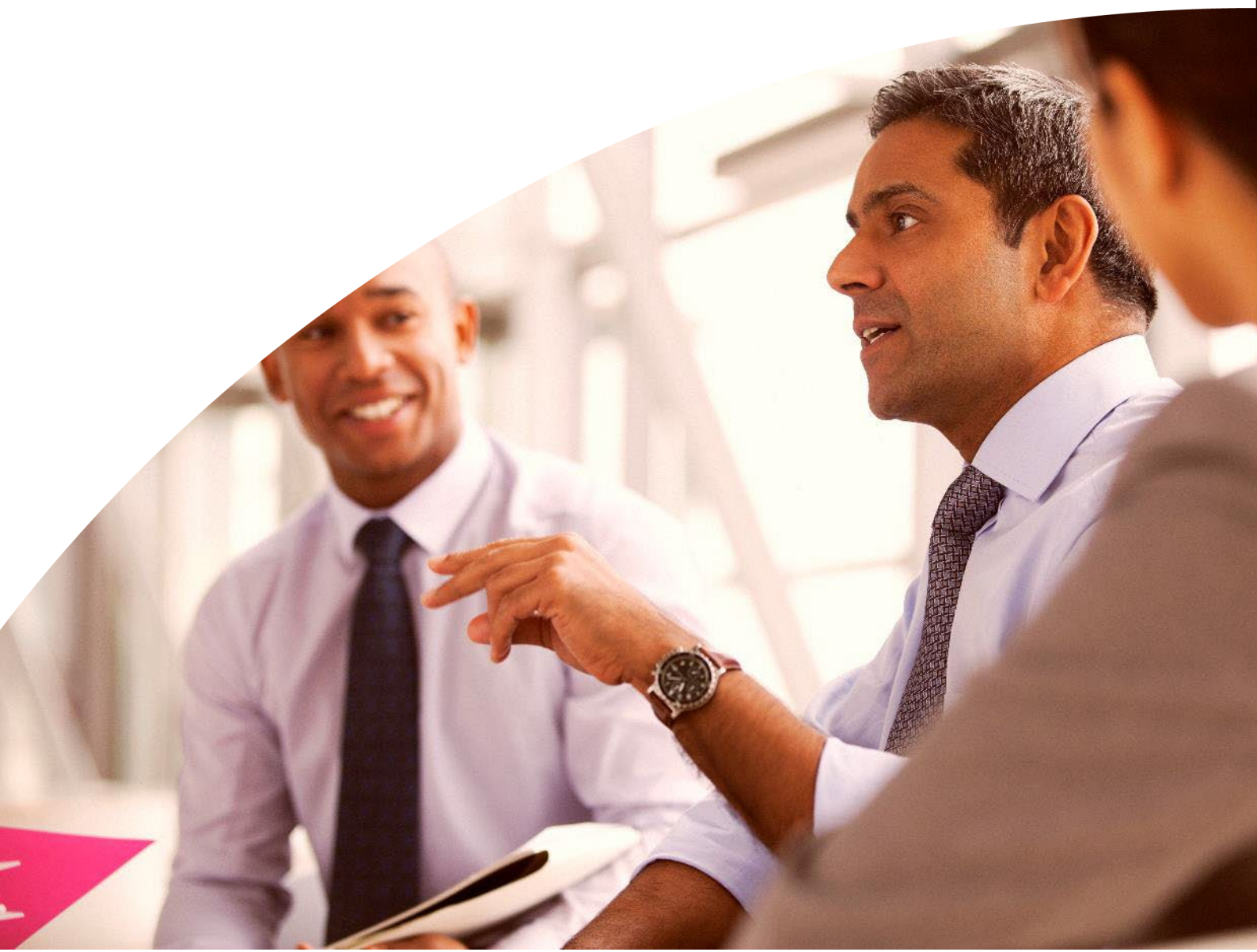


Apex court imposed personal cost on errant officials for unnecessary litigation and harassment of assessee

28 January 2022



Summary

The Supreme Court (SC) has affirmed the decision of the Telangana High Court (HC), which had held that the tax evasion cannot be presumed on delay due to traffic blockage and agitation, which led to expiry of the e-way bill. The SC affirmed the views of HC, that the State alone remains responsible for not providing smooth passage of traffic and penalising assessee for that was arbitrary and illegal. The SC not only upheld the personal cost imposed by the HC on the errant Goods and Services Tax (GST) officials but significantly increased the same.

Facts of the case

- The petitioner¹ is a trader of all kinds of paper and a sole distributor of paper². It also affects inter-state purchases of papers from Orissa.
- The petitioner had made an intra-state supply of paper through tax invoice and generated an e-way bill for making delivery to consignee. The trolley was detained by the Deputy Officer, alleging that the validity of the e-way bill had expired and proposed to impose tax and penalty.
- The petitioner alleged that the officer had unloaded the goods at a private premise without tendering any acknowledgment of receipt of detention of the goods and released the auto trolley by unloading the goods. The petitioner contended that such action was arbitrary and illegal and the officer could not have taken physical possession of the goods in such a manner.
- The petitioner also submitted a letter explaining the reasons leading to the expiry of the e-way bill, but the officer did not acknowledge it. Since it did not seem likely that the officer would release the goods, the petitioner made payment of tax and penalty after which the goods were released.

Telangana HC observations and ruling³:

- **Duty of Revenue to consider petitioner's representation:** The petitioner gave a letter explaining about obstruction to the movement of the auto trolley on account of a rally conducted in the city preventing the vehicle from reaching its destination on that day. It was the duty of the Proper Officer to consider the explanation offered by the petitioner and not harp on the fact that the e-way bill was not extended even after the expiry. Such behaviour of the Proper Officer was untenable.
- **Proper Officer's conclusion was plainly arbitrary and illegal:** The Proper Officer stated in the counter affidavit that the petitioner is evading tax. As per HC, there was no material before the officer to come to such a conclusion and there wasn't any evidence of an attempt to sell the goods to somebody else. This was arbitrary and illegal and violates Article 14⁴, because there is no denial by the Proper Officer of the traffic blockage preventing the movement of auto trolleys. Because of the non-extension of the validity of the e-way bill by the petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax.
- **Blatant use of power by the Proper Officer:** There has been a blatant use of power in collecting the tax and penalty both from the petitioner under GST law. The HC deprecated the conduct of the

¹ Satyam Shivam Papers Pvt. Ltd.

² M/s. International Papers Limited

³ Writ Petition No.9688 of 2020

⁴ Article 14 of the Constitution of India

Proper Officer in not even adverting to the response⁵ given by the petitioner to the detention notice⁶, and his deliberate intention to treat the validity of the expiry on the e-way bill as amounting to evasion of tax without any evidence of such evasion.

- **Revenue to pay cost to petitioner:** The HC directed to refund the amount collected from petitioner within four weeks with interest @6%p.a. Further, the HC directed that the Proper Officer shall also pay costs of INR 10,000 to the petitioner.

SC observations and ruling⁷:

- **Meticulous examination by the High Court:** Upon analysis of the observation and reasoning provided by the Telangana HC, the SC noticed that the HC has correctly found that there was no intent to evade tax. The goods could not reach the destination within the time for reasons beyond the control of the petitioner. The State alone remains responsible for not providing smooth passage of traffic.

- **Enhancement of personal penalty imposed on revenue:** Due to corresponding harassment faced by the writ petitioner, there was a need to enhance the amount of costs imposed. Accordingly, a sum of INR 59000/- has been imposed on the Revenue to be paid to the petitioner over and above costs already awarded by the HC.

Our comments

The present ruling by the Apex Court is a landmark judgment and shall act as a deterrent against officials from causing undue hardship to taxpayers.

The judgment should also provide relief in cases where the expiry of the validity of the e-way bill has been treated as an intent to evade tax without there being any evidence of such evasion on the part of the assessee and will also help curb unnecessary litigation.

⁵ in Form GST MOV – 09

⁶ Form GST MOV-07

⁷ Petition(s) for Special Leave to Appeal (C) No(s). 21132/2021

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