

# TAX INFO

*Dated: 09.10.2020*

**Latest update on GST Law: Information regarding Goods cannot be detained merely because driver has taken a different route based on the Judgement issued by Telangana High Court.**

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## **Goods cannot be detained merely because driver has taken a different route**

<b>Name of Petitioner</b>	Commercial Steel Company
<b>Name of Respondent</b>	Assistant Commissioner of State Tax
<b>Name of Court</b>	Telangana High Court
<b>Appeal Number</b>	WP No. 2161 of 2020
<b>Date of Judgement</b>	04/03/2020

### **Facts of the Case:**

The petitioner purchased goods from a dealer valued at 3,52,920.74 and tax at Rs.18% was levied coming to Rs. 63,526/-. When the consignment was coming from Vidyanagar, Karnataka with all requisite documents through a vehicle bearing No. KA 35 C 0141, it was detained at Jeedimetla on 12.12.2019, and a notice was issued alleging 'wrong destination' and directing payment of 9% of the Central Tax and 9% of State Tax and penalty equal to tax estimating the purchase value of Rs.11,14,579/- as against the actual tax invoice value of Rs.4,16,447/-.

### **Contention of Petitioner:**

The proprietor of the petitioner could not contest it at that time on account of there being a marriage in his house on 12.12.2019 at Hyderabad, and since the driver of the vehicle was pressurizing for release of the vehicle, he was forced to pay the amount mentioned in the notice dt.12.12.2019 issued by the respondent. It is alleged that when the goods were in transit in an inter-State sale, the respondents cannot detain the same and demand and collect the tax in the manner they have done which is arbitrary and without jurisdiction.

It is also contended that the respondent had no authorization and the collection of taxes under both the Central and State Acts towards G.S.T. is arbitrary and highhanded; that at best the respondent can collect from the dealer a security equivalent to the amount payable. He should be granted a refund of the amount of Rs.4,16,447/- levied and collected under both the Central Tax Act and the State Tax Act, 2017.

### **Reply of Respondent:**

There was no pressure on the dealer to pay the tax and penalty; a show-cause notice in Form MOV-07 was given and an opportunity to file objections was also given; and there was, therefore, compliance with principles of natural justice.

It is further contended that if the goods were to be delivered at Balanagar according to the invoice, the vehicle cannot be at Jeedimetla since Balanagar comes first and Jeedimetla later, and no reasonable person would cross over Balanagar and then turn over to go back to the place of destination. It is also stated that there is a road from Jeedimetla to Balanagar which can be used to turn back to Balanagar. But, if the said road is blocked due to strikes or repairs or if there are rallies only that can be done, and there is no reason assigned to take the longer route avoiding the normal route.

### **Observations:**

It was mentioned in the order of detention of the vehicle and the consignment carried thereon from Karnataka to Hyderabad issued under Section 129(1) of the CGST Act, 2017 that the reason for such detention is 'wrong destination'. Under the Act, this is not a ground to detain the vehicle carrying the goods or levy tax or penalty.

There is no material placed on record by the respondent to show that any attempt was made by the petitioner to deliver the goods at a different place and sell in the local market evading CGST and SGST, because it was found at Jeedimetla and cannot lead to any presumption that there was an intention on the part of the petitioner to sell the goods at the local market evading the CGST and SGST.

The invoice in the custody of the driver of the vehicle indicated that IGST @ 18% was already collected and when the IGST was already paid, the goods cannot be treated as having escaped tax and fresh tax and penalty cannot be imposed on petitioner.

### **Ruling:**

The impugned action of the respondents in collecting the amount of Rs.4,16,447/- from the petitioner towards tax and penalty under the CGST and SGST Act, 2017 under threat of detention of the vehicle carrying the said goods for an absurd reason ('wrong destination') when the vehicle in question carried all the proper documents evidencing that it was an inter-State sale transaction is clearly arbitrary, violative of Articles 14, 265 and 300-A of the Constitution of India.

The respondent is directed to refund the same with interest at the rate of 6% per annum from 13.12.2019 till the date of payment within a period of three (03) weeks from the date of receipt of copy of the order.

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