

TAX INFO

Dated 03/11/2021

Latest update on GST Law: Information regarding **Provisional release of the goods and vehicle prior to issue of GST MOV 10 is justified** as given in **Judgement by High Court Of Gujarat.**

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Name of Petitioner	AB Traders
Name of Respondent	State Of Gujarat
Court	High Court Of Gujarat
Date of Judgement	23/09/2021
Appeal No.	Special Civil Application No. 14306 of 2021

Facts of the Case:

The petitioner is a proprietorship firm; it received purchase order from a buyer in New Delhi. The petitioner appointed transporter and it was specifically conveyed to him that movement of goods was to be commenced only after both tax invoice as well as e-way bill were given to the driver. Due to intermittent network outages, the petitioner could not immediately generate e-way bill from the portal but the transporter commenced movement of goods without waiting for e-way bill to be generated as goods had already been loaded onto the vehicle. The Department detained the goods since e-way bill was not available with the driver. Apart from non-availability of e-way bill, Department alleged that the registration of the recipient was being shown as "suspended" and that the goods had been undervalued.

On 10.09.2021, detention order and confiscation notice (both) were served to the petitioner. Both cannot be served simultaneously. Confiscation proceeding notice in MOV-10 can be issued only after the Detention proceeding is complete in the absence of co-operation or in-action of the petitioner.

Contention of Petitioner:

On 17.9.2021, the Petitioner requested for provisional release of the goods and vehicle. He stated that driver duly produced tax invoice as well as transport receipt at the time of intercept. There was no discrepancy found in the quantity as per invoice and the quantity loaded on the conveyance. He also pointed out that there seemed to be some error on the part of the Department as the registration of the buyer was very much active. Written reminder was given by the petitioner on 20.09.2021. However, there was no solution for provisional release of the vehicle and the goods. **He raised objection in relation to invocation of powers of confiscation and confiscation notice dated 10.9.2021 as being wholly without jurisdiction and illegal.**

Decision of the Court:

The Court chose not to enter into the merits of the matter. However, the petitioner is the owner of the goods and **provisional release of the goods and vehicle prior to moving of such stage of GST MOV 10 i.e. confiscation notice is justified** to enable the petitioner to take necessary legal course if in case there arises any need for challenge. Therefore, The Court directed to first consider the application for release of the goods and vehicle in accordance with law.

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