

E-Waybill generated between detention and seizure of goods – No GST Penalty... Intent to Evade tax is *sine qua non* to invoke penalty

By: Team Tax Connect

Recognising the distinction between technical errors and intentional evasion is essential for maintaining a balanced and equitable approach to tax enforcement. As nations continue their pursuit of effective tax administration, upholding this principle becomes paramount in fostering voluntary compliance, preserving trust in the tax system, and ensuring the judicious use of regulatory powers. In this backdrop we are discussing E-Waybill detention cases which are being handled by Industry as well as by consultants on a regular basis.

Section 129 of the CGST Act deals with detention, seizure, and release of goods in case violation of the provisions of the CGST Act is found. Section 130 deals with confiscation of goods or conveyance and levy of penalty. Both the sections revolve around a similar issue and provide for the proceedings available at the hands of the proper Officer upon him having found the goods in violation of the provisions of the Act, Rule 138 of the Rules framed under the CGST Act being one of them. Through all these provisions the legislation makes "intent to evade tax" a sine qua non for initiation of the proceedings under sections 129 and 130 of the CGST Act.

Let's understand a situation by an example before we move onto the jurisprudence evolved till date –

- ✚ 1st EWB "123456" generated on 26th January 2024 at 12 Noon

- ✚ Expiry of "123456" is on 27th Jan 2024 at 12 Midnight

- ✚ **No new EWB generated due to exceptional circumstances**

- ✚ Detention of the vehicle on 28th Jan 2024 at 8AM and statement taken in Form MOV01

- ✚ Order for Physical Verification of the vehicle made on 28th Jan 2024 at 8:10AM in Form MOV02

📄 Report of Physical Verification of the vehicle made on 28th Jan 2024 at 8:30AM in Part A of Form EWB03/ MOV04

📄 **New EWB "234567" generated on 28th Jan 2024 at 9AM**

📄 Final Report of Physical Verification of the vehicle made on 28th Jan 2024 at 10:00AM in Part B of Form EWB03

📄 Order for detention of the vehicle made on 28th Jan 2024 at 11:00AM in Form MOV06

📄 Notice for detention of the vehicle made on 28th Jan 2024 at 12:00Noon in Form MOV07

📄 Order for detention of the vehicle made on 28th Jan 2024 at 1:00PM in Form MOV09 and amount of penalty of 200% of tax amount paid

This is a very common case and therefore it is important to understand how to handle such cases in the light of what jurisprudence has evolved in the matter. The jurisprudence evolved is that if the e-Way Bill is generated and produced before the passing of the order under Section 129(3) of the CGST Act, 2017/UPGST Act, 2019 and if the goods are carried with all the other relevant documents evidencing payment of due tax, then in that case the detention and seizure of goods is wholly baseless and the same defeats the purpose of the said Acts. The said position has been clarified in the case of Modern Traders v. State of UP (Writ Tax No. 763 of 2018) - 2018-VIL-623-ALH.

A combined reading of Sections 68, 129, and 130 of the UPGST Act, 2017 shows that goods can be detained, and tax and penalty can be demanded only –

1. When the goods are liable for confiscation, which can be only when the same are transported in contravention of the provisions of the UPGST Act, 2017/CGST Act, 2017 and the rules framed thereunder
2. The intention to evade the payment of tax.

The intention to evade the payment of tax as the CGST and the SGST cannot be proved in case –

1. Tax is already charged by consignor on the tax invoice accompanying the vehicle and the same is also uploaded on the GST/IRP portal

2. The vehicle number is mentioned in the invoices and during the physical verification of the goods.

Even where Part-B of the e-Way Bill or E-Way Bill itself is not generated, but there is no ill intention at the hands of the consignor/ consignee therein to evade tax, if the documents accompanying the goods contain all the relevant details, no penalty can be invoked.

Non - generation of Part B of e-Way Bill was held to be a mere technical error, if the invoice contained the details of the vehicle transporting the goods, it was held that there was no intention on part of the consignor/consignee to evade tax.

Mere technical errors, without having any potential financial implications, should not be the grounds for imposition of penalties. The underlying philosophy is to maintain a fair and just tax system, where penalties are proportionate to the gravity of the offense. In the realm of taxation, imposition of penalty serves as a critical measure to ensure compliance with tax laws and regulations. However, a nuanced understanding prevails within legal frameworks that for penalties to be justly imposed, there must be a demonstrated actual intent to evade tax. This principle underscores the importance of distinguishing technical errors from deliberate attempts to evade tax obligations.

Penalties should be reserved for cases where an intentional act to defraud the tax system is evident, rather than for inadvertent technical errors. The legal foundation for this principle lies in the recognition that taxation statutes are not designed to punish inadvertent mistakes but rather deliberate acts of non-compliance. The burden of proof, therefore, rests on tax authorities to establish the actual intent to evade tax before imposing penalties on taxpayers. This safeguards individuals and entities from punitive measures arising from honest mistakes, administrative errors, or technical discrepancies that lack any malicious intent.

Hence, once both the e-Way Bills were presented before passing of the penalty order, and all the documents including the tax invoices, were found to be in order, there is no sound rationale to pass an order for penalty was held in the case of M/s FALGUNI STEELS Vs STATE OF U.P. [2024-VIL-78-ALH].

LET'S DISCUSS FURTHER!

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