

DETENTION OF GOODS UNDER SEC. 129 ON THE ALLEGATION OF UNDERVALUATION

To,
The Office of the Assistant Commissioner (Mobile Squad)
Ward No. ...,State GST
Room No., ... Floor
...City
State, Pincode.....

SUBJECT: - Reply to Notice issued dated for <Trade Name>; <GSTIN> for detention of goods.

REFERENCE:

Respected Sir/Madam,
Greetings!!

1. With reference to the above-captioned subject, we, M/s _____ (hereinafter referred as 'the company') located at _____ hereby brings to your kind attention that notice was issued on _____ .

2. FACTS OF THE CASE:

- 2.1. This is in reference to your Notice Ref No. __ Dated: _____ issued for detention of goods.
- 2.2. We have submitted that our goods detained by department due to sold goods below the market price.

3. PROVISION RELATED TO THIS CASE

3.1. 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 penalty equal to two 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 penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, 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 penalty;]

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

*2[****]*

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).]

(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

3.2. RULE 138A. DOCUMENTS AND DEVICES TO BE CARRIED BY A PERSON-IN-CHARGE OF A CONVEYANCE.

(1) The person in charge of a conveyance shall carry-

- (a) the invoice or bill of supply or delivery challan, as the case may be; and*
- (b) a copy of the e-waybill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be Notified by the Commissioner:*

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel:

Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.]

(2) In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.]

(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1

(4) The Commissioner may, by Notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by Notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply.

3.3. RULE 138B. VERIFICATION OF DOCUMENTS AND CONVEYANCES.

(1) The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

(3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

4. OUR SUBMISSION AND CASE LAWS

4.1. We hereby acknowledge the receipt of a Detention Notice under MOV-06 and a Show Cause Notice under MOV-07 from the concerned department, citing the sale of goods at a price below the prevailing market rate. However, we would like to bring to your attention that there is no explicit clause or provision within the Goods and Services Tax (GST) Act of India that prohibits the sale of goods at a price lower than the market rate.

4.2. We would like to make reference to the decision of **Hon'ble Chhattisgarh High Court** in the case of **K.P. Sugandh Ltd. vs State of Chhattisgarh [W.P.T. Nos. 36 and 49 of 2020, decided on 16-Mar-2020]**, where Hon'ble High Court held that undervaluation cannot be ground for seizure of goods in Transit by inspecting authorities.

In this case, the Chhattisgarh High Court ruled on the detention of a vehicle and seizure of goods in transit under the GST law. The petitioner was transporting tax-paid Pan Masala and Tobacco products from his factory to the dealer's premises. The driver was carrying the required documents, including the invoice and E-way Bill, which matched the quantity and description of the goods.

The only ground for the seizure and subsequent demand and penalty order was the allegation of selling goods below the Maximum Retail Price (MRP). The court held that undervaluation is not a valid reason for the seizure of goods in transit by inspecting authorities. Instead, they should have informed the concerned assessing authority to initiate appropriate proceedings.

Therefore, the court found the seizure of goods and vehicle unsustainable and set aside the consequent demand and penalty order. However, the Department is free

to initiate separate proceedings regarding the alleged undervaluation. This case was decided under Sections 129 and 130 of the Central Goods and Services Tax Act, 2017.

4.3. We would like to place our reliance on the judgment of the Hon'ble Kerala High Court in the case of **Alfa Group vs Assistant State Tax Officer, Allappuzha [Writ Petition (C) No. 30798 of 2019; dated 18-Nov-2019]**, where Hon'ble High Court has held that there is no mandate in GST Laws that goods shall not be sold at prices below the MRP declared thereon.

In this case the petitioner's goods were detained in a parcel godown due to the invoice value being lower than the Maximum Retail Price (MRP) and an alleged incorrect entry of the HSN code. The petitioner challenged this detention, arguing that it was not justified under Section 129 or Section 130 of the GST Act.

Upon hearing the arguments, the court found that none of the reasons stated in the detention order justified the detention of the goods. The court noted that the GST Act does not prohibit goods from being sold at prices below the MRP. Additionally, there was no evidence that the alleged wrong classification of the goods resulted in any difference in the adopted tax rate.

The court emphasized that the GST Act facilitates free movement of goods after self-assessment by the assessee. Therefore, arbitrary and unwarranted detention of goods during transportation is not permissible. Such actions could erode public confidence in the tax administration system and potentially impact the country's economy.

As a result, the court quashed the detention order and directed the respondents to immediately release the petitioner's goods. The court also instructed the Commissioner of the Kerala State Taxes Department to issue guidelines to prevent such unwarranted detentions in the future. The judgment was to be communicated to the Commissioner for necessary action. The petition was allowed.

4.4. We would like to place our reliance on the judgment of the Hon'ble Allahabad High Court in the case of **Shamhu Saran Agarwal & Co. vs Additional Commissioner Grade-2 [Writ Petition Tax No. 33 of 2022; dated 31-Jan-2024]**, where Hon'ble

High Court has held that penalty under section 129 cannot be levied merely on the basis of speculation that goods are undervalued.

In this case the petitioner filed a writ petition under Article 226 of the Constitution of India, challenging the penalty order dated December 20, 2020, passed by the Commercial Tax Officer, Mobile Squad-6, Agra, and the order dated September 17, 2021, passed in appeal by the Additional Commissioner Grade-II (Appeal)-II, State Tax, Agra.

The goods were initially detained on the grounds of under-valuation, and this was upheld by the appellate authority. However, a circular issued by the Commissioner, Commercial Tax, Uttar Pradesh, dated May 9, 2018, stated that goods should not be detained on the grounds of under-valuation.

The petitioner's counsel cited a judgment from the Kerala High Court in the case of Hindustan Coca Cola (P.) Ltd. v. Asstt. STO, which concluded that in case of a bonafide dispute regarding the classification of goods, the squad officer may intercept and detain the goods for the purpose of preparing the relevant papers for transmission to the judicial assessing officers, but nothing beyond.

In this case, all relevant documents were accompanied with the goods, and there was no mismatch in the description of the goods with the documents. The only ground for detention was that the valuation of the goods as per the invoice was not correct. The court held that this was not a valid ground for detaining the goods.

The court further stated that in the event of under-valuation, an appropriate notice under Sections 73 or 74 of the Uttar Pradesh Goods and Service Tax Act, 2017, is required to be issued as per the procedure provided therein. The court held that the detention of goods on the speculation of under-valuation is not allowed, and the impugned orders were quashed and set aside. Any deposit made by the petitioner to the authorities was ordered to be returned within four weeks. The writ petition was allowed.

5. ACCEPTANCE AND WORKING

5.1. In conclusion, based on the aforementioned cases, it is evident that the sale of goods below the market rate or Maximum Retail Price (MRP) does not constitute a valid ground for the detention or seizure of goods under the Goods and Services Tax (GST) Act of India. The Chhattisgarh High Court in K.P. Sugandh Ltd. vs State of Chhattisgarh, the Kerala High Court in Alfa Group vs Assistant State Tax Officer, and the Allahabad High Court in Shamhu Saran Agarwal & Co. vs Additional Commissioner Grade-2 have all ruled that undervaluation alone is not sufficient to justify such actions by the inspecting authorities. Instead, proper procedures under the relevant sections of the GST Act should be followed. These judgments collectively underscore the importance of adhering to legal provisions and prevent arbitrary detentions that could undermine public confidence in the tax administration system and negatively impact the economy. Thus, the detention notices under MOV-06 and show cause notices under MOV-07 in this context are unsustainable, and the goods should be released forthwith.

5.2. Prayer

We humbly pray before the Assistant Commissioner to consider the following submissions and the legal precedents supporting our claim. We request the office to:

Acknowledge and recognize that the sale of goods below the market rate or Maximum Retail Price (MRP) does not constitute a valid ground for the detention or seizure of goods under the Goods and Services Tax (GST) Act of India, as affirmed by various high court rulings.

Release the detained goods forthwith, as the detention notices under MOV-06 and show cause notices under MOV-07 are unsustainable in light of the legal precedents and the absence of any explicit clause in the GST Act prohibiting such sales.

Adhere to the legal procedures under the relevant sections of the GST Act, ensuring that any future actions are based on concrete evidence and not mere speculation of undervaluation.

Provide an opportunity for a hearing as mandated by Section 129(4) of the GST Act, allowing us to present our case comprehensively before any penalty is determined.

Give effect to the case laws mentioned, particularly the judgments from the Chhattisgarh High Court, Kerala High Court, and Allahabad High Court, which have consistently ruled that undervaluation alone is not a sufficient ground for detention or seizure of goods.

Uphold the right to trade freely as enshrined under Article 19(1)(g) of the Constitution of India, which guarantees the freedom to practice any profession, or to carry on any occupation, trade, or business, thereby ensuring that arbitrary and unwarranted detentions do not hinder lawful business activities.

We hope for a positive resolution that upholds the principles of fairness and the rule of law, ensuring the rightful and just treatment of our case.

Thank you for considering our request. We are hopeful for a positive resolution that supports the principles of fairness and the rule of law.

Thanks & Regards

For

Director/Authorized Signatory

Date: 15-May-2024

Place: New Delhi