

We are glad to share our GST litigation support communique and get you everything that you need to know from the world of litigation, along with incisive analysis from the CA. Rajat Mohan. This Newsletter brings you key judicial pronouncements from the Supreme Court, various High Courts, AARs, and Appellate Authorities emerging in the GST era and the erstwhile VAT, Service tax, and Excise regime.¹

Synopsis of all changes in GST is given below for your quick reference:

S. No	Subject	Authority
1	The mistake of two digits while entering vehicle no. in invoice and E-way Bill is a typographic error and may be treated as a minor one	AA-GST-HP
2	Order detaining the goods of the petitioner in transit is not justified where between the date of apprehending the goods and passing of the order of detention, the e-way bill was updated by filling the Part B thereof	HC
3	Detention of the goods for non-compliance with the provisions was justified	HC
4	Petition assailing the notices issued u/s 129(3) not adjudicated at the stage particularly when the petitioner had already submitted reply	HC
5	In case of detention of goods, where the assessee had paid 10% of the remaining amount of tax in dispute, the recovery proceedings for the balance amount shall be deemed to be stayed	HC
6	Authority directed to release goods and vehicle on payment of tax amount	HC
7	Authority directed to release goods and vehicle on payment of 25% of tax amount	HC
8	Vehicle to be released on furnishing of bond	HC
9	Goods to be released provisionally	HC
10	The order issued rejecting appeal is not valid	HC

The mistake of two digits while entering vehicle no. in invoice and E-way Bill is a typographic error and may be treated as a minor one.

The appellant-dealer importing Paper Board as raw material for manufacturing of Corrugated Boxes. The appellant had imported paper boards from M/s. B.S.J. Papers Pvt. Ltd., Rohini Delhi. On 4-12-2018 the Vehicle No. HP17B-4290 was intercepted at Behral by the Proper Officer and the driver was asked to produce documents related to goods loaded in the vehicle. The Proper Officer found that Vehicle No. HP17B-1790 as mentioned in the invoice and E-way Bill did not match with Vehicle No. HP17B-4290 which was intercepted, therefore, he started proceedings u/s. 129(1) and imposed a tax/penalty of Rs. 57,708/- under section 129. Hence, appeal

The Court observed that due to a typographic error by the consignee while issuing tax invoice and generating E-way Bill, the Vehicle No. HP-17B1790 was mentioned instead of Vehicle No. HP-17B-4290 on both tax invoice and as well as in E-way Bill. Apart from this there was no dispute on the quantity/quality of goods in question and the validity of the E-way Bill. The mistake of two digits while entering vehicle no. in invoice and E-way Bill is a typographic error and may be treated as a minor one. Therefore, the order of the Assistant Commissioner State Taxes & Excise-Cum proper officer, Paonta

¹ *DISCLAIMER: The views expressed are strictly of the author. 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.*

Circle-II was set aside. The additional demand of Rs. 57,708/- deposited by the appellant was directed to be refunded and the penalty of Rs. 500/- under SGST and Rs. 500/- under CGST u/s. 125 of CGST/HPGST Act, 2017 was imposed on the Appellant in accordance to CBIC Circular No. 64/38/2018-GST, dated 14th September 2018 and the state Circular No. 12-25/2018-19-EXN-GST-(575)6009-6026, dated 13th March, 2019.

Mahalakshmi Packagers Manufacture v. ACST&E-Cum-Proper Officer, Paonta, Circle-II - [2020] 115 taxmann.com 391 (AA- GST - HP)

Order detaining the goods of the petitioner in transit is not justified where between the date of apprehending the goods and passing of the order of detention, the e-way bill was updated by filling the Part B thereof.

The petitioner has challenged the order passed by the authorities detaining the goods that were in transit, on the ground that Part B of the e-way bill was not updated or generated at the time of inspection.

The court observed that while a notice of inspection was purportedly issued on 6-11-2020 and a notice was stated to have been served to the petitioner scheduling the inspection of the goods on 11-11-2020, the detention order in FORM GST MOV-6 was issued to the petitioner on 18-11-2020. In the meanwhile, between the date of apprehending the goods at the parcel office and the date on which the order of detention was passed, the e-way bill was updated by filling the Part B thereof. The court was of the view that the defects did not subsist on the date of passing of the order of detention.

High Court held that the detention cannot be said to be justified for the purpose of section 129 of the GST Act. Authorities were directed to release the goods belonging to the petitioner.

Suraj Hitech (P.) Ltd. v. Assistant State Tax Officer, Kochi - [2021] 123 taxmann.com 320 (High court of Kerala)

Detention of the goods for non-compliance with the provisions was justified.

The petitioner has filed the petition against the order whereby, the goods belonging to the petitioner were detained along with the vehicles on the ground that the E-way Bill did not indicate the correct number of the vehicle that was carrying the goods. The issue was whether the order detaining the goods and vehicle of the petitioner was sustainable?

Court noted the submission of the petitioner that the subsequent E-way Bill showing the correct number of the vehicle was not available at the time of detention but was produced before the authorities immediately thereafter. Taking note of the said submission but finding that the detention of the goods was justified for non-compliance with the provisions of section 129, authorities were directed to release the goods and vehicle of the petitioner, on the petitioner furnishing a bank guarantee to cover the tax and penalty amounts determined in the order. The authorities shall thereafter forward the files to the adjudicating authority for adjudication in accordance with section 130.

AMM Aquapure Systems v. Assistant State Tax Officer (Int.) - [2020] 122 taxmann.com 263 (High court of Kerala)

Petition assailing the notices issued u/s 129(3) not adjudicated at the stage particularly when the petitioner had already submitted reply

Petitioner is engaged in the execution of work contract with Cochin Shipyard. The petitioner generated e-way bills with the Part A details but did not fill in Part A of the Form GST e-way bill-01. Therefore, three trailers/vehicles while in the jurisdiction of Kochi were intercepted and retained by the Kochi Authorities. Notices were issued to petitioners on the premise that the already purchased cranes working in Orissa were entrusted to the transporter for transportation to Kochi and in that respect,

three separate delivery challans were issued. Petitioner filed a petition challenging the proceedings initiated under section 129(3).

The high court was of the view that the controversy involved assailing the impugned notices could not be adjudicated at this stage of the matter, particularly when the petitioner had already submitted a reply backed by relevant provisions and circulars which is required to be considered dispassionately and in a pragmatic manner. Petitioner was directed to submit a bank guarantee in terms of the provisions of section 129 for release of the vehicle. The writ petition was disposed of.

Larsen & Toubro Ltd. v. Commissioner, State Goods & Service Tax Department - [2020] 115 taxmann.com 212 (High court of Kerala)

In case of detention of goods, where the assessee had paid 10% of the remaining amount of tax in dispute, the recovery proceedings for the balance amount shall be deemed to be stayed.

Petitioner filed writ petition challenging the order passed by the Assistant State Tax Officer imposing tax and penalty to the tune of Rs. 1,15,333/- each. It was contended that the goods detained under section 129(1) was only 'promotional materials' consigned by the supplier, not intended for sale, and it will not attract any tax liability as contemplated under section 7 of the GST Act. Appellant had already filed a statutory appeal, as provided under section 107 of the Act, after paying 10% of the disputed tax and penalty, to satisfy the prerequisite condition contemplated under section 107(6)(b) of the Act. It was the contention in the writ petition that, since he had resorted to the statutory remedy of appeal by remitting 10% of the disputed tax and penalty, as required under section 107, the entire balance amount is deemed to be under stay as provided in sub-section (7) to section 107. Therefore the appellant pleaded for the release of the goods, without proceeding with any further steps for the confiscation of the same. Single Judge held that the mere pendency of an appeal cannot be taken as a basis for directing the release of the goods, without any security, because non-payment of the amount of security would attract proceedings for confiscation of the goods under section 130 of the Act. However, the direction was issued to the appellate authority to consider and dispose of the appeal, within a period of three months.

High Court observed that where the appellant had paid the amount stipulated under sub-section (6) of Section 107, which in the case at hand is 10% of the remaining amount of tax in dispute, the recovery proceedings for the balance amount shall be deemed to stay. As long as there exists a deemed stay against the recovery and collection of the amount of tax and penalty imposed, the situation contemplated under section 6 of Section 129 would not arise. Consequently, no proceedings for confiscation of the goods as contemplated under section 130 can proceed until disposal of the statutory appeal. Therefore, merely because the appellant had failed to furnish security, or to get the goods released, by paying the amount of tax and penalty imposed, the confiscation proceedings cannot be proceeded, because he had instituted a statutory appeal after compliance of the prerequisite condition.

Court observed that the provision under section 129 is clear and unambiguous that the goods under detention can be released only on compliance with the provisions of sub-section (6) of section 67 of the Act, which is made applicable with respect to the condition under section 129, by virtue of section 129(2) of the Act. Unless the security as contemplated under section 129(2), read with section 67(6), is furnished with; or payment of the entire amount of tax and penalty imposed under section 3 is made, the goods are not liable to be released. Therefore the relief sought for the release of the goods, pending disposal of the appeal, cannot be entertained.

Smeara Enterprises v. State Tax Officer - [2020] 122 taxmann.com 304 (High court of Kerala)

Authority directed to release goods and vehicle on payment of tax amount

Competent Authority detained goods of assessee under transport as well as a vehicle on the plea that e-way bill was not generated and issued a notice under section 130 for the confiscation of goods, vehicle and levy of penalty. Assessee filed writ petition seeking relief in this regard.

The court observed that the writ applicant availed the benefit of the interim order passed by this Court and got the vehicle, along with the goods released on payment of the tax amount. The proceedings, as on date, are at the stage of show cause notice, under section 130 of the Central Goods and Services Act, 2017. The proceedings shall go ahead in accordance with the law.

Court directed that the vehicle, as well as the goods, be released, upon payment of the tax, in terms of the impugned notice. HC held that it is now for the applicant to make good his case that the show cause notice, issued in GST-MOV-10, deserves to be discharged.

Siddhballi Stone Gallery v. State of Gujarat [2020] 115 taxmann.com 313 (High court of Gujarat)

Authority directed to release goods and vehicle on payment of 25% of tax amount

The petitioner has challenged the seizure/detention of goods/materials by the Superintendent of State Taxes, Churaibari Enforcement Wing, North Tripura by the order dated February 17, 2020 on the ground that e-Way bills tendered for the goods in movement stood expired when the vehicle entered within the territory of the State of Tripura and were intercepted Check Post. Thereafter, notice under section 129(3) of the Central Goods and Services Tax Act, 2017 and the State Goods and Services Tax Act, 2017 and also under section 20 of the Integrated Goods and Services Tax Act, 2017 was issued to the petitioner giving the description of the goods and the tax and penalty imposed for such illegal transportation in violation of the provisions of the Central Goods and Services Tax Act, 2017 and the State Goods and Services Tax Act, 2017 and also under the Integrated Goods and Services Tax Act, 2017.

High Court observed from the case *Chandimata Iron v. State of Tripura* which had passed the said order which was read below:

"Since the order under challenge in this petition is appealable, we permit the petitioner to pursue such appeal for which, we are informed limitation period has yet not expired. However, considering the facts of the case, the goods of the petitioner which are in the nature of TMT Bars, shall be released provisionally on the petitioner depositing 25% of the disputed tax and penalty demand and furnishing a bond for securing the rest of the amount.

Similarly, if the transporter also approached the competent authority for provisional release of the vehicle and offers bond for the full value of the tax and penalty such vehicle shall be released in favour of the transporter."

High court directs the respondents to release the detained materials, on deposit of 25% of the disputed tax and penalty, by the petitioner, as demanded collectively and also on securing the total demand by a bond whereby the petitioner shall pledge for the payment of for the rest of the demand subject to the outcome of the appeal. On deposit of 25% of the tax and penalty, and the bond the authority which detained those goods/materials shall release them within three days from the deposit of the said amount and the bond.

Balaji Steel Rolling Mills Ltd. v. State of Tripura [2021] 123 taxmann.com 368 (High court of TRIPURA)

Vehicle to be released on furnishing of bond

The petitioner vehicle got stuck in Raipur and it suffered a mechanical failure. Consequent thereupon, trans-shipment was done. However, the amendment in the e-way bill could not be immediately done for the lockdown. The said vehicle reached to the Churaibari check post, when the Superintendent of State Tax (GST) Churaibari Enforcement Wing detained the said vehicle finding that the proper E-way bill was not being carried by the said vehicle. The petitioner got the E-way bill amended by the competent authority and the same was produced to the said superintendent but he denied to take

cognizance of the amended e-way bill and refused to release the goods that was being carried by the said vehicle. On writ:

High Court observed that as per section 129(1)(C) seized goods shall be released upon furnishing a security equivalent to the amount of applicable tax and penalty equal to one hundred percent of the tax payable and the provisions of subsection (6) of section 67 shall mutatis mutandis apply for detention and seizure of goods and conveyance."

High Court held that it would be appropriate for fair ends of justice that the respondents shall release the goods and the vehicle, if the petitioner furnished the indemnity bond undertaking clearly that in the event of any adverse order from the court or on the issuance of direction to make tax and penalty as imposed by the Superintendent of State Tax (GST), Churaibari Enforcement Wing, the petitioner shall, within seven days, pay the entire amount to the competent authority without raising any further plea.

Sri Gopikrishna Infrastructure (P.) Ltd. v. State of Tripura [2021] 123 taxmann.com 108 (High court of TRIPURA)

Goods to be released provisionally

Writ petition was filed praying to direct authorities to release goods detained and seized in purported exercise of powers under section 129 and it was pointed out that three months back an application was filed under section 67(6) for provisional release of goods and conveyance. However, no orders had been passed on such an application.

High Court observed that petition may be disposed of relegating the writ applicants to avail the alternative remedy of filing an appeal under section 107 of the Act. It is further observed that the final order in Form MOV-11 has been passed. This is suggestive of the fact that the final order of confiscation has been passed. Such an order would be an appealable order under section 107 of the Act. It is also pointed out that three months back, an application was filed under section 67(6) of the Act for provisional release of the goods and the conveyance. However, no orders have been passed on such an application.

High Court disposes of this writ application with a direction to the authority concerned to immediately take up the application filed by the writ applicants under section 67(6) of the Act for the provisional release of the goods and the conveyance and pass an appropriate order in accordance with law within a period of one week from the date of the presentation of this order.

SB Traders v. State of Gujarat [2021] 123 taxmann.com 371 (High court of Gujarat)

The order issued rejecting appeal is not valid

While transporting two consignments of TMT steel in a Goods Vehicle from Perumbavoor to Muvattupuzha supported by invoices e-way bills were detained on September 27, 2018 alleging that the e-way bills were not valid as the number of the vehicle of the e-way bills was not entered. The competent authority further issued on assessee a notice dated September 28, 2018 demanding tax and penalty. Against impugned notice dated September 28, 2018, assessee filed an appeal before Appellate Authority on October 11, 2018. During the pendency of the appeal, the Competent Authority passed the adjudication order dated November 21, 2018 on assessee. Thereafter Appellate Authority passed order dated August 14, 2019 holding that notice dated September 28, 2018 was not appealable and accordingly rejected appeal as not maintainable. Assessee filed writ petition for restoration of appeal granting liberty to it to challenge adjudication order dated November 21, 2018.

High Court observed that on a plain and simple reading of the provisions of the Act, sub-section (3) of Section 129 envisages that the proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c) and on payment of the amount referred to in sub-

section (1) all the proceedings in respect of notice specified in sub-section (3) shall be again to be concluded. It further observed that the appeal was filed on October 11, 2018 and the adjudication order dated November 21, 2018 was issued during the pendency of the appeal. The appeal could have been rectified by an amendment appropriately to be against the adjudication order. The authorities ought not to have adopted a rigid approach and rejected the appeal as not maintainable. At the best request of the petitioner could have been construed in the manner for the amendment of the appeal, challenging the adjudication order in order to overcome the maintainability of the appeal.

For the reason above, High court held that the impugned order dated August 14, 2019 received on November 13, 2019 is set aside. The appeal is restored granting liberty to the petitioner to challenge the order dated November 21, 2018 in accordance with law.

Fawas Associated Agencies v. Assistant State Tax Officer [2021] 123 taxmann.com 229 (High court of Kerala)

About the author

CA. Rajat Mohan is Fellow Member of Institute of Chartered Accountants of India (F.C.A.) and Fellow of Institute of Company Secretaries of India (F.C.S.). Furthermore, he also has qualified post qualification course of Institute of Chartered Accountants of India on 'Information Systems Audit' (D.I.S.A.).

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