

Power to detain or seize the goods and conveyance cannot be invoked for search and seizure of the godown – Allahabad HC

2 September 2022



Summary

The Special Investigation Branch (SIB) initiated search and seizure operation in business premises of the assessee. In this respect, the Allahabad High Court (HC) noted that adjudication proceedings were separately initiated, which are pending for consideration in appeal. Further, the assessee received two show cause notices (SCNs) from two different authorities. The HC observed that the provision giving the power¹ to detain or seize a vehicle was exercised by such officers to search the godown premise of the assessee. The HC stated that the power for inspection, search and seizure² has been given separately under the GST law and in order to exercise such power, the proper officer must have reasons to believe, then he may authorise the officer to inspect any place of business of the concerned person. In this regard, the HC opined that both the officers acted with negligence and deliberately exercised non-existing powers. The HC held both officers accountable for their acts. Further, the HC quashed the entire proceedings initiated without jurisdiction.

Facts of the case

- The assessee³, a manufacturer of PVC pipes, has its manufacturing unit in Agra. The assessee stores its raw material and manufactured goods in godown located at the same premise.
- The SIB initiated a search and seizure operation on business premises of the assessee. It was alleged that there was a shortage of physical stock in comparison to details recorded in stock registers. The assessee disputed the allegation and contended that the stock reconciliation could be made after considering the stock of raw material and finished goods stored at other godown, which was not subjected to search and seizure.
- The assessee also received two SCNs from two different authorities with respect to the search and seizure of the godown. Thereafter, seizure orders were

passed wherein tax and penalty was demanded.

- The appellate authorities dismissed the appeals and, therefore, the petitioner has filed the present appeal.

Allahabad HC observations and ruling⁴:

- **No challenge to search and seizure operation:** The assessee has not challenged the search and seizure operation conducted by the SIB. In this respect, the HC noted that the adjudication proceedings were initiated separately which are pending for consideration in appeal. Thus, the HC has not passed an order to avoid influencing the outcome of proceedings.
- **Invocation of provisions:** The provision of detention, seizure of goods and conveyance in transit

¹ Section 129(3) of the CGST Act

² Section 67 of the CGST Act

³ Mahavir Polyplast Pvt. Ltd.

⁴ Writ Tax No. 57 of 2020 And 56 of 2020

cannot be invoked for search and seizure of the godown merely because it is mandatory to have 'reasons to believe' to invoke Section 67 of the CGST Act. Further, the HC stated that both the officers have exercised non-existing power and even deliberately described the vehicle⁵, thus it cannot be said that the officers have not directed the subject search at any vehicle.

- **Accountability of the officers:** The HC did not get into detail regarding the intention of the officers in issuing notices and initiating proceedings without jurisdiction⁶. However, since the officers are accountable for their acts, the HC communicated the officer⁷ to look into the matter, call for an explanation and take appropriate action to avoid such occurrences in the future.

Our comments

As per the GST provisions, the power to invoke Section 129 is limited to detention, seizure of goods and vehicles in the case where any person transports goods or stores goods while in transit in contravention of the GST law. Further, the power of inspection, search and seizure is given under Section 67, which can be exercised when the proper officer has reasons to believe that there is suppression of transaction/activities with an intention to evade tax. Therefore, Section 129 giving the power to detain or seize the goods or vehicles cannot be invoked to conduct search or seize the godown.

In the present ruling, to control abuse of power, the HC has held the officers accountable due to deliberate exercise of non-existing powers. This is a welcoming ruling and shall set precedence in similar matters.

⁵ being checked as "UPGODOWN02"
And "GODOWON"

⁶ since it would require calling of personal affidavits of the officers at the cost of precious time of the Court

⁷ to the Commissioner Commercial Tax UP

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