

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE GOPINATH P.  
FRIDAY, THE 15<sup>TH</sup> DAY OF JULY 2022 / 24TH ASHADHA, 1944  
WP(C) NO. 22158 OF 2022

**PETITIONER:**

GOLDEN TRADERS  
17/961 A, CHANGARAMKULAM, ALAMKODE,  
MALAPPURAM DISTRICT, PIN-6795 85  
REPRESENTED BY ITS MANAGING PARTNER BIJEESH P.V.

BY ADVS.

RAJATH R NATH  
G.REMADEVI  
HARIMA HARIHARAN  
K.S.HARIHARAN NAIR

**RESPONDENT:**

ASSISTANT STATE TAX OFFICER (PROPER OFFICER)  
SQUAD NO.II, OFFICE OF THE DEPUTY COMMISSIONER  
OF STATE TAX (INTELLIGENCE), STATE GST DEPARTMENT,  
PALAKKAD, PIN - 678 001.

BY ADV ADVOCATE GENERAL OFFICE KERALA

**OTHER PRESENT:**

SRI. MOHAMMED RAFIQ (SPL GP - TAX)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
15.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **J U D G M E N T**

Petitioner is a registered dealer under the provisions of the Goods & Services Tax enactments. While the petitioner was transporting areca nuts in a goods carriage vehicle, the vehicle was intercepted by the respondent on the allegation that the goods were transported without valid documents. Initially, 03.07.2022, proceedings were issued in form GST-MOV-01 and form GST-MOV-02 for enabling the physical verification of the goods. Thereafter Ext.P9 notice in form GST-MOV-10 has been issued by the proper officer under the provisions of Section 130 of the Central Goods and Service Tax Act (CGST Act) r/w relevant provisions of the Integrated Goods and Services Tax Act (IGST Act) calling upon the petitioner to show cause as to why the goods in question and the conveyance used to transport the goods shall not be confiscated under the provisions of Section 130 of the CGST Act r/w the provisions of the IGST Act and the amounts demanded should not be levied on the petitioner.

2. The learned counsel appearing for the petitioner contents that the action of the proper officer is completely illegal and unwarranted in the facts and circumstances of the case. It is submitted that the petitioner has a valid answer to all the allegations and the action

of the officials is highhanded and arbitrary.

3. The learned Special Government Pleader appearing for the respondent would submit that Ext.P.9 is only a show cause notice and the same is not liable to be interfered with in the exercise of jurisdiction under Article 226 of the constitution of India. It is submitted that while the petitioner may claim that Ext.P9 is to be adjudicated without undue delay, he has no right to claim that pending such adjudication, the goods and the conveyance must be released to him. It is submitted that the provisions of Section 130 of the Act do not provide for any such contingency and it is only after the proceedings are completed can the question of redeeming the goods on payment of the fine in lieu of confiscation be considered. Reference in this regard is made to the provisions of Section 130 of the CGST Act and to the judgment of the Supreme Court in ***Union of India Vs. Lexus Exports (P) Ltd. & Another; 1997 (10) SCC 232***. It is submitted that proceedings for confiscation under Section 130 of the CGST Act are proceedings in rem and the petitioner has no title to the goods and the conveyance against which such proceedings have been initiated. It is submitted that on completion of the proceedings, the officer may decide to allow redemption of the goods on payment of fine in lieu of confiscation and merely because there is a provision for imposition of such fine, it cannot

be said that the petitioner has any title to the goods, pending such adjudication. Specific reference is made in this regard to the findings of the Supreme Court in paragraph 3 of the judgment in ***Lexus Exports (P) Ltd.*** (Supra).

4. It is then pointed out that the Supreme Court in ***Commissioner of Customs (Import) Mumbai Vs. Jagdish Cancer & Research Centre; 2001 (6) SCC 483*** has taken the view that the option to pay the fine in lieu of confiscation of the goods is a liability in addition to the duties and penalties that may be payable and that such an option can be exercised only after the proceedings have been completed. The judgment of the Supreme Court in ***Assistant Commissioner of State Tax and Others Vs. Commercial Steel Limited; 2021 SCC OnLine SC 884*** is relied on to point out that when the statutory remedies are open to be availed, the petitioner cannot avail the remedy under Article 226 of the Constitution of India. It is submitted that the Supreme Court in ***Commercial Steel*** (supra) has reiterated the well-recognized exceptions where a writ petition would be maintained notwithstanding the availability of an alternative remedy. The learned Special Government Pleader has also referred to the counter affidavit filed in the writ petition. The reference is made to the judgment of the Supreme Court in ***State of Kerala Vs. A.Lakshmikutty;***

**1986 (4) SCC 632** to contend that when there is no legal right, there is no corresponding duty and therefore a *mandamus* cannot be sought for enforcing the claim that the petitioner is entitled, in the least, to an interim release of the goods pending adjudication.

5. I have considered the contentions raised. Ext.P9 is a show cause notice issued under the provisions of Section 130 of the CGST Act. The learned Special Government Pleader is right in contending that the validity or legality of Ext.P9, which is only a show cause notice need not be considered by this Court in proceedings under Article 226 of the Constitution of India, at this stage. While holding so I am aware that some High Courts have taken the view that in the initial stage, proceedings of this nature can be levied only under Section 129 and not under Section 130 of the CGST Act. However, that question need not be gone into in this Writ Petition, as in the facts of the present case, the notice under Section 130 was issued only after physical verification. I am therefore of the view that the prayer to quash Ext.P9 is only to be rejected and I do so. In that view of the matter, the decisions cited at the bar by the Learned Special Government pleader regarding the existence of statutory remedies etc. do not require consideration.

6. However, the question remains as to whether the petitioner is entitled to the interim release of the goods pending adjudication of the

notice under section 130 of the CGST Act. Though the learned special Government Pleader has referred to the judgment of the Supreme Court in ***Lexus Export (P) Ltd.***(Supra), I am of the view that the said precedent has no application in deciding a matter arising under section 130 of the CGST Act. That case dealt with the provisions of the Customs Act, 1962. Under the provisions of the Customs Act, 1962, confiscation may be absolute if the goods in question are prohibited goods within the meaning of Customs Law. In the case of a domestic transaction like that in the present case, the question of ordering an absolute confiscation does not arise as even the provisions do not contemplate such course. The objection raised by the department is that there is an attempt to evade the payment of tax. There is no provision in Section 130 which prohibits the interim release of goods which are detained pending finalization of proceedings under Section 130. The State can insist on conditions being imposed to ensure that its revenue is protected. I am fortified in taking this view in the light of the detailed order of a Learned Judge of this Court in R.P No. 630 of 2021 and connected case (reported as ***State Tax Officer v. Balakrishnan; 2022 (1) KLT 83***) where this Court after considering various precedents including that of the Supreme Court in ***Lexus Exports (supra)*** held as under:-

*“26. Absence of the use of the words ‘provisional release’ or non-reference to section 67(6) of the Act is not determinative of the intent of the section. Since section 130 of the Act is a code by itself, the provisions of section 130 must be viewed independently to understand its scope. None can find fault if the legislature in its wisdom thought it fit to incorporate a provision into section 130 itself for release of the goods in lieu of confiscation at two stages - during adjudication and after adjudication. When the intention of a section is manifest from the words employed, it would be insidious to interpret the section differently, by referring to other sections of the same enactment. Absence of the words provisional release or absence of reference to section 67(6) of the Act is not determinative when section 130(2) of the Act itself is manifest of such a release.*

*27. The two different stages in which the goods can be released - during adjudication and post-adjudication are obviously created with a purpose. The purpose of the two-stage release is that, if the owner of the goods, even before being deprived of his title to the goods or conveyance, is ready to pay the fine stipulated by the officer, then without further wrangles, if the goods and or conveyance can be released to the said owner, the same avoids unnecessary procedural formalities. If the fine in lieu of confiscation is paid at the initial stage, no prejudice would be caused to the revenue also, since by virtue of section 130(7) even after adjudication, an option to pay fine in lieu of confiscation is to be offered peremptorily. Thus, in view of the above deliberations, I am of the firm view that section 130(2) of the Act applies before the order of confiscation is issued. 28. The decision relied upon by the learned Senior Government Pleader rendered by the Karnataka High Court in M/s.Meghdoot Logistics case, according to me, can be distinguished. Though the said decision observes in paragraph 21 that there is no provision for a provisional release of the seized goods under section 130 of the Act, this Court is of the considered view that the question of release under section 130(2) of the Act never arose for consideration in that case and the observations were only obiter dicta of the Court. The aforesaid decision arose on an issue under section 129 of the Act and in the process of distinction, a passing reference alone was made to section 130. In such a view of the matter, I am not persuaded to follow the said judgment.*

*29. In the decision in Special Civil Application No.4043 of 2020 by the High Court of Gujarat in Kannan v. State of Gujarat, though it was observed that the competent authority has the power to pass an order of provisional release of goods, subject to certain terms and conditions, this Court is of the*

*view that section 130(2) contemplates a release not provisional or absolute but a release peculiar to the Act during the course of adjudication. Further, the provisions of section 125 of the Customs Act though contains similar wordings as in section 130(2) of the Act, the interpretations adopted therein cannot be adopted in their entirety since specific distinctions are available in the various clauses of section 130 of the Act.*

*30. Thus, I answer the first question that though section 130(2) is not a case of provisional release, the sub-clause confers power upon the competent officer to release the goods on payment of fine in lieu of confiscation, while the proceedings for confiscation are continuing and before orders of adjudication are passed. "*

Of course, ***Balakrishnan (supra)*** is an order in a review petition seeking review of an interim order and the main writ petition is yet to be decided. However, that by itself is no reason to hold otherwise as I am in complete agreement with the views expressed by the learned judge in ***Balakrishnan (supra)***. I must also note that though the order in ***Balakrishnan (supra)*** was the subject matter of an appeal, the Division Bench through order in W.A No. 1728 of 2021 did not stay the operation of the order and instead directed its compliance. It was observed:-

*".....Prima facie, we are of the view that the provisions of the GST Act, as also the provisions of the Customs Act that was referred to by Sri.Mohammed Rafiq, the learned Special Government Pleader for the State, suggest that the ultimate object of the statutory provisions dealing with confiscation of goods is only to secure the value of the goods that are liable for confiscation, and not to absolutely seize/confiscate goods that are admittedly not in the nature of prohibited goods. We, therefore, feel that no prejudice would be caused to the revenue at this stage if the goods are released to the dealer against the amounts directed to be collected in the order dated 7.9.2021. The legal issue regarding the legality of an order, permitting a provisional release of goods liable for confiscation, can be decided at the time of final disposal of the writ petition.*



I am, therefore, of the view that the petitioner is entitled to an order directing the release of goods pending adjudication of Ext.P9 notice. As a result, it is directed that pending adjudication of Ext.P9 notice, the goods and conveyance detained in terms of Expt.P9 order shall be released to the petitioner on the petitioner depositing a sum of Rs.1,00,000/- (Rupees One Lakh Only) and furnishing a simple bond for the balance amount.

The writ petition is disposed of as above.

**Sd/-  
GOPINATH P.  
JUDGE**

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**APPENDIX OF WP(C) 22158/2022**

## PETITIONER EXHIBITS

- Exhibit P1 COPY OF THE INVOICE NO.98 DATED 02-07-2022  
ISSUED BY HE PETITIONER TO M/S. GOLDEN  
TRADERS, INDORE
- Exhibit P1(a) COPY OF THE INVOICE NO.100 DATED 02-07-  
2022 ISSUED BY HE PETITIONER TO M/S.  
GOLDEN TRADERS, INDORE
- Exhibit P1(b) COPY OF THE INVOICE NO.101 DATED 02-07-  
2022 ISSUED BY THE PETITIONER TO M/S.  
GOLDEN TRADERS, INDORE
- Exhibit P2 COPY OF THE INVOICE NO. MP/013 DATED 02-  
07-2022 ISSUED BY M/S. M P A COMPANY TO  
M/S. NARIYALWALA SUPER MARKET
- Exhibit P3 COPY OF THE E-WAY BILL NO. 5813 8572  
9893DATED 02-07-2022 GENERATED AGAINST  
EXT.P1 INVOICE
- Exhibit P3(a) COPY OF THE E-WAY BILL NO. 5213 8581 2629  
DATED 02-07-2022 GENERATED AGAINST  
EXT.P1(A) INVOICE
- Exhibit P3(b) COPY OF THE E-WAY BILL NO. 5313 8581 4785  
DATED 02-07-2022 GENERATED AGAINST  
EXT.P1(B) INVOICE
- Exhibit P4 COPY OF THE E-WAY BILL NO. 5613 8573 4763  
DATED 02-07-2022 GENERATED AGAINST EXT.P2  
INVOICE
- Exhibit P5 COPY OF FORM GST MOV-01 DATED 03-07-2022  
ISSUED BY THE RESPONDENT
- Exhibit P6 COPY OF FORM GST MOV-02 DATED 03-07-2022  
ISSUED BY THE RESPONDENT
- Exhibit P7 COPY OF THE DEBIT NOTE NO. 1 DATED 04-07-  
2022 ISSUED TO M/S. GOLDEN TRADERS, INDORE
- Exhibit P7(a) COPY OF THE CREDIT NOTE (SALES RETURN) NO.  
0001 DATED 04-07-2022.

Exhibit P8	COPY OF THE DETAILED REPLY DATED 04-07-2022 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT IN RESPONSE TO EXT.P6
Exhibit P9	COPY OF THE NOTICE IN FORM GST MOV-10 DATED 03-07-2022 ISSUED BY THE RESPONDENT
Exhibit P10	COPY OF THE SCREENSHOT EVIDENCING THE DATE OF UPLOADING OF EXT. P9 NOTICE
Exhibit P11	COPY OF SCREENSHOT SHOWING GST MOV-04 PHYSICAL VERIFICATION REPORT AS " REQUESTED DOCUMENT NOT FOUND."IN THE GSTN PORTAL
Exhibit P12	COPY OF THE LATEST FORM GSTR 3B RETURN FOR THE MONTH MAY 2022 DATED 22-6-2022 FILED BY THE PETITIONER