



Dimensions – 95th Edition

Judgments under GST era

M/s Singh Traders v. Additional Commissioner Grade-2 and 2 Others¹

Issue for Consideration

Is the serving of an order to the driver of the vehicle valid in terms of section 169 of the Uttar Pradesh GST Act, 2017 (“UPGST Act”)?

Discussion

- An order dated March 15, 2018 (“impugned order”) was issued to the Petitioner under section 129(3) of the UPGST Act by the Respondents on the grounds that the goods were not accompanied by Form GST EWB-01. Thereafter, the Respondents proceeded to determine the tax and penalty.
- The Petitioner could obtain a certified copy of the impugned order only on July 10, 2019 and filed an appeal against it on July 12, 2019 alleging that the order had been wrongly served to the driver of the vehicle instead of the Petitioner. The appeal was dismissed by the Respondents on the grounds of limitation in terms of section 107(1) and (4) of the UPGST Act.

- Aggrieved, the Petitioners filed the present Writ Petition before the Hon’ble High Court of Allahabad and submitted that the driver of the vehicle could not be considered their representative. In such circumstances, the starting point for limitation should have been the date on which the Petitioner obtained a copy of the impugned order i.e. July 10, 2019. The Petitioner also placed reliance on the judgment in the case of *M/s SS Patel Hardware v. Commissioner, State G.S.T. and 2 others*² wherein it was held that the service of an order on the driver of the vehicle cannot be considered as valid and thus, the period of limitation would commence from the day on which a certified copy or copy of the order is made available to the Petitioner.
- After perusing section 169 of the UPGST Act, the Hon’ble High Court observed as follows:
 - The Court stated that the serving of the impugned order to the driver of the vehicle does not fall within any of the methods of service prescribed under section 169 of the UPGST Act.
 - The Court also stated that the impugned order is wholly arbitrary, illegal and contrary to the

¹ 2020-VIL-606-ALH

² 2018-VIL-627-ALH



mandate prescribed under section 169 of the UPGST Act.

Judgment

The Hon'ble High Court of Allahabad directed the Respondents to hear and decide the appeal expeditiously without going into the question of the limitation on merits.

Dhruva Comments:

Section 169 of the UPGST Act or the CGST Act, 2017 clearly prescribes the acceptable modes for the service of any order, notice or communication.

The judgment is in line with the decision in the case of *M/s SS Patel Hardware (supra)* wherein it was held that the serving of a notice to the driver of a vehicle cannot be deemed to be valid under law. Furthermore, the limitation period should start from the date on which the tax payer obtains a certified copy or a copy of the order from the relevant authorities.

***Shri Anant Jignesh Shah, Proprietor of M/s Nakoda and Company v. The Union of India, Through the under Secretary, & 2 Other(s)*³**

Issue for Consideration

Can the goods and vehicle be detained and can a Show Cause Notice ("SCN") under section 130 of the CGST Act, 2017 be issued based on a mere suspicion that GST is being evaded?

Discussion

- The Petitioner is engaged in the business of trading of pan masala in the State of Gujarat.
- The Petitioner placed an order for the supply of Pan masala ("goods") from one of its suppliers in Madhya Pradesh. The said goods were to be transported from Madhya Pradesh to Gujarat. An e-way bill was also generated for the said transportation of goods.

- However, the vehicle carrying the goods was intercepted by the Respondents who detained the goods and passed an order of detention in Form GST MOV-06 and issued a SCN in Form GST MOV-10. The contention of the Respondents is that when the vehicle was intercepted on September 13, 2020, a tax bill dated September 8, 2020 pertaining to the subject goods was produced. It was explained that they had earlier loaded vegetables which were unloaded at Ahmedabad. Subsequently, the impugned goods were being transported. Based on the movement of the vehicle at the Toll tax on September 9, 2020 and again on September 12, 2020, the authorities were of the view that the supplier had generated the e-way bill / tax bill but had transported the goods twice on the same e-waybill. Therefore, proceedings were initiated under Section 129 and 130 of the CGST Act, 2017.
- Aggrieved by the detention of the goods and the issue of SCN, the Petitioner filed the present Writ Petition before the Hon'ble High Court of Gujarat.
- The High Court observed as follows:
 - The ground on which the Respondents proposes to confiscate the goods are not tenable in law. The SCN appears to have been issued on an assumption that the driver of the vehicle must have in the past indulged in activities in contravention of the GST law.
 - The entire basis for the issuance of SCN is conjectures and surmises.
 - The goods and the vehicle can be detained under section 129 of the CGST Act, 2017 only if the goods have been transported in contravention of the GST law.
 - The Respondent had a suspicion that the driver of the goods might have transported goods twice on the same e-way bill. Thus, the case of the Respondents is one of evasion of tax for some transaction which is unknown.
 - The SCN issued under section 130 of the CGST Act, 2017 cannot be issued on a mere

³ 2020-VIL-604-GUJ



suspicion. There must be some prima facie material to the satisfaction of the authority that the goods are liable to be confiscated.

- It is open to the authority to initiate any other enquiry for any other transaction in this regard.

Judgment

The Hon'ble High Court of Gujarat quashed and set aside the SCN issued in Form GST MOV-10.

Dhruva Comments:

It is an established fact that SCN being foundation for making an allegation must clearly bring out the charge along with basis and cannot be based on presumptions / suspicion. The judgment reiterates this settled principle of law. Equally, it is important to note that the multiple movements of same vehicle carrying the said goods at the Toll plaza was being tracked for detecting any possible evasion of tax.

Notification

Extension of time limit for Anti-profiteering compliances

- The Government had issued notification no. 35/2020-Central Tax dated April 3, 2020 ("said notification") whereby the timelines for undertaking various compliances under the GST law was extended.
- The Government has now amended the said notification vide notification no. 91/2020-Central Tax dated December 14, 2020 (w.e.f. December 01, 2020) to extend the time limit for completion or undertaking compliance of any action by any authority as specified or notified under section 171 of the CGST Act, 2017 (dealing with Anti-profiteering), falling between March 20, 2020 and March 30, 2021 (previously November 29, 2020) and if the completion or compliance of action has not been done, then the time limit in such cases shall be extended to March 31, 2021 (previously November 30, 2020).





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