

Expiration of e- way bill and “minor negligence” will not amount to tax evasion

The Hon’ble Madhya Pradesh High Court in *M/S Daya Shanker Singh v. State of Madhya Pradesh [Writ Petition No. 12324 of 2022, dated August 10, 2022]* directed the assessing authority to refund back the penalty charged from the assessee because of the mere expiration of the e-way bill just by few hours as it did not amount to tax evasion, fraudulent intent or gross negligence.

Facts:

M/S Daya Shanker Singh (**“the Petitioner”**) is a registered Government contractor and registered dealer. The Petitioner received a work order from the divisional project engineer of the Public Works Department (**“PIU”**), Dindori for the construction of an additional laboratory and classroom at Chandravijay College in Dindori for which the Petitioner placed an order to Mittal Steels, Raipur for the supply of TMT bars for the same.

Accordingly, the e-way bill was generated on May 17, 2022 and the vehicle reached Dindori on May 19, 2022, well within the time mentioned in the e-way bill. The Petitioner stated that the truck driver was moving the goods to the Weigh Bridge and while doing so the assistant commissioner (**“the Respondent”**) at 4.35 AM on May 20, 2022 intercepted the vehicle and demanded some documents. On producing the documents, the Respondent detained the goods in his custody stating that the e-way bill got expired on dated May 19, 2022 at 12 AM and issued Form MOV-02 (i.e., order for physical verification / inspection of the conveyance, goods and documents). The written reply of the Petitioner dated May 24, 2022 was rejected and Form MOV-06 (i.e., order for detention) was issued followed by Form MOV-07 (i.e. show cause notice) specifying the penalty amount of Rs. 6,82,030/- (**“Impugned notice/ order”**).

Being aggrieved the present writ petition is being filed by the Petitioner under Article 226 of the Indian Constitution.

Issue:

Whether or not the expiration of the e-way bill just by few hours amounts to tax evasion?

Held:

The Hon'ble High Court of Madhya Pradesh in ***Writ Petition No. 12324 of 2022, dated August 10, 2022*** held as under:

- Allowed the writ petition and set aside the Impugned notice/ order imposing penalty. Further, directed that the penalty paid by the Petitioner to be refunded back within the period of 30 days failing the interest of 6% would be liable to be paid on the given amount till the actual payment.
- Moreover, the Court observed that the Respondents could not establish that there exist any element of evasion of tax, fraudulent intent, or negligence on the part of the Petitioner. The principles of natural justice, which is part of the statutory requirement of Section 126 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") have not been followed which provides that no penalty should be imposed for 'minor breaches' or procedural requirements or omission, etc. Noted that the principles of natural justice were statutorily recognized and ingrained in Section 126(1) and (3) of the CGST Act. Further, the law makers have taken care of the doctrine of proportionality while bringing Section 126(1) of the CGST Act. The punishment should be commensurate with the breach is the legislative mandate as per sub-section (1) of Section 126(1) *ibid*.
- The delay of almost 4:30 hours before which E-way Bill stood expired appears to be bonafide and without establishing fraudulent intent and negligence on the part of the Petitioner, the Impugned notice/order could not have been passed.

Relevant Provision:

Section 126 of the CGST Act:

“126. General disciplines related to penalty.

(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation.—For the purpose of this sub-section,—

(a) a breach shall be considered a ‘minor breach’ if the amount of tax involved is less than five thousand rupees;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.”

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