

Tax evasion cannot be presumed merely based on e-way bill expiry

The Hon'ble Telangana High Court in *Satyam Shivam Papers Pvt. Ltd. v. Assistant Commissioner ST & Ors. [Writ Petition No. 9688 of 2020 dated June 2, 2021]* set aside the order in Form GST MOV-09 passed by the Revenue Department, imposing tax and penalty on the assessee due to the expiry of the e-way bill and Deprecated the Revenue Authority for blatant abuse of power in detaining goods by treating validity of the expiry on the e-way bill as amounting to evasion of tax Held that, no presumption can be drawn that there was an intention to evade tax on account of non-extension of the validity of the e-way bill by the Petitioner or the auto trolley driver.

Facts:

Satyam Shivam Papers Pvt. Ltd. ("**the Petitioner**") is a Company carries on trading business in all kinds of paper and is the sole distributor of M/s. International Papers Limited, Andhra Pradesh, and also effects inter-State purchases of papers from M/s. Emami Papers Ltd., Orissa and receives supplies of paper from these two companies and submits monthly Goods and Services Tax returns ("**GST Returns**") and pays GST under the Central Goods and Services Tax Act, 2017 ("**CGST Act**").

The Petitioner made an intra-state supply of paper on January 4, 2020 and generated an e-way bill for the auto trolley and dispatched the goods. During the delivery of the paper, the roads were blocked due to a political rally opposing CAA and NRC conducted by certain political parties, and the traffic could not move forward or backward. The driver of the auto trolley waited till 08:30 p.m. on the road, and by that time, having realized that the shop of the buyer would be closed, the driver took the goods to his residence with a desire to deliver the goods on the next working day. Accordingly, an attempt was made by the driver but the trolley was detained by the Deputy State Tax Officer ("**the Respondent**") and a Detention Notice in Form GST MOV-07 dated January 6, 2020 was served to the Petitioner alleging that the validity of the e-way bill had expired proposing to impose tax and penalty.

Subsequently, representations dated January 7, 2020 and January 8, 2020 was made by the Petitioner to the Respondent for release of the detained goods by explaining about obstruction to the movement of the auto trolley, but the same was ignored and an order dated January 22, 2020 in Form GST MOV-09 ("**the Impugned Order**") was passed by the Senior Assistant on behalf of the Respondent for tax-evasion, levying the penalty and tax on the Petitioner. Accordingly, the Petitioner made the payment of INR 69,000/- after which the release order was issued by the Senior Assistant of the Respondent.

Being aggrieved by the Impugned Order, this petition has been filed.

Issue:

Whether the Respondent was correct in detaining the goods of the Petitioner and passing the Impugned Order due to the e-way bill expiry?

Held:

The Hon'ble Telangana High Court in ***Writ Petition No.9688 of 2020 dated June 2, 2021***, held as under:

- Noted that, Impugned Order was signed by the Senior Assistant of the Respondent, and not by the Respondent himself, by wrongly stating that the Petitioner had no objection to pay proposed tax and penalty in spite of the representations made by the Petitioner.
- Stated that, it was the duty of the Respondent to consider the explanation offered by the Petitioner as to why the goods could not have been delivered during the validity of the e-way bill, and instead the Respondent is harping on the fact that the e-way bill is not extended even four hours before the expiry or four hours after the expiry, which is untenable.
- Further stated that, there was no material before the Respondent to come to the conclusion that there was evasion of tax by the Petitioner merely on account of lapse of time mentioned in the e-way bill and this is plainly arbitrary, illegal and violative of Article 14 of the Constitution of India.
- Opined that, there has been a blatant abuse of power by the Respondent in collecting the tax and penalty from the Petitioner and compelling the Petitioner to pay INR 69,000/- by such conduct.
- Held that, no presumption can be drawn that there was an intention to evade tax on account of non-extension of the validity of the e-way bill by the Petitioner or the auto trolley driver. Further Deprecated the conduct of the respondent in not advertng to the representations by the Petitioner, and deliberate intention to treat the validity of the expiry on the e-way bill as amounting to evasion of tax without any evidence of such evasion of tax by the Petitioner. Set aside the Impugned Order.

- Directed the Respondent to refund the amount collected from the Petitioner with interest @6% p.a. and imposed fine of INR 10,000/- payable by the Respondent to the Petitioner within 4 weeks.

Relevant Provisions:

Section 129 of the CGST Act:

“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.”

Online GST Course by Bimal Jain

Recorded: Certified Advanced GST Course

Course Details: Certificate of Participation will be Provided, Free GST Updates on E-mail, WhatsApp, Telegram for 1 Year, Background Material and PPT will be Provided on the downloadable basis, Total 21 Recorded Sessions (60 Hours), will be available for 120 hours or 60 Days whichever expires earlier.

For Registration:- <https://cutt.ly/hxjl5Cu>

Recorded: GST Course on Exports, Deemed Exports, SEZ, Imports, Merchandise Exports, Inverted Duty Structure (including Refunds)

Course Details: 6 Online Recorded Sessions of 2.30Hrs each with Background Material (BGM)

For Registration:- <https://cutt.ly/pvw7mzl>

For more details, Call: +91-8076563802, E-mail: intern@a2ztaxcorp.com, Web: www.a2ztaxcorp.in

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.