

## Goods cannot be detained for contravention of provisions by other person in supply chain – Punjab and Haryana HC

16 February 2022



## Summary

The Punjab and Haryana High Court (HC) observed that the goods and conveyance in transit were accompanied by the prescribed documents i.e., invoice and e-way bill. Further, there was no allegation that the petitioner had contravened any provisions of the Goods and Services Tax (GST) law with an intent to evade payment of tax. Therefore, the HC held that the action of the Revenue initiating detention and seizure proceedings under the GST law cannot be sustained. The HC further stated there must be a direct nexus between intent to evade tax with the activity of the petitioner. Thus, the HC held that the goods cannot be detained without passing appropriate orders in accordance with law and directed to release the goods.

## Facts of the case

- The petitioner<sup>1</sup> had sold copper scrap which was detained by the authorities while in transit, despite carrying the prescribed documents i.e., the invoice and the e-way bill.
- The petitioner received a communication from the authorities, wherein it was stated that one of the petitioner's supplier<sup>2</sup> was not having inward supply and was only engaged in outward supply without paying any tax. Therefore, the authorities alleged that the petitioner's goods were liable for confiscation and levy of penalty<sup>3</sup>.
- The petitioner filed present writ<sup>4</sup> before the HC challenging the detention of goods in spite of availability/production of all the prescribed documents under the law<sup>5</sup>. The petitioner further contended that it cannot be alleged that there was any intention to evade payment of tax, hence proceedings are not sustainable<sup>6</sup>.

- **No discrepancy found:** In the present case, the goods and conveyance in transit were accompanied with the prescribed documents i.e., the invoice and the e-way bill<sup>8</sup>. The Revenue had not pointed out any discrepancy in the said documents.
- **No intent to evade tax:** There is no allegation that the petitioner had contravened any provisions of the law. The allegation of contravention is on the predecessor for not having any inward supply. There is no intention to evade payment of tax on the part of the petitioner.
- **Verification of payment of tax by predecessors:** The trader cannot be accused of having the intention to evade payment of tax for an act or omission on part of someone not directly linked. It is impossible for traders to ascertain whether input tax has been paid by the predecessors.
- **Proceedings cannot be sustained:** The petitioner can claim input tax credit only if the same has been paid to the government. Therefore, the proceedings

## Punjab and Haryana HC observations and ruling<sup>7</sup>:

<sup>1</sup> Shiv Enterprises

<sup>2</sup> Balbir Enterprises

<sup>3</sup> Section 130(1) of the CGST Act, 2017

<sup>4</sup> CWP-18392-2021

<sup>5</sup> Section 129 of the CGST Act, 2017

<sup>6</sup> Section 130 of the CGST Act, 2017

<sup>7</sup> dated 4 February 2022

<sup>8</sup> Rule 138A of the GST Rules, 2017

under the provisions of the act cannot be sustained and need to be set aside. In a case where the goods in transit are accompanied by the documents, as prescribed, the authorities need not proceed with detention or seizure proceedings. The goods/conveyance cannot be detained without passing appropriate orders in accordance with the law.

- **Order for release:** In case the authorities find that the action of the person falls within the prescribed criteria, then the authorities have the right to proceed with confiscation proceedings. However, in the present case, no direct nexus could be found between the basis of proceedings and the action of the petitioner. Accordingly, the HC directed

the Revenue to release the conveyance and goods.

### Our comments

On a similar issue, earlier, the Division Bench of the Punjab and Haryana HC<sup>9</sup> had held that for the exercise of power at the check-post to be valid, there should be a reasonable nexus with an attempt for evasion.

The present ruling should set precedence in similar cases and act as a barrier for revenue authorities from initiating detention and seizure proceedings in absence of contravention of any provisions by the assessee.

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<sup>9</sup> Xcell Automation

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