
[2024] 163 taxmann.com 245 (Andhra Pradesh)[30-05-2024]

GST : Where petitioner had claimed to have purchased iron scrap from an unregistered dealer, petitioner owed a responsibility to prove genuineness of sale transaction, authorities should initiate proceedings under section 129

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[2024] 163 taxmann.com 245 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

A Z Enterprises

v.

Deputy Assistant Commissioner (ST)*

SUBBA REDDY SATTI AND SMT. VENKATA JYOTHIRMAI PRATAPA, JJ.

WRIT PETITION NO. 12160 OF 2024

MAY 30, 2024

Confiscation of goods or conveyances - Illegal supply of goods - Petitioner-assessee had purchased iron scrap from one hawker, being an unregistered person and sold same to a foundry - While goods were in transit, vehicle was intercepted and impugned proceedings were issued on ground that relevant papers did not cover consignment - Case of assessee was that respondent-authorities had, without following procedure of detention under section 129, directly invoked section 130 and ordered confiscation of goods and also auction was scheduled - HELD : Sections 129 and 130 are independent of each other; section 130 is not dependent on section 129 being mutually exclusive - As petitioner had claimed to have purchased iron scrap from an unregistered dealer - Petitioner owed a responsibility to prove genuineness of sale transaction - Authorities should initiate proceedings under section 129 against petitioner and conduct enquiry by giving opportunity to establish their case - Auction notice was also to be set aside and goods of assessee were to be released [Section [130](#), read with section [129](#), of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 7 to 10] [In favour of assessee]

CASE REVIEW

Arhaan Ferrous and Non-Ferrous Solutions (P.) Ltd. v. Deputy Assistant Commissioner-1 (ST) [[2023](#)] [153 taxmann.com 325/99 GST 437/2023 \(77\) G.S.T.L. 46/\(2023\) 9 Centax 171 \(A.P.\)](#) (para 10) followed.

CASES REFERRED TO

Arhaan Ferrous and Non-Ferrous Solutions (P.) Ltd. v. Deputy Assistant Commissioner-1 (ST) [[2023](#)] [153 taxmann.com 325/99 GST 437/2023 \(77\) G.S.T.L. 46/\(2023\) 9 Centax 171 \(A.P.\)](#) (para 4).

ORDER

1. This Writ Petition is filed under Article 226 of the Constitution of India with the following prayer for:

".... a writ of Mandamus, to declaring the action of Respondent Nos.1 and 2 in detaining the goods as well as the vehicle bearing No. AP 0 27 X 4645 covered by Invoice No.243 dated 27-01-2024 without following due process of law contemplating under Section 129 of CGST Act, 2017 and proceeding to auction the confiscated goods invoking power under Section 79 of CGST Act, 2017 even during the pendency of the appeal before Respondent No.3 as illegal, arbitrary, highhanded, without authority of law

and jurisdiction, vitiated on account of violation of principles of natural justice and consequently set aside the impugned auction notice issued by Respondent No.2 dated 02.03.2024 (signed on 16.05.2024) in Form GST MOV-17 and pass such other order or orders."

2. Heard Sri V.Siddharth Reddy, learned counsel for the Petitioner, and Sri P.Shreyas Reddy, learned Government Pleader for Commercial Taxes.

3. As requested by the learned counsel representing both sides, the matter is taken up for hearing for final disposal.

4. Learned counsel for the Petitioner would submit that the Respondent Authorities, without following the procedure of detention under Section 129 of CGST Act, 2017, directly invoked Section 130 of CGST Act, 2017 and ordered the confiscation of the goods and the auction is scheduled to be held on 31.05.2024. Learned counsel further submits that it is a covered matter in the light of the Common Order dated 03.08.2023 passed by a Coordinate Division Bench of this Court in *Arhaan Ferrous and Non-Ferrous Solutions (P.) Ltd. v. Deputy Assistant Commissioner-1 (ST)* [[2023](#)] [153 taxmann.com 325/99 GST 437/2023 \(77\) G.S.T.L. 46/\(2023\) 9 Centax 171 \(A.P.\)](#) [Writ Petition Nos.15481, 15482, 15486 and 15487 of 2023].

5. Learned Government Pleader for Commercial Taxes fairly conceded the same and would submit that the Court may pass appropriate orders by imposing certain conditions.

6. The petitioner's case is that he purchased iron scrap from one hawker, Mr. Shaik Nazeer Ahmed of Nellore on 27.01.2024 and sold the same in favor of M/s.Agarwal Foundries Private Limited, Naidupeta under an invoice for a consideration of Rs.4,91,400/-. When the goods were in transit from Nellore to the consignee, the vehicle was intercepted at Venkatachalam Toll Plaza by respondent No.1 and issued the impugned proceedings on the ground that the relevant papers do not cover the consignment. Learned counsel would submit that the petitioner has purchased the goods from an unregistered dealer and consignment is covered by a valid invoice, Way Bill, and relevant transport documents.

7. As can be seen from the record, proceedings were issued for confiscation of goods in Form G.S.T MOV-10, dated 09.02.2024 by invoking the power under Section 130 of the CGST Act, 2017. The impugned proceedings dated 02.03.2024 would show that a show cause notice has been issued on 09.02.2024 calling upon the petitioner to explain, within fifteen days from the receipt of the notice, why the goods shall not be confiscated. But the very next sentence would reveal that the petitioner is directed to appear before the Deputy Assistant Commissioner on 16.02.2024, at 11.00 a.m., which would indicate that without giving fifteen clear days, the matter is called on 16.02.2024. Hence, there is some force in the contention of the Petitioner that the impugned order passed in violation of the principles of natural justice.

8. Needless to say, in the present case, respondent No.1 has detained the goods of the petitioner while they were in transit from Nellore to Naidupeta. Respondent No.1 may initiate proceedings for confiscation under Section 130 of the CGST Act, 2017, in view of the absence of address of the unregistered dealer, from whom the Petitioner purchased the goods. When it is the case of the petitioner that he bona fide purchased the goods from an unregistered dealer for valuable consideration under authenticated documents, it is his duty to establish the same. As he claims to have purchased the iron scrap from an unregistered dealer at Nellore, owes a responsibility to prove the genuineness of the sale transaction. As rightly argued, the authorities can initiate proceedings under Section 129 of CGST Act, 2017 against the petitioner and conduct enquiry by giving opportunity to establish their case.

9. Section 129 of CGST Act, 2017 speaks about the detention, seizure, and release of goods and conveyances in transit, whereas, Section 130 of CGST Act, 2017 deals with the confiscation of goods and levy of tax, penalty and fine thereof. The harmonious reading of Sections 129 and 130 of CGST Act, 2017, keeping in mind the object and purpose, would construe that they are independent of each other. Section 130 of CGST Act, 2017 is not dependent to Section 129 of CGST Act, 2017. They are mutually exclusive.

10. In the light of the discussion and the common Order dated 03.08.2023 in WP. Nos.15481, 15482, 15486 and 15487 of 2023 passed by a Coordinate Division Bench of this Court, to which I am one of the members, and considering the submissions made, this Writ Petition is disposed of giving liberty to the Respondent Nos.1 and 2 to initiate proceedings against the Petitioner under Section 129 of CGST/APGST Act, 2017 within two weeks from the date of receipt of a copy of this order and conduct enquiry by giving an opportunity of hearing to the Petitioner and pass appropriate orders in accordance with governing law and rules. In view of the same, the auction notice impugned in the writ petition is set aside. In the meanwhile, Respondent Nos.1 and 2 shall

release the detained goods in favour of the Petitioner on a deposit of 25% of their value and execute a personal bond for the balance. They shall also release the vehicle bearing No. AP 0 27 X 4645 in favour of the Petitioner on executing a personal security bond for the value of the vehicle as determined by the concerned Road Transport Authority. No costs.

11. Pending applications, if any, shall stand closed.

ANURAG

*In favour of assessee.