

THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE
W. P. No.16266 of 2018

(Advantage India Logistics Pvt. Ltd. vs. Union of India & others)

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

D.B.: Hon'ble Shri Pankaj Kumar Jaiswal

Hon'ble Shri Sunil Kumar Awasthi, JJ.

Writ Petition No.16266 of 2018

Advantage India Logistics Private Limited.

Versus

The Union of India and others

Shri Vivek Dalal, learned counsel for the petitioner.

Shri Romesh Dave, learned Government Advocate for the
 respondent Nos.2 to 3 – State.

* * * * *

ORDER

(Passed on this **23/08/2018**)

Per P.K. Jaiswal, J.

In the present writ petition, the petitioner – Advantage India Logistics Private Limited is praying for quashment of seizure memo dated 15.07.2018 (Annexure-P/1) issued under Section 129(1) of Madhya Pradesh Goods & Services Tax Act, 2017 (in short “the MPGST Act, 2017”).

2. According to the petitioner, M. P. State Government or officials authorized under the MPGST Act, 2017 have no jurisdiction to exercise the powers under the Integrated Goods and Services Act, 2017 (in short “the IGST Act, 2017”), particularly under Section 4 of the IGST Act, 2017.

3. It is also averred that there is no separate notification authorizing officials of the State Government under the IGST Act to exercise powers under the IGST Act, 2017, therefore, the respondent Nos.3 and 4 have no

THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE
W. P. No.16266 of 2018

(Advantage India Logistics Pvt. Ltd. vs. Union of India & others)

power to inspect, search and seize goods under the IGST Act, 2017 and prayed for its quashment.

4. The sole contention of the learned counsel for the petitioner is that in absence of any notification under Section 4 of IGST Act, 2017, the respondent No.4 is not competent to issue show cause notice and the impugned seizure memo dated 15.07.2018 is wholly without jurisdiction.

5. The IGST Act, 2017 deals with taxability of inter-state supply of goods and services. Section 4 of the IGST Act reads as under :-

4. Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

6. From perusal of the aforesaid, it is clear that the officers appointed under the MPGST Act, 2017 was authorized to be proper officers for the purposes of the IGST Act.

7. At present, no notification was issued by the Central Government under Section 4 of the IGST Act. By order dated 12.10.2017, the respondent No.4 was authorized as proper officer and was bestowed with powers such as inspection, search and seizure under Section 68 of the MPGST Act. Serial Nos.31 and 57 of the order dated 12.10.2017 (Annexure-R/1) reads as under :-

<i>S. No.</i>	<i>Section</i>	<i>Functions Assigned</i>	<i>Designation of Proper Officer</i>
<i>31</i>	<i>68(3)</i>	<i>To intercept any conveyance to inspect documents, devices and</i>	<i>Deputy Commissioner of State Tax Assistant Commissioner of State Tax State Tax Officer Inspector of State Tax Taxation Assistant</i>

THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W. P. No.16266 of 2018

(Advantage India Logistics Pvt. Ltd. vs. Union of India & others)

		<i>goods</i>	
57	129(3)	<i>To issue notice and pass an order in tax and penalty of relation to seized goods</i>	<i>Deputy Commissioner of State Tax Assistant Commissioner of State Tax State Tax Officer</i>

8. Section 20 of the IGST Act provides for the provisions of Central Goods & Services Tax Act (in short “the CGST”) relating to inspection, search, seizure etc. Section 68 of the MPGST Act provides the powers of inspection, search and seizure of goods in movement. Section 129 of the MPGST Act provides the power in respect of detention, seizure and release of goods and conveyance in transaction.

9. In the present case, it is an admitted position that the subject vehicle was transporting goods for inter-state supply of goods from Gurgaon, Haryana to Pune, Maharashtra. As per E-Way Bill System (Annexure-P/4), the number of vehicle was mentioned as HR-38-0823 whereas, the correct vehicle number is HR-38-X-0823. It was found by the respondent No.4 that the E-Way Bill was defective and not updated, therefore, show cause notice was issued on 13.07.2018 to inspect the subject vehicle on 15.07.2018. On inspection, the respondent No.4 in exercise of powers under Section 129(1) of the MPGST Act passed the seizure order (Annexure-P/1) on 15.07.2018.

10. The respondent No.4 in compliance of the statutory mandate under Section 129(6) has passed a final order dated 23.07.2018 directing the petitioner to pay an amount of Rs.4,20,266/- (minimum) as tax and penalty in terms of Section 129(3) of the MPGST Act.

11. Against the aforesaid final order dated 23.07.2018, statutory appeal under Section 109 of the Act has been provided.

THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE**W. P. No.16266 of 2018*****(Advantage India Logistics Pvt. Ltd. vs. Union of India & others)***

12. Learned counsel for the petitioner has drawn our attention to Article 246-A and 269-A of the Constitution which was brought by one hundred and first (101) amendment on 08.09.2016 and submitted that Parliament has exclusive power to make laws with respect to goods and service tax where the supply of goods, or of services, or both takes place in the course of inter-state trade or commerce. As no notification has been issued under Section 4 of the IGST Act and, therefore, the respondent No.4 was not competent to pass any order and, therefore, the petitioner without availing the statutory remedy has filed this writ petition. He has also drawn our attention to the notification dated 13.10.2017 issued by the Government of India, Ministry of Finance in respect of refund under Section 20 of the IGST Act and submitted that similar type of notification is required and prayed for its quashment.

13. On due consideration of the arguments of the learned counsel for the parties so also the provisions of Section 4 of the IGST Act, we are of the view that officers appointed under the MPGST Act are authorized to be proper officers for the purpose of IGST and, therefore, the contention of the petitioner that no notification was issued and in absence of any notification under Section 4 of the IGST Act has no force, we cannot accept the contention of the petitioner that the action of the respondent No.4 is wholly without jurisdiction.

14. In view of the statutory appeal provided under the statute, we are not inclined to entertain this writ petition and dismiss the writ petition with liberty to avail the remedy of appeal provided under the statute. No costs.

(P. K. Jaiswal)
Judge

(S. K. Awasthi)
Judge