

Malicious exercise of power resulting in harassment of assessee is illegal and abusive - Allahabad HC

12 April 2022



Summary

The Allahabad High Court (HC) has held that once the confiscation order and order passed by first appellate authority has been quashed, the confiscation order stands eclipsed from its date of issuance itself. Hence, the detention of truck despite quashing of the orders is arbitrary and illegal. The HC noted that if the public authorities act oppressively, resulting in harassment of the assessee then it would not be an exercise of power but its abuse. The HC observed that the illegal detention of truck after quashing of orders resulted in financial loss to the petitioner. Therefore, the HC directed the authorities to release the truck and compensate him for the financial loss occurred. The HC ruled that award of compensation would help in improving work culture and public confidence in rule of law.

Facts of the case

- The petitioner¹ has given a truck on hire for transportation of goods. During the journey from Delhi to Andhra Pradesh, the truck was intercepted while passing through Uttar Pradesh. The authorities found that the truck was loaded with goods over and above what was mentioned in the invoice. Thus, the officer issued a detention order².
- The petitioner and the hirer did not come forward for the payment of tax and penalty. Subsequently, the authorities initiated confiscation proceedings and issued a notice. The petitioner submitted the application having the facts and submissions for the release of the truck before the authorities. However, meanwhile, the authorities passed a confiscation order³ without giving an opportunity of being heard.
- The petitioner filed an appeal against the order which was dismissed by the appellate authority. Hence, the petitioner filed writ before this court wherein it was held that the Show Cause Notice (SCN) was defective

as no opportunity of personal hearing was granted to the petitioner. Thus, the confiscation order and the order passed by the first appellate authority was quashed.

- However, despite the court order, the authorities have neither issued fresh notice nor released the truck.

Allahabad HC observations and ruling⁴:

- **Detention is arbitrary, illegal and unauthorised:** Once the confiscation order and the order passed by first appellate authority has been quashed, the confiscation order stands eclipsed from its date of issuance itself. In the present case, without any order or proceeding for confiscation in existence, truck is being unauthorisedly and illegally detained since the last 18 months. Such detention is arbitrary, illegal and unauthorised, resulting in the harassment of the petitioner.
- **No authority can arrogate arbitrary power:** If the public authorities act maliciously and exercise of power results in harassment of petitioner, then it is an abuse of power. No

¹ Calcutta South Transport Co.

² In MOV-06

³ In GST MOV-11

⁴ Writ Tax No. - 406 of 2022; Dated 28.03.2022

authority can arrogate arbitrary power to itself. Thus, the authorities shall compensate the loss suffered by the petitioner for the illegal detention of the truck. It would also help in improving work culture and public confidence in rule of law.

Our comments

The judicial authorities, in many rulings, had imposed exemplary cost on erring officials and directed the department to take actions against the erring officials whose actions resulted in the harassment of taxpayers.

Similarly, the Allahabad HC, in the present ruling, emphasises that the authorities cannot arrogate arbitrary power and directed the authorities to compensate the petitioner so that public can have faith in the rule of law. The ruling shall be relied upon by the taxpayers and shall act as a deterrent against officials from causing undue hardship to taxpayers.

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