

The Chamber of Tax Consultants Study Circle Meeting on 14th November 2019

Issues in Interest, Penalty and Confiscation under GST

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Issues for discussion

Interest

1. Input Tax Credit Available but not Utilized.
2. Interest on delay in payment of GST when credit is lying in the electronic ledgers.
3. Interest on delay in payment of GST.
4. Interest if payment is not made within 180 days to the supplier of goods or services.
5. Interest on unmatched credit.
6. Interest on Cenvat Credit carried forward in Tran-1 and held to be ineligible
7. IGST credit taken instead of CGST and SGST and vice versa.
8. Interest on non-reversal of input tax credit on exempted supplies

Issues for discussion

Penalty

9. Fraudulent refund by an unregistered person.
10. Tax collected by an unregistered person but not paid to the government.
11. Tax collected but not paid beyond three months.
12. Circular Trading of goods.
13. Denial of personal hearing and reduction in the quantum of Penalty.

Confiscation

14. Whether confiscation only applicable in case of taxable supplies?
15. Whether goods can be confiscated on the basis of doubt not concerning supply of goods in question?

Section 50 of the CGST Act, 2017 – Interest on delayed payment of tax

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Case Study-1 Input Tax Credit Availed but not Utilized

- ❑ ABC Limited is engaged in the manufacture of accessories of motor vehicles. The company has availed credit on Outdoor Catering Services. The department pointed out to the company that in view of Section 17(5)(b) of the CGST Act the company is not eligible to take credit. The company has availed the credit but not utilized the same. Admitting the mistake, the company immediately reversed the credit availed. The department has raised demand for interest under Section 50 for incorrect availment of the credit. The company wishes to know whether it is liable to pay interest?

Case Study 1-Legal Provisions

Section 73 and 74 of the CGST Act –

Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or **where input tax credit has been wrongly availed or utilized for any reason**, ... he shall serve notice on the person ... requiring him to show cause as to why he should not **pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable** under the provisions of this Act or the rules made thereunder.

Case Study-2 Interest on delay in payment of GST when credit is lying in the electronic ledgers

- ❑ Disha Engineering is engaged in manufacture of pipes and execution of infrastructure projects. The company had delayed in filing the returns in GSTR-3B for the month of October 2017. Liability for the month was Rs. 100 Crore against which the company has Rs. 50 Crore credit lying in the electronic credit ledger. The company had paid tax liability along with interest calculated on the net tax liability (i.e. Rs. 50 Crore) at the time of filing of its return. During the course of audit, the Department raised a contention that interest is to be calculated on total tax liability (i.e. Rs. 100 Crore) and not on net tax liability. In the present situation, how interest will be computed.
- ❑ Suppose in the above case, if the Company had Rs. 50 Crore in the electronic cash ledger and Rs. 50 Crore in electronic credit ledger. Is any interest payable?

Case Study 2-Legal Provisions

Section 50(1) *Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.*

Vide the Finance Act 2019, below proviso was added in Section 50;

*“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, **shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.**”*

Section 39(1) *Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form, manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed on or before the twentieth day of the month succeeding such calendar month or part thereof.*

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return :

Case Study 2-Legal Provisions

SECTION 41. Claim of input tax credit and provisional acceptance thereof. — (1) Every registered person shall subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

SECTION 16. Eligibility and conditions for taking input tax credit.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(d) he has furnished the return under section 39 :

Case Study 2-Legal Provisions

SECTION 49. Payment of tax, interest, penalty and other amounts

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [section 41 or section 43A], to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

- ▶ *M/S. Megha Engineering and Infrastructure Ltd. Vs CCT Hyderabad 2019 (4) TMI 1319 – Telangana and Andhara Pradesh High Court.*

- ❑ AAP & Co. is a Security Agency registered with GST Department. Due to shortage of funds, it could not pay the GST liability for the period from July 2017 to December, 2018. The Company has sufficient funds available now but it is not willing to pay any interest liability. It request you to give advice to save the interest liability somehow?

Case Study-3-Legal Provisions

Section 2(106) – *Tax period means the period for which the return is required to be furnished.*

Section 39

(1) *Every registered person for every calendar month shall furnish a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax paid, on or before the twentieth day of the month succeeding such calendar month or part thereof.*

(7) *Every registered person, who is required to furnish a return, shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.*

Rule 61

(1) *Every registered person.....shall furnish a return specified under sub-section (1) of section 39 in **FORM GSTR-3** electronically through the common portal.*

(5) *Where the time limit for furnishing of details in **FORM GSTR-1** under section 37 and in **FORM GSTR-2** under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, [specify the manner and conditions subject to which the] return shall be furnished in **FORM GSTR-3B** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.*

Case Study-3-Legal Provisions

*Notification no.10/2017 –Central Tax dated 28th June 2017 it was provided in terms of sub-rule (5) of Rule 61 of the CGST Rules that where the time limit for furnishing of details in Form GSTR-1 under Section 37 and in Form GSTR-2 under Section 38 has been extended and the circumstances so warrant, return **in Form GSTR-3B, in lieu of Form GSTR-3**, may be furnished in such manner and subject to such conditions as may be notified by the Commissioner.*

Sub-rule (5) of Rule 61 of the CGST Rules was retrospectively amended with effect from 1st July 2017 vide Notification No.17/2017 – Central Tax dated 27th July 2017 to omit the wordings return in Form GSTR-3B being in lieu of Form GSTR-3.

Case Study-3-Legal Provisions

Subsequent amendment in Rule 61 with retrospective effect from 01.07.2017

*5) Where the time limit for furnishing of details in **FORM GSTR-1** under section 37 or in **FORM GSTR-2** under section 38 has been extended, the return specified in sub-section (1) of section 39 shall, in such manner and subject to such conditions as the Commissioner may, by notification, specify, be furnished in **FORM GSTR-3B** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

*Provided that where a return in **FORM GSTR-3B** is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in **FORM GSTR-3**.*

AAP & Co. vs UOI [2019 (26) GSTL 481] – It was held that the monthly return GSTR-3B is not a substitute of monthly return GSTR-3 having statutory backing of Section 39(1) of the Act read with Rule 61(1).

Case Study-4-Reversal of credit and interest if recipient fails to make payment within 180 days

- ❑ SMS Limited is a manufacturer of paper products and is registered under GST. The company avails input tax credit on the basis of tax invoice as soon as the goods or services are received. The company had received advertising agency service from Times of India on 01.04.2018 on which it paid GST of Rs. 1 Lakh (CGST-50K and SGST-50K). The company made payment to the supplier of service on 31.03.2019. The department raised demand for reversal of input tax credit along with interest and penalty as input tax credit was availed even when payment was not made within 180 days. The company wishes to know if the contention of department is correct.
- ❑ In the above case if SMS limited had reversed the credit on 179th day will any interest be payable?

Case Study-4-Legal Provisions

Section 16(2)

*Where a registered person fails to pay to the supplier, the amount towards value of supply along with tax payable thereon **within a period of 180 days from the date of issue of invoice**, an amount equal to the input tax credit availed shall be added to the output tax liability along with interest thereon.*

*Provided also that the **recipient shall be entitled to avail of the credit of input tax** on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.*

RULE 37. Reversal of input tax credit in the case of non-payment of consideration

- ▶ (2) *The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.*
- ▶ (3) *The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.*

Case Study-5 -Interest on unmatched credit

- ❑ SK Motors has availed input tax credit of Rs. 10 Crore while filing GSTR-3B return as against Rs. 6 Crore which is reflecting in the GSTR-2A. The company wishes to know if it is liable to pay interest on the differential amount.

Case Study-5-Legal Provisions

Section 16(2) – No registered person shall be entitled to the credit of input tax unless:

(a) he is in possession of a tax invoice/ debit note/ other tax paying document;

(b) he has **received the goods or services** or both;

...

(c) subject to provisions of Section 41 or Section 43A, **the tax charged in respect of supply has been actually paid to the government;**

(d) he has furnished the return under section 39.

Section 50(3) – A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent

Case Study-5-Legal Provisions

Section 42(5) – *The amount in respect of which any discrepancy is communicated to the recipient under sub-section (3) and which is not rectified by the supplier his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.*

Section 42(7) – *The recipient shall be eligible to reduce, from his output tax liability, the amount added, under sub section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.*

Section 42(10) – *The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in Section 50(3).*

Case Study-6-Interest on Tran-1 credit held to be ineligible

- ❑ PQR Limited is engaged in the business of general insurance. The company was registered under service tax. After the enactment of the Central Goods and Service Tax Act, 2017 the company was granted registration under GST. As per the provisions of Section 140(1) of the Central Goods and Service Tax Act, 2017, the company carried forward Cenvat Credit lying as on 30.06.2017. Later on, it was found that the Cenvat credit so carried forward was ineligible. The Company reversed the credit but wants to know whether any interest is payable on subsequent reversal of input tax credit.

Case Study-6-Legal Provisions

- ▶ **Section 2(62)** – *“input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes*
- ▶ **Section 2(63)** *“input tax credit” means the credit of input tax;*
- ▶ **Rule 121 of the Central Goods and Service Tax Rules, 2017**

The amount credited under sub-rule (3) of Rule 117 may be verified and proceedings under Section 73 or, as the case may be, Section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

Case Study-7-IGST Credit taken instead of CGST and SGST

- ❑ Amar Industries is engaged in manufacture of polymer and located in New Delhi. The company had received testing services from Rama Lab located in Maharashtra. Rama Lab raised invoice on Amar Industries inter-alia charging IGST. Amar Industries had availed IGST credit on the same. During the course of investigation on Rama Labs, it was alleged by the Department that Rama Labs ought to have charged CGST and MH SGST on this transaction being intra state supply. Rama Labs accepted the mistake and accordingly discharged the CGST and MH SGST. Rama Lab approached you as to whether any interest is required to be paid?
- ❑ Amar Industries also approached you to advise whether ITC can be denied to it and recovered along with interest.?

Case Study-7-Legal Provisions

Section 50(1) *Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.*

SECTION 77. Tax wrongfully collected and paid to Central Government or State Government

(2) *A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable.*

Case Study-8-Interest on non-reversal of credit on exempted supplies

- ❑ R Limited owned a commercial property and gave it on rent to various companies. The Company had discharged applicable GST on the aforesaid services. The Company also had a residential premise which was rented out to employees of the Company at market prevailing rates. The Company did not discharge GST on the same since it was exempted pursuant to Notification No. 12/2017. The Company has not reversed the proportionate credit on provision of such supplies. Realising its mistake the Company has reversed the proportionate credit. The Company wishes to know whether interest was also liable to be paid on such reversal.

Case Study-8-Legal Provisions

Section 50 of the CGST Act, 2017 – Interest on delayed payment of tax

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Rule 42(2)(a)- Where the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂', such excess shall be [reversed by the registered person in **FORM GSTR-3B or through **FORM GST DRC-03***] in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment***

Legal Provisions relating to Penalty

Section 122(1)- Penalty on taxable persons for evasion of tax for twenty one different offences.

Section 122(2)- Penalty on registered person for non-payment, short-payment and erroneous refund.

Section 122(3)- Penalty on any person who aids or abets any of the offences specified in Section 122(1).

Section 123- Penalty for failure to furnish information return.

Section 124- Fine for failure to furnish statistics.

Section 125- General penalty where no penalty is separately provided.

Section 126- General disciplines related to penalty

Section 127- Power of proper officer to impose penalty in certain cases where the same is already not covered already by Section 63, 64, 73, 74, 129 or 130.

Section 128- Power to waive in part or full penalty referred to in 122 or 123 or 125 of any late fee referred in 47.

Case Study-9-Fraudulent refund by an unregistered person

- ❑ Maharashtra government in order to incentivise the industry provided for refund of SGST portion on machinery purchased locally for the purpose of use in manufacture of Sewing Machines. L is an unregistered person who fraudulently sought refund claiming to be a manufacturer of Sewing Machines. GST Department issued show cause notice to L inter-alia recovery of refund along with equal amount of Penalty. L wishes to know whether any penalty is imposable on him in the present case?

Case Study-9-Legal Provisions

Section 2(107) - taxable person means a person who is registered or liable to be registered under section 22 or section 24.

*Section 122(1) - Where a **taxable person** who –
(viii) Fraudulently obtains refund of tax under this Act.*

*Section 74 - Where it appears to the proper officer that any tax has not been paid or short paid or **erroneously refunded**, or where input tax credit has been wrongly availed or utilized for any reason, ... he shall **serve notice on the person** ... requiring him to show cause as to why he should not **pay the amount specified in the notice along with interest payable thereon under section 50 and a** penalty equivalent to the tax specified in the notice.*

***SECTION 125. General penalty.** — Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.*

SECTION 75. General provisions relating to determination of tax.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Case Study-10- Penalty on tax collected by unregistered person but not paid to government

- ❑ Mukesh Kumar is a Spice seller in Kerala. His turnover is less than the registration limit prescribed by the GST Act. In some cases he had collected GST from the customer but not paid to the government. A search was conducted by GST department and now GST department issued show cause notice for recovery of tax, interest and equal amount of penalty. Mukesh Kumar approached you to advice :-
 1. Whether Department is correct in Imposing equal amount of penalty?
 2. For how many years can Department raise demand for tax and penalty?
 3. In the aforesaid example suppose, Mukesh Kumar recovers only the tax which was paid by him on his input supplies whether it is liable to pay any penalty?

Case Study-10-Legal Provisions

Section 2(107) - taxable person means a person who is registered or liable to be registered under section 22 or section 24.

Section 122(1) Where a taxable person who –

(iv) **collects any tax** in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due.

Section 76 –

.... every person who has **collected from any other person any amount as representing the tax under this Act**, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(6) The proper officer shall issue an order within one year from the date of issue of the notice

Case Study-11- Tax collected but not paid beyond three months

- ❑ Subhash Limited is a dealer of Plastic household items and registered with Department. The company had collected GST from the customer in the month of January, 2019. However, due to financial crunch could not deposit the same to government treasury on due date and finally it was deposited only on September, 2019. The Department is of the view that the company has collected tax but not paid to the government within 3 months hence equal amount of penalty is imposable on the company in terms of Section 122(1)(iii) of the CGST act. The company wishes to know whether the stand of the department is correct in law?

Case Study-11-Legal Provisions

Section 122(1) Where a taxable person who –

(iii) **collects any amount as tax** but fails to pay the same to the government beyond a period of three months from the date on which such payment becomes due.

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Case Study-12- Penalty in case of circular trading of goods

- ❑ 'A' purchased goods (iron, steel etc.) on which appropriate GST was paid. 'A' availed input tax credit on the basis of eligible tax invoices. 'A' sold goods to 'B'. Based on invoices issued by 'A', 'B' took the input tax credit. 'B' subsequently sold goods to 'C'. 'C' also based on invoice raised by 'B' took the credit and sold the goods again to 'A' charging GST. In the entire chain of transaction, there was no actual movement of goods and goods always remained with 'A'. Department has caught hold of 'B' and is denying Input tax credit and inter-alia proposing to recover the same along with Interest and penalty. B approached you to advice whether the proposed action of the department is correct in law?

Section 122(1) – *Where a taxable person –*

(vii) takes or utilizes input tax credit without actual receipt of goods of services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder.

Section 2 (93) “*recipient*” of supply of goods or services or both, means

- ▶ *(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

SECTION 16. Eligibility and conditions for taking input tax credit

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(b) he has received the goods or services or both.

[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

Case Study-13- Denial of personal hearing and reduction in the quantum of penalty.

- ❑ For contravention of provisions of the act, the department had issued show cause notice to ABC Limited under Section 74. Since tax amount along with interest was already paid during the course of hearing, the show cause notice was issued only to recover penalty. The adjudicating authority was of the view that without giving an opportunity of personal hearing, confirmed the penalty. The adjudicating authority was of the view that in view of provisions of section 126(6) in case of fixed sum/fixed percentage penalty no personal hearing is required to be given. ABC wants to know whether the order passed by the Ld. Adjudicating authority is correct in law.
- ❑ Whether commissioner can reduce the quantum of penalty?

Case Study-13-Legal Provisions

Section 126 (2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

Section 126(3) – *No person shall be imposed on any person without giving him an opportunity of being heard.*

Section 126(6) – *The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.*

Legal Provisions relating to detention seizure and confiscation.

SECTION 129. Detention, seizure and release of goods and conveyances in transit.

SECTION 130. Confiscation of goods or conveyances and levy of penalty

Case Study-14- If confiscation of goods only apply on taxable goods

- ABC Limited is a GST registered company located in Kerala. The company transported some goods to their own premises within the state on the strength of delivery challans. However Kerala GST Department intercepted the goods and detained them. Notice of detention was issued u/s 129 of the CGST Act & SGST Act, alleging that movement of goods was not declared, as required under Rules 55 & 138 of KGST Rules. The Department claimed that the goods were not covered by uploaded Form KER-1 declaration. The Company claimed that it omitted to do so and immediately uploaded & submitted a copy of declaration in Form KER-1. However the Department refused to accept the same claiming that it was uploaded after detention of goods. The Department sought payment of tax & penalty to release the goods. Is contention of Department correct?

Case Study-14-Legal Provisions

- ▶ **SECTION 129. Detention, seizure and release of goods and conveyances in transit. — (1)**
Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, --
- ▶ (a) *on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;*
 - ▶ (b) *on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;*
- (6)** *Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.*

Case Study-14-Legal Provisions

SECTION 130 (1) Notwithstanding anything contained in this Act, if any person —

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (ii) does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) supplies any goods liable to tax under this Act without having applied for registration; or
- (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

Assistant State Tax officer Vs Indus Tower 2018- TIOL -2755-Kerala (HC)

Case Study-15- Whether department can detain goods on the basis of doubt not connected with the supply of goods in question?

- ABC Limited was transporting the goods through a Goods Transport Agency. The driver of the truck was carrying invoice, e-way bill and lorry receipt. The truck was intercepted by the Officer at a Toll Gate. The driver of the truck produced the documents relating to the goods which were being transported; however, the Department detained the truck on the ground that the genuineness of the goods in transit (its quantity etc.) and/or tendered documents requires further verification. Upon preliminary verification of the dealer online, Department came to know that with respect to some other supply, dealer has not paid the tax and some other purchases are also not genuine. The Department had detained the goods on the aforesaid grounds even though there is no apparent discrepancies in the quantity of the present consignment. Subsequently the Department confiscated the goods. Whether the action of the department to detain goods is justified in law?

Case Study-15-Legal Provisions

Circular No. 41/15/2018-GST dated 13.04.2018, issued by the CBIC prescribed the procedure which is required to be followed by the proper officer at the time when the goods and conveyance are intercepted. In terms of the said circular, if upon verification of the documents and on verification of the goods, no discrepancy is found, the conveyance shall be allowed to move further.

Nisha Trading Co. State of Gujarat 2019 TIOL 2430 -HC- AHM -GST

Discussion



Thank You

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