all documents in respect of the allegations and if there is any discrepancy in the nature of goods, the Respondent is directed to obtain opinion from the Forest Department by requesting one of their officers to inspect the goods in the place where it has been detained.
- Directed the Appellant to file the application within a period of one week.
- Further directed that, since the goods being natural produce may expose to the fury of weather, and there is likelihood of deterioration. Therefore, the Authority shall permit the Appellant to provide requisite number of tarpolene for securing the goods so that the goods are not exposed to sun and rain.

Relevant Provisions:

Section 68 of the CGST Act:

"Inspection of goods in movement.

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.”

Section 129 of the CGST 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 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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