

Proper officer shall pass an order within seven days of service of notice of such detention or seizure of goods or conveyance

The Hon'ble Patna High Court in the case of *Pawan Carrying Corporation v. State of Bihar [Civil Writ Jurisdiction Case No. 3499 of 2024 dated February 29, 2024]* held that the proper officer must issue the notice right within seven days of detention or seizure of goods or conveyance. There is no reason to wait for an application by the driver of the vehicle for the verification of the goods when the vehicle is intercepted. Lastly, the order should be passed within seven days of the service of notice of such detention or seizure of goods or conveyance.

Facts:

M/s. Pawan Carrying Corporation ("**the Petitioner**"), was transporting tobacco from Kanpur in Uttar Pradesh to Dalkola in West Bengal, passing through the State of Bihar. The Tax Authorities ("**the Respondent**") intercepted the vehicle on December 22, 2023 and issued the statement of the Driver in Form GST MOV-1 along with Form GST MOV-2 for physical verification and inspection. Only when the driver of the vehicle submitted an application for physical verification a detention Order dated December 28, 2023 was passed. Thereafter, the Petitioner submitted its letter of authority on January 02, 2024.

Further, the Respondent issued a Notice dated January 05, 2024 under Section 129(3) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") which was beyond seven days going by both the date of interception and the date of detention.

On January 12, 2024 and January 15, 2024, the Petitioner sought for adjournment. It was adjourned for January 15, 2024, the date on which the reply was submitted by the Petitioner. Thereafter, the Respondent passed an Order on January 15, 2024 ("**the Impugned Order**").

The Petitioner raised the ground of limitation, both in issuing a notice after the detention and then in passing the Impugned Order from the date of service of such notice.

Hence, aggrieved by the Impugned Order, the present writ petition was filed by the Petitioner.

Issue:

Whether the proper officer shall pass an Order within seven days of service of notice of such detention or seizure of goods or conveyance?

Held:

The Hon'ble Patna High Court in the ***Civil Writ Jurisdiction Case No. 3499 of 2024*** held that:

- Observed that, the vehicle was intercepted on December 22, 2023 and there was no reason for the verification of the goods, that should await for an application by the driver of the vehicle. Section 129 of the CGST Act, is a *non-obstante* clause that confers the power for detention or seizure of any transport or goods, when they are in transit in contravention of the provisions of the CGST Act. Hence, when the vehicle was intercepted and detained by the Respondent, there was no reason to wait for six days before carrying out the inspection of the goods.
- Noted that, even if the detention is stated to be on December 28, 2023, the notice was only issued on January 05, 2024, after the seven-day period provided in Section 129(3) CGST Act. Further, when the Petitioner had required for time on the seventh day from the date of serving of notice, nothing was preventing the Respondent from rejecting the said prayer and passing the order, especially where the matter is kept pending, the proceedings would be barred by limitation.
- Held that, the limitation is clear and definite. The facts of the case indicate that the Respondents did not act in accordance with the Section 129 of the CGST Act. Therefore, there is no reason to sustain the demand raised. Hence, the Impugned Order passed for the detention of the vehicles were set aside and directed the Respondents to release the vehicle with the goods immediately.

Our Comments:

Section 129 of the CGST Act talks about “*Detention, seizure and release of goods and conveyances in transit*”. According to Section 129 (3) of the CGST Act states that 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).

In Pari Materia the case of ***Udhayan Steels Private Limited v. Deputy Tax Officer (Int.) & Anr. [W.P.No.34268 of 2022 dated December 28, 2022]*** and in the case of ***K. Enterprises v. the Assistant/Deputy Commissioner & Anr. [W.P.No.22646 of 2022 dated August 29, 2022]*** wherein, the Court set aside the proceedings and directed the release the vehicle/goods for being contrary to statutory requirements. Further, it was held that the order of detention passed beyond the time lines stipulated under Section 129(3) of the CGST Act, is a serious flaw, which vitiates the proceedings for interception in full and in entirety.

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