

[2021] 124 taxmann.com 102 (Andhra Pradesh)/[2021] 45 GSTL 231 (Andhra Pradesh)[22-10-2020]

GST : Where assessee was doing business in silver ornaments and it decided to shift its business premises and when it was proceeding in a vehicle with accounts and stock of silver ornaments to newly established business premises, on way GST Authorities detained silver ornaments on ground that there were no supporting documents and thereafter concerned Authority passed an order under section 130 confiscating of silver ornaments, said Authority was to be directed to conduct an enquiry afresh and pass an appropriate order by giving cogent reasons

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[2021] 124 taxmann.com 102 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sangeetha Jewellers

v.

Deputy Assistant Commissioner*

U. DURGA PRASAD RAO AND KONGARA VIJAYA LAKSHMI, JJ.

WRIT PETITION NO.7078 OF 2020

OCTOBER 22, 2020

Section [130](#) of the Central Goods and Services Tax Act, 2017/Section [130](#) of the Andhra Pradesh Goods and Services Tax Act, 2017 - Confiscation of goods or conveyances and levy of penalty - Assessee was doing business in silver ornaments at Madhugiri Town in Karnataka - As business was not in flourishing condition in Madhugiri Town, assessee decided to shift its business from Madhugiri Town to Pavagada Town in Karnataka - On 15-1-2020, when assessee was proceeding in a vehicle along with accounts and stock of 69 Kgs. of silver ornaments to newly established business premises at Pavagada, on way GST Authorities detained silver ornaments and vehicle on ground that there was no supporting documents - Thereafter, concerned Authority issued on assessee a show cause notice under section 130 for confiscation of silver ornaments - Assessee in reply to show cause notice stated that due to some unfavourable conditions business was shifted from Madhugiri to Pavagada by taking a shop on lease and on detained day it was taking left over stock of 69 Kgs. of silver ornaments to Pavagada which was totally accounted for - Concerned Authority rejected explanation of assessee on grounds that assessee had not produced records pertaining to silver ornaments at time of initial check, explanation of assessee was afterthought and had no relevance, and personal hearing was granted to assessee earlier and it had not availed same - He further passed an order dated 4-2-2020 under section 130 confiscating 69 Kgs. of silver ornaments - Whether reasons given for discarding explanation of assessee were logically or legally tenable - Held, no - Whether impugned order did not stand to legal scrutiny and liable to be set aside - Held, yes - Whether concerned Authority was to be directed to conduct an enquiry afresh and afford an opportunity of hearing to assessee and pass an appropriate order by giving cogent reasons - Held, yes [Paras 17, 19 and 20] [In favour of assessee]

(NR)

CASES REFERRED TO

Sneh Enterprises v. Commr. of Cus. [2006 taxmann.com 1512 \(SC\)](#) (para 6), *Synergy Fertichem (P.) Ltd. v. State of Gujarat* [\[2019\] 112 taxmann.com 370 \(Guj.\)](#) (para 7) and *Whirlpool Corpn. v. Registrar of Trade Marks* AIR 1999 SC 22 (para 19).

Shaik Jeelani Basha for the Petitioner.

ORDER

U. Durga Prasad Rao, J. - The petitioners implore for writ of mandamus declaring the order dated 4-2-2020 passed by 1st respondent confiscating 69 Kgs of silver ornaments worth Rs. 28,00,000/- and directing the petitioners to pay tax of Rs. 84,000/- (Central Tax and State Tax), penalty of Rs. 84,000/- and fine of Rs. 26,32,000/- in lieu of confiscation, as without authorization as contemplated under section 67 of the Central Goods and Service Act, 2017 (for short, 'CGST Act'), arbitrary, without jurisdiction and consequently to set aside the confiscation proceedings.

2. The petitioners' case succinctly is thus:

- (a) 1st petitioner is the Proprietrix of M/s. Sangeetha Jewellers, Madhugiri Town, Karnataka State, doing business in silver ornaments and a registered dealer under the Goods and Service Tax Act, 2017 since May, 2018, having GST Registration No. 29GZIPS5843AIZZ. The 2nd petitioner is her husband and 3rd petitioner is the brother-in-law of 1st petitioner.
- (b) As the business of 1st petitioner was not up to the mark, they decided to shift their business from Madhugiri to Pavagada Town in Karnataka. On 15-1-2020, at about 06.30 A.M. when the petitioners along with one Smt. J. Devi, the grand mother of 2nd petitioner, were proceeding in their vehicle Creta bearing No. KA 06Z 1813 along with accounts and stock of 69 Kgs of silver ornaments to the newly established business premises at Pavagada, which was taken on lease on 1-12-2019, on the way the 2nd respondent intercepted their vehicle at Y.B. Halli Check Post and seized the silver ornaments and vehicle under the cover of panchanama, on the ground that there were no supporting documents. Thereafter, the 2nd respondent handed over the seized ornaments to the 4th respondent. Hence, the petitioners approached the 4th respondent, who in turn directed them to approach 1st respondent. Accordingly, the 1st petitioner approached the 1st respondent and produced all the business records for verification to show the justification of the transaction and thus, accounted for the stock. However, the 1st respondent did not consider the explanation of 1st petitioner and the books of accounts produced by her but blindly followed the Panchanama recorded by 2nd respondent. The 1st respondent issued a notice of confiscation in Form GST MOU-10, dated 21-1-2020, which was served on 2nd petitioner on 25-1-2020. Against which the 1st petitioner filed a detailed explanation dated 28-1-2020 by enclosing all the relevant documents stating that the seized stock of 69 Kgs of silver ornaments were purchased from the registered GST dealers covered by proper invoice and GST tax and the same ornaments were being shifted to the new business premises at Pavagada. The goods were thus accounted for and suffered tax and hence, the proposed levy of tax and penalty was not justified.
- (c) However, without considering the aforesaid explanation the 1st respondent treated the seized stock as unaccounted for and rejected the contention of the petitioners and passed the impugned order.
- (d) The order of the 1st respondent is highly arbitrary and contrary to the facts and circumstances of the case, besides 1st respondent has no authorization as contemplated under section 67 of the CGST Act.

Hence, the writ petition.

3. 1st respondent filed counter and while denying the petition averments, *inter alia* contended thus:

- (a) It is contended that for inspection of the goods in movement, Section 68 of the State Goods and Service Tax Act, 2017 (SGST Act) will apply but not Section 67 of the said Act as claimed by the petitioners. The Deputy Assistant Commissioner (ST) is the authorised officer as per the Gazette Notification No. 37 dated 30-6-2017, Revenue Department (CT-II) proceedings of the Chief Commissioner of State Tax, Andhra Pradesh. Hence, the contention of the petitioners that 1st respondent without authorisation issued the impugned proceedings is false and misleading.

- (b) The 2nd respondent intercepted the petitioners' vehicle on 15-1-2020 and seized the silver ornaments and vehicle and intimated the said fact to 4th respondent on 17-1-2020. He informed that at the time of interception Sri Prakash, S/o. Nemaram & Sri Mohan Lal, S/o. Bhikaram, Madhugiri, Tumkur District were incharge of goods & vehicle. He further informed that they were conveying 69 Kgs of silver ornaments worth Rs. 28.00 lakhs without having any bills and supporting documents and without paying GST. Therefore, he prepared mahazarnama in the presence of revenue officials and kept the goods and the conveyance in his safe custody.
- (c) The 4th respondent in his turn, while forwarding the records (a) letter of the Inspector of Police, Madakasira Circle dated 15-1-2020 (b) Mahazarnama recorded in the presence of revenue officials dated 15-1-2020, authorised the Deputy Assistant Commissioner (ST)-1, Hindupur to take further action in the matter since the petitioners have violated Section 68 r/w Rule 138A (a) of the SGST Act and Rules 2017. It is further clear that the petitioners intended to evade the payment of legitimate tax due for the consignment. Accordingly, Form MOV-01, Form MOV-06 dated 20-1-2020 (Order of Detention) were prepared and when the persons in-charge of the goods were requested to take the notices, they simply left the place stating that they would come later, but did not turn up. In that view, the assessing authority served notices by affixture i.e., affixing to the conveyance bearing No. KA06Z1813 which was stationed at Madakasira Police Station through Sri K. Anjaneyulu, Office Subordinate in the presence of two witnesses. A copy of the order was served on second respondent. Further, since the person in-charge of the conveyance has not turned up, a notice in Form MOV-10 dated 21-1-2020 was served by affixture through the Office Subordinate in the presence of two witnesses. Hence, the contention of the petitioners that no statutory notices were served is false.
- (d) The contention of the petitioners that they were shifting their business from Madhugiri to Pavagada is an afterthought. If the said contention is true, their address in the registration certificate should appear as Pavagada but not Madhugiri but their address in the registration certificate still appears as Madhugiri.
- (e) It is further contended that Form MOV-07 & MOV-09 were not issued because the action was initiated under section 130 of the SGST Act, 2017. The petitioners' allegation that they were served on them is wrong.
- (f) It is contended that if the petitioners are aggrieved by the affixing order, there is a recourse for them to file an appeal under the Act and in that view, the writ petition is not maintainable. The action taken by the respondent authorities is perfectly valid under law and therefore, the writ petition may be dismissed.

4. The petitioners filed reply affidavit denying the counter averments as thus:

- (a) It is contended that the action of 1st respondent in directly invoking/initiating the confiscation proceedings by issuing confiscation notice in GST MOV-10 dated 21-1-2020 and thereupon passing the confiscation proceedings dated 4-2-2020 under section 130 of the SGST Act is highly arbitrary and contrary to the scheme of the Act and without jurisdiction and authority under law. The respondents made contradictory statements, as, at one breath they stated as if notices under Form MOV-07 & MOV-09 were served on the petitioners by affixture on their conveyance and in another breath they stated, notices under MOV-07 & MOV-09 were not required to be served since action was initiated under section 130. It is further contended that the 1st respondent acted in contravention of Section 129(6) of the SGST Act. Even assuming that the notice dated 20-1-2020 was issued, without waiting for 14 days from the said date, he ought not to have issued confiscation notice on the same day. Thus, the confiscation notice dated 21-1-2020 issued under section 130 of the SGST Act is not valid in the eye of law. It is further contended that the petitioners have explained to the authorities that they were shifting their business from Madhugiri to Pavadaga and the left over stock of 69 Kgs of silver ornaments were being shifted to the new business premises. In support of their case the petitioners filed various documents. The respondent authorities, however, not properly considered the explanation of the petitioners dated 28-1-2020 and their documents. Hence, the impugned order is liable to be set aside.

5. Heard the arguments of Sri Sk. Jeelani Basha, learned counsel for petitioners, and Sri Y.N. Vivekananda, learned Government Pleader for Commercial Taxes-II representing the respondents.

6. Vociferously challenging the confiscation proceedings dated 4-2-2020 of the 1st respondent, learned counsel for the petitioners Sri Jeelani Basha would argue that the 1st petitioner conducted business in silver ornaments under the name and style "M/s. Sangeetha Jewellers" for about 20 months in Madhugiri Town and they used to purchase the silver ornaments from registered GST dealers under proper invoice and paid GST tax and they used to maintain all accounts perfectly. His further submission is that when their business was not in flourishing condition in Madhugiri, they proposed to shift from that place to Pavagada town and in fact the petitioners have taken a shop on lease at Pavagada *vide* Rent Deed dated 1-12-2019. Thus, the petitioners have shifted from Madhugiri to Pavagada on 15-1-2020 in the vehicle bearing No. KA 06Z 1813 along with their left over silver ornaments weighing about 69180.824 grams. Learned counsel further argued that on the way at Madakasira, the 2nd respondent intercepted the vehicle and the petitioners promptly intimated him that the stock of 69180.824 grams of silver ornaments already suffered tax under SGST Act. However, without heeding to their submission, the 2nd respondent detained the silver ornaments and conveyance and handed over them to 4th respondent without issuing any detention notice under section 129 of the SGST Act. However, 1st respondent issued them a show cause notice MOV-10 dated 21-1-2020 under section 130, as to why the stock and conveyance shall not be confiscated which was received by petitioners on 25-1-2020. The petitioners submitted a detailed explanation dated 28-1-2020 along with necessary documents showing the stock had already suffered tax under the SGST Act. Without appreciating the detailed explanation and the documents filed in support of their version, 1st respondent passed the impugned confiscation proceedings which is contrary to law.

- (a) Learned counsel impugned the confiscation proceedings on two main grounds. Firstly, the authorities cannot undertake the confiscation proceedings under section 130 of the SGST Act straight away without first exhausting the procedure contemplated under section 129 of the SGST Act. The authorities have not issued the detention notice and 14 days time stipulated under section 129 of the SGST Act. As the procedure under section 129 is not religiously followed, the consequent proceedings under section 130 of the SGST Act are therefore, null and void.
- (b) Secondly, he argued, 1st respondent has not given an opportunity to the petitioners to establish their case nor he objectively analysed and assessed the probative value of the documents produced by the petitioners along with their explanation to show that the detained stock had already suffered the tax under the SGST Act. 1st respondent, without giving any plausible reasons, simply rejected the documents on an untenable ground that they were fabricated with an afterthought. Learned counsel vehemently argued that the 1st respondent cannot brand the documents produced by the petitioners as afterthought without assigning any reason. The documents such as monthly returns etc., cannot be manipulated by the petitioners since, they were maintained over a long period during the course of their day-to-day business. Hence, without making an objective analysis it is not apt on the part of the 1st respondent to reject them on the ground that they were created by an afterthought. Had a reasonable opportunity been given, the petitioners would have established the genuinity of all the documents relied upon by them. He placed reliance on the decision in *Sneh Enterprises v. Commissioner. of Customs*. [2006 taxmann.com 1512 \(SC\)](https://taxmann.com/1512/SC/) to canvass the point that the tax statutes need strict interpretation and submitted that since the respondent authorities did not follow the procedure contemplated under section 129 of the SGST Act and failed to issue notices thereunder, the further proceedings are vitiated. He impugned the proceedings of 1st respondent also on the ground that under section 67 of the SGST Act the Joint Commissioner, but not the 1st respondent, has authority to act upon. He thus prayed to *set aside* the impugned proceedings and issue appropriate directions to the respondent authorities.

7. In oppugnation, learned Government Pleader for Commercial Taxes - II firstly argued that in respect of the taxable goods in transit, like in the present case, Section 68 of the CGST (Section 68 of the SGST Act in *pari materia*) is applicable but not Section 67 as contended by the petitioners. He would submit that as per Section 68 r/w. Rule 138, the person in-charge of a conveyance, before commencement of the movement of the goods from one place to its destination, shall obtain an e-way bill (electronic way bill) by feeding required information in the common portal maintained by the respondent Department and carry with him such e-way bill and other required documents throughout the journey. Failing which the "Proper Officer" who is authorised under section 68 of the CGST Act can intercept the vehicle and on the failure of the person in-charge of the conveyance to produce the e-way bill and other related documents, can take action under section 129 and also 130 of the CGST Act. He would submit that as per the Gazette Notification No. 37 of Revenue Department (CT-II) dated 30-6-2017, the Proper Officer with reference to Section 68(3) for inspection of goods in movement, among others, is the Deputy Assistant Commissioner *i.e.*, 1st respondent. He would thus

submit that the 1st respondent is legally authorised to pass the impugned proceedings and the contention in contra is untenable.

- (a) Secondly, he argued that on 15-1-2020 the Inspector of Police, Madakasira intercepted the vehicle and found 69180.824 grams of silver ornaments in the vehicle. He enquired the petitioners 2 and 3 who were in the car about the e-way bill and other documents. They admitted to have not paid the tax while purchasing those silver ornaments and went away stating that they would come soon. Therefore, the 2nd respondent handed over the goods and vehicle to 4th respondent who authorised 1st respondent to take up the proceedings. Learned Government Pleader further argued that since the petitioners failed to produce relevant documents and did not turn up, he decided to take up the proceedings under sections 129 & 130 of the CGST Act. Accordingly, he issued Form GST MOV-6 notice of detention dated 20-1-2020 under section 129(1). As there were none to receive, he got affixed the said notice on the vehicle. Learned Government Pleader would submit that since the 1st respondent proposed to proceed under section 130 also, he did not issue notice in Form GST MOV-07 under section 129(3) of the CGST Act specifying the tax and penalty payable on the seized goods and conveyance. He further argued that 1st respondent then issued a Form GST MOV-10 under section 130 directing the petitioners to show cause within 14 days as to why the seized goods shall not be confiscated and the said notice was also affixed on the vehicle. Apart from it, 1st respondent also got issued a personal hearing notice dated 30-1-2020 under section 130(4) of the CGST Act fixing the date 3-2-2020 for personal hearing which was received by the auditor of the petitioners and 1st petitioner submitted a written explanation dated 28-1-2020. However, having found the conduct of the petitioners in not carrying relevant documents along with them during the transit and leaving the place of detention without receiving the notices and not submitting the documents atleast immediately thereafter but only producing some documents along with written explanation belatedly, the 1st respondent concluded that the petitioners' plea that they paid GST on the detained goods long before was an afterthought and accordingly, passed the impugned proceedings dated 4-2-2020. He thus claimed that the order was perfectly valid and passed after issuing the relevant notices and by following due process contemplated under sections 129 & 130 of the CGST Act.
- (b) Thirdly, he argued that Section 129 & 130 of the CGST Act are independent and mutually exclusive and therefore, the authorities can adopt both of them simultaneously. To buttress this argument, he relied upon *Synergy Fertilchem (P.) Ltd. v. State of Gujarat* [2019] 112 taxmann.com 370 (Guj.). He thus prayed to dismiss the writ petition.

8. The points for consideration are:

- (1) Whether the 1st respondent is authorised to pass the impugned proceedings dated 4-2-2020?
- (2) Whether the 1st respondent is legally justified in proceeding simultaneously under section 129 & 130 of the CGST Act against the petitioners?
- (3) Whether the order dated 4-2-2020 of the 1st respondent is legally sustainable?

9. Point No. 1 : On perusal of record, we hold the argument of the petitioners that the 1st respondent is not legally authorised to issue the impugned proceedings is not correct in view of the Gazette notification No. 37 of Revenue Department (CT-II) dated 30-6-2017 filed by the learned Government Pleader. Section 68(3) of the CGST Act confers power on "the Proper Officer" to intercept any conveyance on the way and require the person in-charge of the said conveyance to produce the documents prescribed under sub-section (1) of Section 68 and the devices for verification in which case the said person shall be liable to produce the same and also allow the inspection of goods. While so, in the Gazette notification No. 37, the Chief Commissioner of State Tax notified certain officers as "Proper Officer" occurring in different sections of the SGST Act. In Serial No. 23, certain officers viz., (i) Goods and Service Tax Officer (ii) Deputy Assistant Commissioner (iii) Assistant Commissioner (iv) Deputy Commissioner and (v) Joint Commissioner having jurisdiction and/or (i) Deputy Assistant Commissioner (ii) Assistant Commissioner and (iii) Deputy Commissioner as authorised by the additional Commissioner/Commissioner in case of State Enforcement Wing are authorised as "Proper Officers" to act under section 68(3).

- (a) While so, by an amendment vide Ref. No. CCW/GST/74/2015 dated 28-3-2018 the Commissioner of Commercial Taxes authorized the officer not below the cadre of 'Deputy Assistant Commissioner

of State Tax' as 'Proper Officer' for the purpose of Section 68(3). In the instant case, the confiscation proceedings are issued by the Deputy Assistant Commissioner (ST)-I, Hindupur, the first respondent herein, who is authorised as per the above Gazette notification.

10. Point No. 2 : Admittedly, in this case the goods *i.e.*, 69180.824 grams of silver ornaments were detained while in transport. Section 68 r/w Rule 138, 138A, Section 129 & 130 will apply to the present instance. As already discussed in Point No. 1 *supra*, under section 68 while taxable goods are under conveyance, the Proper Officer can intercept and require the in-charge of the conveyance for the necessary documents and devices and also inspect the goods. While so, Rule 138 of the CGST Rules, 2017 says that every registered person who causes movement of goods of the consignment value exceeding Rs. 50,000/- shall furnish the information relating to the said goods electronically on the common portal and obtain a e-way bill. Then Rule 138A prescribes the documents and devices to be carried by a person in-charge of a conveyance. It lays down thus:

138A. (1) The person-in-charge of a conveyance shall carry—

- (a) the invoice or bill of supply or delivery challan, as the case may be; and
- (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

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- (a) Rule 138B deals with verification of documents and conveyances. This provision says that the Proper Officer who is authorized in this behalf can intercept any conveyance to verify the e-way bill in physical or electronic form for all interstate and intrastate movement of the goods. He can also make a physical verification of the conveyance.

11. Coming to the facts, on 15-1-2020 when the petitioners were proceeding in their vehicle Creta bearing No. KA 06Z 1813 along with 69180.824 grams of silver, 2nd respondent intercepted them at Y.B. Halli Check Post and having found large quantity of silver ornaments, enquired the petitioners about the relevant documents. The 2nd petitioner seems to have stated that they were shifting their business from Madhugiri Town to Pavagada and for that purpose they were carrying the silver wear. The 2nd petitioner alleged to have admitted that they did not pay the GST to the Government. On that the 2nd respondent prepared the Panchanama in the presence of mediators and handed over the seized stock and conveyance to 4th respondent. Thus, according to the respondents, the petitioners did not produce any documents like e-way bill, invoice/tax receipts etc. as stipulated under section 68 r/w 138 & 138A of the CGST Act and its Rules.

12. Then according to 4th respondent, he issued Form GST MOV-06 detention notice under section 129(1) of the CGST Act to the petitioners and as they were not available, got affixed on the vehicle in the presence of the mediators. According to him, since the petitioners failed to produce any documents, he proposed to initiate the confiscation proceedings also and hence, he issued Form GST MOV-10 confiscation notice under section 130 of the CGST Act to the petitioners to show cause within 14 days as to why the goods and conveyance shall not be confiscated and the said notice was also affixed on the vehicle in the presence of the mediators. Learned Government Pleader produced the copies of Form GST MOV-6 and Form GST MOV-10 along with counter. Therefore, the contention of the petitioners that no notices were issued to them as prescribed under law cannot be countenanced.

13. Now the crucial question is whether the 1st respondent is justified in proceeding simultaneously under section 129 & 130 of the CGST Act against the petitioners. It is the contention of the petitioners that Section 129 and 130 are interrelated and interdependent, as, the confiscation proceedings under section 130 can be taken only when the in-charge of a conveyance failed to pay tax and penalty for the transported goods within 14 days of detention as prescribed in section 129(6) of the CGST Act. Whereas, learned Government Pleader traversed said plea and argued that both the sections are mutually exclusive and procedures contemplated whereof can be followed simultaneously.

14. In *Synergy Fertichem (P.) Ltd. (supra 2)*, a Division Bench of the Gujarat High Court dealt with the precise question as to whether section 129 & 130 of CGST Act overlap or are independent to each other. On an elaborate discussion, they gave their final conclusions as follows:

- (i) Section 129 of the Act talks about detention, seizure and release of goods and conveyances in transit. On the other hand, section 130 talks about confiscation of goods or conveyance and levy of tax, penalty and fine thereof. *Although, both the sections start with a non-obstante clause, yet, the harmonious reading of the two sections, keeping in mind the object and purpose behind the enactment thereof, would indicate that they are independent of each other. Section 130 of the Act, which provides for confiscation of the goods or conveyance is not, in any manner, dependent or subject to section 129 of the Act. Both the sections are mutually exclusive. (Emphasis Supplied).*
- (ii) The phrase "with an intent to evade the payment of tax" in Section 130 of the Act assumes importance. When the law requires an intention to evade payment of tax, then it is not mere failure to pay tax. It must be something more. *The word "evade" in the context means defeating the provisions of law of paying tax. It is made more stringent by use of the word "intent". The assessee must deliberately avoid the payment of tax which is payable in accordance with law. However, the element of mens rea cannot be read into Section 130 of the Act. (Emphasis Supplied).*
- (iii) For the purpose of issuing a notice of confiscation under section 130 of the Act at the threshold, i.e., at the stage of detention and seizure of the goods and conveyance, the case has to be of such a nature that on the face of the entire transaction, the authority concerned should be convinced that the contravention was with a definite intent to evade payment of tax. The action, in such circumstances, should be in good faith and not be a mere pretence. In other words, the authorities need to make out a very strong case. Mere suspicion may not be sufficient to invoke Section 130 of the Act straightway.
- (iv) *If the authorities are of the view that the case is one of invoking section 130 of the Act at the very threshold, then they need to record their reasons for such belief in writing, and such reasons recorded in writing should, thereafter, be looked into by the superior authority so that the superior authority can take an appropriate decision whether the case is one of straightway invoking section 130 of the Act. (Emphasis Supplied).*
- (v) Even if the goods or the conveyance is released upon payment of the tax and penalty under section 129 of the Act, later, if the authorities find something incriminating against the owner of the goods in the course of the inquiry, if any, then it would be permissible to them to initiate the confiscation proceedings under section 130 of the Act.
- (vi) *Section 130 of the Act is not dependent on sub-section (6) of Section 129 of the Act. (Emphasis Supplied).*
- (vii) *Sections 129 and 130 respectively of the Act are mutually exclusive and independent of each other. (Emphasis Supplied).* If the amount of tax and penalty, as determined under section 129 of the Act for the purpose of release of the goods and the conveyance, is not deposited within the statutory time period, then the consequence of the same would be forfeiture of the goods and the vehicle with the Government. This does not necessarily imply that the confiscation proceedings can be initiated only in the event of the failure on the part of the owner of the goods or the conveyance in depositing the amount towards the tax and liability determined under section 129 of the Act.
- (viii) For the purpose of section 129(6) of the Act, it would not be necessary for the department to establish any intention to evade payment of tax. If the tax and penalty, as determined under section 129, is not deposited within the statutory time period, then the goods and the conveyance shall be liable to be put to auction and the sale proceeds shall be deposited with the Government.
- (ix) xxx
- (x) xxx
- (xi) xxx
- (xii) xxx

(xiii) xxx

(xiv) xxx

(xv) xxx

(xvi) xxx

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15. We have, cautiously and meticulously gone through the above judgment. It is held therein that both the sections, though commenced with a *non obstante* clause, yet are mutually exclusive and independent. It implies that the confiscation proceedings can be taken up by the authorities after exhausting the measures under section 129(6) and also simultaneously along with Section 129 and there is no bar. However, since the phrase "with an intent to evade the payment of tax" is employed in Section 130 of the Act, before invoking the confiscation proceedings under section 130 at the threshold, the concerned authority must form a firm opinion that the assessee has deliberately avoided the payment of tax. Such opinion must be an express one and recorded with the reasons. It must be noted that except arguing that the authorities cannot invoke both the sections simultaneously, the petitioners have not produced any case law which militates against the views expressed in the above judgment.

- (a) Therefore, while fully subscribing the above views of the Gujarat High Court, we wish to add one more aspect. As for invoking Section 130 at the threshold, the authority need to record his reasons for his belief that the assessee has deliberately avoided the payment of tax, so also, during the course of enquiry under section 130, the authority shall, in terms of Section 130(4), afford an opportunity of hearing to the person whose goods and conveyance are sought to be confiscated and record cogent reasons for rejecting the contention of the owner.

This point is answered accordingly.

16. *Point No. 3* : With the above jurisprudence holding that the authority can simultaneously proceed under section 129 and 130 of the CGST Act, we have scrutinized the impugned confiscation order dated 4-2-2019 passed by the 1st respondent. As against the confiscation notice under Form MOV-10 dated 21-1-2020, admittedly the 1st petitioner submitted her explanation along with documents mentioned therein. Hence, initially we perused her explanation. Her case precisely is that the 69 KGs silver ornaments under transport were related to M/s. Sangeetha Jewellers, Madhugiri for which she is the Proprietrix and those silver ornaments were purchased by the petitioners from the registered GST dealers covered by proper invoice and GST tax was already paid. Due to some unfavourable conditions, she stated, the business was shifted from Madhugiri to Pavagada by taking a shop on lease and on the detained day, they were taking the left over stock of 69 KGs of silver ornaments to Pavagada which was totally accounted for. It is her grievance that in spite of their explanation to the 2nd respondent, he detained the goods and conveyance and handed over to 4th respondent. She filed the following documents:

- (1) Copy of registration certificate
- (2) Copy of monthly returns filed in GSTR-3B
- (3) Copies of all purchase and sale bills
- (4) Copies of Sales and Purchase extracts of ledger
- (5) Copies of lease rental agreement
- (6) Copies of Income-tax Returns filed
- (7) Trading, Profit and Loss and Balance Sheet for 2018-19 Financial Year i.e., from 3-05-2018 to 31-03-2019
- (8) Trading account copy from 1-04-2019 to 14-01-2020 disclosing a closing stock of 69180.824 grms of silver ornaments

17. Then a perusal of the confiscation order shows that the above explanation of the petitioners was rejected on three grounds, which, we constrained to hold, are neither logically nor legally tenable. Firstly, it was

observed that during the check held on 15-1-2020 while the goods were intransit, they did not produce any documents as prescribed under section 68 r/w Rule 138 and hence, goods are liable for confiscation.

- (a) Admittedly, the petitioners have not produced records pertaining to the silver ornaments at the time of initial check. However, that cannot be the sole ground to reject the record which was later produced along with explanation. It must not be forgotten that confiscation under section 130 is a drastic step which will denude the citizen of his right over his property. Therefore, to deprive him of it, the authority must not only afford a personal hearing to the owner in terms of Section 130(4) of CGST Act, but also adduce cogent reasons for discarding the explanation offered by him. Mere non-production of the records at the inception, will not automatically falsify the records produced later. The order must reflect the reasons as to why and how the records are fudged and spurious ones.

18. The second apparent reason for discarding the explanation is that the contentions of the first petitioner are afterthought and have no relevance. This by no means a ground to reject the explanation. As already stated *supra*, mere branding the explanation as afterthought without assigning reasons as to how the documents are fabricated ones will not make the order legally justified. The falsity of the records shall be established by analysing the records but not simply branding them as afterthought.

19. The third reason is that though a personal hearing was granted on 3-2-2020 the petitioners have not availed the same. This reason is also quite inadequate, as the petitioners have already filed their explanation along with record. Therefore, without scrutinizing the said record in terms of the explanation and not noting any adverse comments on the probative value and genuinity of the said record, it was not apposite for 1st respondent to reject the contention of the petitioners. It should be made clear that the orders of Public Servants some of whom are quasi judicial authorities, which have the far reaching effect on the life, liberty, property and welfare of the public must be based on cogent reasons. The reason is the live nerve of an order. In *Sneh Enterprises* (1 *supra*) the Hon'ble apex court held that the Tax Statutes need strict interpretation. It follows that while interpreting the Tax Statutes and applying to the facts and holding that the provisions thereof are violated, the authorities must give cogent reasons. Unfortunately, in the instant case, the reasons, are a casualty. Therefore, the impugned order does not stand to legal scrutiny and liable to be set aside.

It is argued by learned Government Pleader that since provision for appeal against the impugned order is provided by the statute under section 107 of CGST Act, the writ petition is not maintainable. The facts and law involved in this case do not permit us to agree with the said contention. It is true that an alternative remedy is available in the form of Section 107 of CGST Act. However, it must not be forgotten that the petitioners herein challenged the jurisdictional authority of 1st respondent to pass the impugned order. Besides, they also pleaded that principles of natural justice have not been followed and a fair opportunity was not afforded to them to establish their defence. In *Whirlpool Corporation v. Registrar of Trade Marks* AIR 1999 SC 22, the apex court observed thus.

"15. Under article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. *But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.* (Emphasis Supplied).

Therefore, we are unable to agree with the above contention of learned Government Pleader.

20. In the result, this writ petition is allowed and while the confiscation order dated 4-2-2020 passed by the 1st respondent is set aside, the 1st respondent is directed to conduct an enquiry afresh and afford an opportunity of personal hearing to the petitioners with reference to their explanation and pass an appropriate order by giving cogent reasons in accordance with law. The entire exercise shall be completed within eight (8) weeks from the date of receipt of a copy of this order. Till then, the detention of subject goods and conveyance shall hold good. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

*In favour of assessee.