
[2022] 145 taxmann.com 128 (Andhra Pradesh)/[2023] 95 GST 566 (Andhra Pradesh)[04-11-2022]

GST : Where order of confiscation was stayed, confiscated goods and conveyance were ordered to be released on payment of 25 per cent of demand amount and furnishing of bond

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[2022] 145 taxmann.com 128 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sun Traders

v.

Deputy Assistant Commissioner, Circle-I*

DR. KMR AND TRR, JJ.
W.P. NO. 15445 OF 2022
NOVEMBER 4, 2022

Confiscation of goods and vehicles - Release of - Order of confiscation was stayed by earlier order subject to payment of 50 per cent of redemption fine - Present application sought modification of stay order - It was contended that while filing an appeal against confiscation order, there shall be deemed stay subject to payment of 10 per cent of disputed amount - HELD: Following order passed by High Court in a similar case earlier, stay order was to be modified to extent that goods and conveyance would be released subject to payment of 1/4th of amount proposed by respondent authorities in impugned show cause notice and on execution of personal bond for rest of amount [Section [129](#), read with section [107](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 10] [Partly in favour of assessee]

CASES REFERRED TO

Synergy Fertichem (P.) Ltd. v. State of Gujarat [[2019](#)] [112 taxmann.com 370/2020 \(33\)](#) [GSTL 513 \(Guj.\)](#) (para 3), *Shanti Metal Industries v. State of Gujarat* [R/special Civil Application No. 5933 of 2022, dated 30-3-2022] (para 3) and *Matrix Traders v. Asstt. Commissioner* [W.P. No. 12843 of 2022, dated 4-5-2022] (para 8).

ORDER

I.A.No.3 of 2022

1. This application is filed to modify the order passed by this Court dated 26-5-2022 in W.P.No.15445 of 2022.
2. Learned counsel for the petitioner would contend that by invoking the provisions of section 130 of the Central Goods and Services Tax Act, 2017, (for short "the Act"), 1st respondent acted without jurisdiction. Further *vide* Finance Act, 2021, sections 129 and 130 were amended to the effect that "Non-Obstante" clause was removed from section 130, while retaining the Non-Obstante clause in section 129 of the Act and that the said amendment came into effect from 1-2-2022 and as such from the said date, section 129 of the Act shall have over riding effect on section 130 of the Act.
3. Further it is contended that section 129 of the Act clearly stated that the same is specific provision which deals with the goods in transit. In respect of cases pertaining to goods in transit, if at all any penalty is

leviable, the same shall be levied under section 129 of the Act. The Non-Obstente clause in section 129 of the Act is indicative of the legislative intent to prevent the application of any other provisions of the Act with respect to goods in transit. Further learned counsel for the petitioner draws the attention of this Court with regard to case law of the Gujarat High Court in the case of *Synergy Fertichem (P.) Ltd v. State of Gujarat* [2019] 112 taxmann.com 370/2020 (33) GSTL 513 (Guj.) and also placed on record the interim order passed by Gujarat High Court dated 30-3-2022 in "*Shanti Metal Industries v. State of Gujarat* [R/special Civil Application No. 5933 of 2022]".

4. Learned counsel for the petitioner would contend that this Court stayed all the proceedings and consequential actions pursuant to confiscation order dated 27-4-2022, subject to condition that the petitioner shall deposit 50% of the fine amount within a period of four weeks by its order, dated 26-5-2022. In view of the said order, the petitioner is suffering huge financial loss and also the goods along with vehicle, which are under the custody of the respondents.

5. Further contended that this Court stayed the operation of confiscation order in Form GST MOV-11 subject to deposit of 50% which is much higher than the statutory amount to obtain stay against the confiscation order. As per terms of section 107(11) of the CGST Act, 2017, while filing an appeal against the confiscation order, there shall be a deemed stay against the said order subject to payment of 10 percent disputed tax amount.

6. It is further contended that if this Court releases the goods and vehicle on payment of 25% of the value proposed in confiscation order and a personal bond for the remaining amount, there shall be no loss to the Government exchequer and requested to modify the earlier order of this Court.

7. Mr. Y.N.Vivekananda, learned Government Pleader for the respondents vehemently opposed to allow the application.

8. On hearing, this Court observed that both the counsels did not notice the earlier order passed by the Division Bench of this Court in *Matrix Traders v. Asstt. Commissioner* [W.P.No.12843 of 2022, dated 4-5-2022] though it was annexed in the application. The said order is squarely applicable to the issue involved in this writ petition and that learned counsel for the petitioner requested to modify the order of this Court dated 26-5-2022 in terms of order passed by the Division Bench in W.P.No.12843 of 2022, dated 4-5-2022.

9. However, taking into consideration of the facts and circumstances of this case and following the order passed by the Division Bench of this Court W.P.No.12843 of 2022, dated 4-5-2022 in similar set of facts, this court is inclined to modify the order passed by this Division Bench dated 26-5-2022 in the above Writ Petition as under:

10. There shall be stay of further proceedings pursuant to the impugned confiscation order dated 27-4-2022 and the subject goods and conveyance shall be released subject to condition that the petitioner shall pay 1/4th of the amount proposed by the respondent authorities in the impugned show cause notice and on execution of personal bond for rest of the amount.

Accordingly the application is allowed.

GK

*Partly in favour of assessee.