

Requirement of e-way bill cannot be escaped by undervaluing the goods

The Hon'ble Allahabad High Court in *M/s. Radha Fragnance v. Union of India and Others [Writ Tax No. 427 of 2019 dated February 14, 2023]* affirmed the order of detention of goods and imposition of tax and penalty, on the grounds that the assessee was transporting huge quantity of goods without e-way bill by reducing the value of goods below the threshold limit. Held that, it is only to protect small trade where the value is minimal that the necessity of downloading e-way bill is dispensed, however, the same does not allow the assessee to undervalue goods so as to escape it from bringing to the notice of the Revenue Department by uploading the same on the Web-Portal.

Facts:

M/s. Radha Fragnance ("**the Petitioner**") is in the business of manufacturing and sale of Pan Masala and Chewing Tobacco ("**the Goods**"), who had received orders for supply of the Goods from two registered dealers namely M/s ASP Enterprises and M/s Alliance Trading Company and was sending the goods through four tax invoices.

The goods in transit from State of Haryana to Jharkhand were intercepted on February 4, 2019 by Revenue Department ("**the Respondent**") wherein, the tax invoices were produced by the driver of the vehicle for the Goods and during verification it was found that goods were not accompanied with E-way Bill as per Rule 138 of the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**"), as the value of goods were claimed to be below INR 50,000/-. The Respondent, on inspection, found that the total value of the Goods came to INR 15,36,000/- and after allowing discount of 25% and excluding tax and Cess, the basic value came to INR 6,12,766/- while the value on both the invoices was declared collectively INR 69,600/-.

Subsequently, a Show Cause Notice in **Form MOV-07** was issued on February 6, 2019 ("**the Impugned SCN**"), for which a reply was filed on February 13, 2019 mentioning that, tax invoices

in respect of tobacco were misplaced by the driver and could not be produced at the time of interception of goods. However, an Order-in-Original dated February 14, 2019 (“**the OIO**”) under Section 129 of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (“**the IGST Act**”) was passed, rejecting the explanation submitted by the Petitioner and directed the Petitioner to deposit Integrated Goods and Services Tax (“**IGST**”) to the extent of Rs.7,27,235/- and penalty of the same amount. Consequently, the Petitioner filed an appeal wherein, the OIO was confirmed vide Order-in-Appeal dated March 2, 2019 (“**the OIA**”).

Being aggrieved, this petition has been filed.

Issue:

Whether in the garb of certain protection given under Rule 138 dispensing requirement of E-Way bill for goods valuing below Rs.50,000/-, a dealer who is a manufacturer, can be allowed to send his goods to different consignees undervaluing the goods and the Tax Authorities not to proceed taking action under the Act?

Held:

The Hon’ble Allahabad High Court in ***Writ Tax No. 427 of 2019*** held as under:

- Observed that, the Respondent, on fair valuation, found that the Goods, which were in transit accounted for INR 7,12,766/- while the proper disclosure was not made by the Petitioner and it was on this undervaluation of goods that the Respondent proceeded and imposed IGST and penalty.
- Stated that, the very purpose of downloading e-way bill is that every goods, which are in transit, is recorded in the Web Portal and the Respondent has a clear picture of the goods which are manufactured and sold by the dealers either Inter-State or Intra-State.

- Further stated that, it is only to protect small trade where the value is minimal that the necessity of downloading e-way bill is dispensed, however, the same does not allow the Petitioner to undervalue goods, so as to escape it from bringing to the notice of the Respondent by uploading the same on the Web-Portal.
- Noted that, the Petitioner had started its business in 2018, and had carried 11 transactions and none of the transactions were ever reported on the Web Portal and no E-Way bill was downloaded. Meaning thereby that all the transactions made by the Petitioner was below INR 50,000/-.
- Opined that, if the Petitioner is permitted, it will harm the business world and lead to a parallel economy and the very purpose of enactment of GST would be frustrated.
- Further noted that, one of the consignee of the Petitioner was actually registered as 'Works Contract and Suppliers of Services' and not in the business of trading. In the garb of technicalities, no benefit can be given to a dealer who has intentionally undervalued its goods to escape from the eyes of law.
- Held that, the Petitioner had grossly undervalued the Goods to avoid downloading e-way bill and bringing the transaction on record so as to escape payment of due tax.
- Further held that, the actions of the Respondent in detaining the Goods and imposing tax and penalty, needed no interference as the Petitioner cannot be permitted to take shelter of the fact that no e-way bill is required in case of goods valued less than INR 50,000/-.

Relevant Provisions:

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.”

Rule 138(1) of the CGST Rules:

“138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees-

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided further that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1. – For the purposes of this rule, the expression “handicraft goods” has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 56/2018-Central Tax, dated the 23rd October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E), dated the 23rd October, 2018 as amended from time to time.

Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods. ”

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