



Dimensions – 91st Edition

Judgment under GST era

M/s. Sree Rama Steels v. The Deputy State Tax Officer and three Others¹

Issue for Consideration

Is the Respondent's initiation of proceedings against the Petitioner under section 129 of the CGST Act, 2017 and under the Telangana GST Act, 2017 ("TGST Act") valid under law?

Discussion

- The Petitioner is a proprietary concern engaged in the trading of iron and steel. The Petitioner placed an order to a vendor located in the state of Telangana for the purchase of M.S. Angles of different sizes.
- The vendor raised a telephonic invoice / delivery challan and generated an e-way bill dated January 26, 2020. Although the goods were loaded on the transport vehicle on January 26, 2020, it could start the journey next day due to restrictions placed on the movement of heavy vehicles in the city of Hyderabad.
- In the meantime, the Petitioner received an order for supply of goods from its customer and generated

a tax invoice and an e-way bill dated January 27, 2020.

- Thereafter, the customer requested the Petitioner to deliver the goods directly to the customer's job work site located at Ranga Reddy District in Hyderabad, Telangana. In order to save transport costs and time, the Petitioner instructed the driver of the transport vehicle to take the goods directly to the job work site.
- While waiting for the receipt of documents pertaining to the change in delivery address from the Petitioner, the transport vehicle and goods along with documents were inspected by the Respondent. Though all the documents were produced by the driver of the transport vehicle, the Respondent detained the goods by issuing an order of detention in Form GST-MOV06 stating the reason that "wrong destination is noticed".
- Thereafter, the Respondent issued a notice to the Petitioner asking to show-cause why tax along with a penalty should not be recovered from the Petitioner.
- The Petitioner replied stating that in order to save transport costs and time, the vehicle was directed towards the job work site along with necessary

¹ 2020 (11) TMI 324



documents. However, no order was passed by the Respondent in response to the above reply.

- Thereafter, the Petitioner got the vehicle released on payment of tax and penalty under protest.
- Aggrieved, the Petitioner filed the present Writ Petition. After perusing the facts of the case and the relevant provisions, the Hon'ble High Court observed as follows:
 - In the absence of an order passed and communicated by the Respondent, the Petitioner cannot be expected to file an appeal under section 107 of the TGST Act. Although reference has been drawn to a subsequent order dated February 4, 2020, there is no evidence to show that such an order was passed and served on the Petitioner.
 - The goods in transit can be detained only in cases involving a contravention of provisions of Act or Rules made thereunder.
 - The Court followed the judgment pronounced by the Hon'ble Gujarat High Court in the case of *Synergy Fertichem Pvt. Ltd. v. State of Gujarat*² and stated that the following steps should be considered at the time of detention and seizure of goods or conveyance:
 - The authorities should look closely into the nature of the contravention of the provisions of the Act or the Rules;
 - The authorities should closely examine whether such contravention was made with an intent to evade the payment of tax; and
 - The contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was with the intent to evade payment of tax.
 - The reason for detention cannot be said to be a mere contravention of the Act or the Rules. The vehicle driver was in possession of the tax invoice and the e-way bill generated by the vendor which constitutes prima facie compliance and which did not warrant the

initiation of proceedings under section 129 of the TGST Act.

- The Court observed that the delivery challan issued by the customer included the address of the job work site but that the same address was not mentioned in the e-way bill. Furthermore, the Court stated that the sale of goods in transit is a common and well recognised trade practice.
- The intention to unload the goods at Katedan, Hyderabad was in pursuance of the request from the Petitioner's customer and was not undertaken with any intention to evade tax and contravene the provisions of law. Furthermore, a mere omission of the change in address in the e-way bill cannot be a ground to presume that there has been an intention to violate the law or to evade tax.
- The GST law is a recent law and there may be difficulties faced by common businessmen in understanding the enactments and the procedures introduced. The interpretation of taxing statutes should facilitate business and inter-state trading and should not act in a perverse manner leading to harassment of trade.

Judgment

The Hon'ble High Court allowed the Writ Petition and directed the Respondents to refund the tax and penalty collected along with interest.

Dhruva Comments:

The judgment supports the *ease of doing business* and marks a distinction between minor technical glitches and the intention to evade taxes or contravention of the GST law.

Furthermore, it is important to note that defects, if any, in the documentation accompanying the goods must be assessed in accordance with circular no. CBEC/20/16/03/2017-GST dated September 14, 2018.

² 2020 (2) TMI 1159



Ruling under GST era

M/s. Dream Road Technologies Private Limited³

Issue for Consideration

Can input tax credit (“ITC”) be availed on the motor vehicles that are further supplied on an operating lease basis to customers?

Discussion

- The Applicant proposes to purchase motor vehicles and provide the same on an operating lease basis.
- The Applicant approached the Authority for Advance Ruling (“the Authority”) to contend that they are eligible to claim the input tax credit (“ITC”) on the motor vehicles purchased on the following basis:
 - As per section 17(5)(a) of the CGST Act, 2017, ITC can be availed on motor vehicles having a seating capacity of more than 13 persons. The ITC can also be availed if the motor vehicle, which are otherwise ineligible, if they have been used for ‘further supply’ of such motor vehicles.
 - The term ‘further supply’ is not defined in the CGST Act, 2017. Hence, the definition of the term ‘supply’ becomes relevant. The term ‘further’ prefixed to ‘supply’ is merely an adverb and does not differentiate it from ‘supply’.
 - On perusal of the definition of the term ‘supply’ under section 7(1)(a) of the CGST Act, 2017 and of the term ‘outward supply’ as per section 2(83) of the CGST Act, 2017, leasing of motor vehicles should fall within the definition of supply and consequently within the term ‘further supply of motor vehicles’ in section 17(5) of the CGST Act, 2017, and thus ITC on purchase of motor vehicles should be admissible.
 - Furthermore, reliance was placed on the advance ruling in the case of *M/s Nursing Transport*⁴ which involved similar facts and in which the Authority held that ITC of motor vehicles was available.

- Undertaking was provided by Applicant that they will not claim depreciation on the tax component charged on such motor vehicles.

- After perusing the facts of the case and the relevant provisions of the GST law, the Authority observed that the essential requirements for the credit to be eligible is present and the matter is covered by the ruling in the case of *M/s Nursing Transport (supra)*.

Ruling

ITC can be availed on the motor vehicles that are further supplied on an operating lease basis.

Dhruva Comments:

The ruling clarifies that the term ‘further supply’ used in section 17(5)(a) of the CGST Act, 2017 is not restricted to the supply of the motor vehicles as ‘goods’ only but also includes the supply of motor vehicles as ‘services’ on lease basis.

³ Advance ruling no. HR/HAAR/2020-21/4 dated August 21, 2020

⁴ [2019] 104 taxmann.com 86 (AAR Madhya Pradesh)





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