



Newsflash
Hon'ble Allahabad High Court allows filing of appeal by the Consignor of goods on issuance of order to driver

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1.0 Background

Detention of goods for discrepancies in E-way bill is a major area of litigation in GST. E-way bill is a part of mandatory documentation under GST and renders the movement of goods valid for reasons involving supply of such goods and also in cases other than supply. An E-way bill is to be generated online on the designated common portal. The e-way bill is to be mandatorily carried along by the person in charge of the conveyance and may be generated by the consignor or the consignee (if registered under GST) or the transporter who causes the movement of goods.

The E-way bill modalities were introduced from April 2018 with an intent to track movement of goods, check tax evasion, and enable inter-operability with the GST portal. Further, there are detailed provisions enumerated under the GST law for non-compliances with the e-way bill provisions. While the trade and industry has gradually adopted to the e-way bill mechanism, however, the litigation surrounding e-way bills seems to be never stopping majorly attributable to non-generation/partial generation of e-way bills, inaccurate details furnished in the e-way bills, non-updation of validity period, so on and so forth.

The number of cases reported for contravention in compliance with the provisions of generation of e-way bill have increased the burden of High Courts. Recently, an interesting case was lodged before Allahabad High Court reported as ***Delhivery Limited Versus State of U.P. And Another [Writ Tax No. 292 Of 2023] [2023 (4) TMI 1060 - Allahabad High*** which has been discussed hereinbelow in this newsflash.

2.0 Allahabad High Court Judgement

In the aforesaid case law, the owner of goods (consignor) filed petition against the **detention order passed for discrepancy in mentioning vehicle number on the e-way bill**. The petition was filed due to the fact that detention order was passed **in the name of driver of the vehicle transporting the consignment of goods**.

The detention order is appealable under the statute, but petitioner was under apprehension that it is not open for consignor or consignee to challenge detention order before appropriate forum as it was issued in the name of driver of the vehicle. However, the High Court held that **consignor or consignee would always be at the liberty to challenge the confiscation of goods along with supporting documents evidencing their ownership and merely because the order was addressed to the driver of the vehicle would not be to the prejudice to the rights of consignor or consignee**. Consequently, it was held that consignor is at liberty to challenge the order by way of appeal and the petition was dismissed.

3.0 Case Analysis:

While the Hon'ble Allahabad High Court seems to have issued a rationale judgement by rightly pointing out that the liberty of the consigner or the consignee shall always prevail to challenge a decision on confiscation of their goods, however, the point to be noted is whether the order has been rightly addressed to the 'driver of the vehicle' is nowhere deliberated upon in the judgement.

We refer to the judgement pronounced by the **Hon'ble Gujarat High Court** in the case of **Messrs Tanay Creation Through Prop. Tanay Mahavir Shah Versus State Of Gujarat [2021 (12) TMI 168 - Gujarat High Court]** where a writ of certiorari was filed by the petitioner against an order passed in violation of principles of natural justice and without serving a copy of the order.

The truck was detained on the grounds that invoice and e-way bill were mismatched, receiver's name and address were not mentioned on the invoice/e-way bill and quantity mismatch. Notice for confiscation of the goods/conveyance for levy of penalty was served upon the truck driver, with a copy marked to the petitioner and other parties. Subsequently, an order was also passed against the driver of the truck with imposition of penalty.

It was held by the Hon'ble Gujarat High Court that:

*The petitioner, who is the owner of the goods has not been afforded the opportunity at all as no service of show cause notice is also made to the petitioner and **the opportunity was only afforded to the driver**. Surprisingly, expressed show cause notice was only to the driver and to none else. This Court notices that neither to the petitioner nor to the owner of the conveyance bearing No.GJ-01-JT-0689, which was intercepted by the State Tax Officer, any notice of show cause had been issued. However, the order dated 03.10.2021 (Annexure-H) reflects that the **order of detention in Form GST MOV-06 was served upon the person in-charge of the conveyance** on 24.08.2021. Notice was also issued under the provisions of sub-section (3) of section 130 of the GST Act. This also is neither to the petitioner nor to any other person, **but exclusively to the driver who has been termed as person in charge of the conveyance.... Quashment of the order will sub-serve the purpose and hence the impugned order passed by the competent authority dated 15.09.2021 will need to be quashed and set aside.***

4.0 Relevant Circular:

We also refer to the **Circular No. 64/38/2018-GST** dated 14th September 2018 issued by the Central Board of Indirect Taxes and Customs which provides for modifications in **procedures for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.**

It has been clarified vide the said Circular that where there are **minor discrepancies in the details mentioned in the e-way bill** however there are no lapses in the invoices accompanying the goods in movement, **proceedings under Section 129 of the CGST Act, 2017 may not be initiated.** Further, the below situations are inter-alia narrated where detention and seizure under Section 129 should not be initiated if the consignment of goods is duly accompanied with an invoice (or any other prescribed document) and also an e-way bill:

- a) **Spelling mistakes** in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
- b) **Error in the pin-code** but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
- c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;
- d) **Error in one or two digits of the document number mentioned in the e-way bill;**
- e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
- f) **Error in one or two digits/characters of the vehicle number.**

Thus, the said Circular enables to understand that the department is attempting to dissuade undue harassment of the consignor, consignee or the transporter (including the driver) owing to minor gaps in the details furnished on the e-way bill and that the same must not attract severe consequences under Section 129 of the CGST Act 2017.

5.0 Our Comments:

The issuance of notices or order in the name of the person in charge of the conveyance i.e. the driver may not be appropriate considering that the provisions of Section 68 of CGST Act 2017 read along with Rule 138 of CGST Rules 2017 necessitate generation of e-way bill by the consignor, consignee or the transporter which is to be carried along with the person in charge of the conveyance.

It is important to note that the legal responsibility for the generation of e-way bill is not placed upon the driver and hence, in case of any lapse or discrepancies, it is the consignor, consignee or the transporter (as the case may be) who must be intimated about the same and any statutory proceedings be addressed to them. Thus, the order issued by the Hon'ble Allahabad High Court though clarifies that order being addressed to the driver of the vehicle would not be to the prejudice of the rights and contentions of the consignor or the consignee, however the faulty issuance of the said order in the name of the driver of the vehicle may have been skipped to be analysed here.

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This Newsflash summarizes Hon'ble Allahabad High Court ruling which allows filing of appeal by the Consignor of goods on issuance of order to driver. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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