

TAX INFO

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Latest update on GST Law: Information regarding Goods can't be Detained for Mere Non-Compliance of GST Rules when Transaction is Non-Taxable Supply based on the Judgement issued by Kerala High Court.

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Goods can't be Detained for Mere Non-Compliance of GST Rules when Transaction is Non-Taxable Supply

Name of Petitioner	M/S Indus Towers Limited
Name of Respondent	The Assistant State Tax Officer
Name of Court	Kerala High Court
Appeal Number	WP(C). No. 196 of 2018
Date of Judgement	17.01.2018

Facts of the Case:

Petitioner is a public limited company engaged in the establishment and maintenance of towers for telecom service providers. The materials procured by them for their use at the various tower locations in the State are being stored at their warehouses and the same will be transported to the various tower locations as and when required. On 7.12.2017, in terms of tax invoice, the petitioner procured the batteries required for their various tower locations. On 20.12.2017, the petitioner transported the batteries covered by tax invoice intended for the tower locations on the strength of delivery challans which were intercepted by the respondent and the petitioner was issued notice of detention under Section 129, stating that the movement of goods was not declared by the petitioner as provided for under Rules 55 and 138 of the KGST Rules. The petitioner was called upon to pay a sum of Rs 57,192/- towards CGST and SGST and equal amount towards penalty, treating the transaction as a taxable supply. The essence of notice was that the goods transported by the petitioner were not accompanied by the uploaded Form KER-1 declaration.

The petitioner sent reply to notice stating that it is on account of an inadvertent omission on the part of their employees that Form KER-1 declaration was not uploaded and that Form KER-1 declaration in respect of goods covered by the delivery challan was uploaded immediately on receipt of notice. Along with reply, a copy of the uploaded declaration in Form KER-1 was also submitted by the petitioner to the first respondent. The explanation offered by the petitioner was not acceptable to the respondent and goods can be released only on payment of the tax and penalty claimed in terms of notice.

Contention of Petitioner:

According to the learned counsel, the first respondent does not dispute the genuineness of the delivery challan. Since the transaction does not involve a taxable supply, the goods cannot be detained invoking the power under Section 129 of the CGST and SGST Acts.

Reply of Respondent:

According to the learned Government Pleader, as it is admitted by the petitioner that the documents accompanied the goods did not include the declaration made in Form KER-1, it cannot be contended that the detention is illegal. He also contended that the goods can be detained even in transactions which do not involve taxable supply.

Observations:

It is rightly pointed out by the learned counsel for the petitioner, it is seen from notice that the first respondent does not dispute the genuineness of the delivery challan. So long as the first respondent does not dispute the genuineness of the delivery challan issued by the petitioner for transporting the goods involved, it has to be taken that the detention of the goods by the first respondent is solely for the reason that the goods did not accompany the documents required in terms of the State GST Rules.

Section 130 dealing with the confiscation of goods indicates beyond doubt that the confiscation of goods is contemplated under the statutes only when a taxable supply is made otherwise than in accordance with the provisions contained in the statutes and the Rules made thereunder with the intent to evade payment of tax. If that be so, mere infraction of the procedural Rules like Rules 55 and 138 of the State GST Rules cannot result in detention of goods, though they may result in imposition of penalty.

Ruling:

Detention of goods merely for infraction of the procedural Rules in transactions which do not amount to taxable supply, is without jurisdiction.

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