

**[2022] 144 taxmann.com 86 (Andhra Pradesh)/[2022] 66 GSTL 159 (Andhra Pradesh)/[2023] 95 GST 212 (Andhra Pradesh)[29-03-2022]**

**GST : Sections 129 and 130 of CGST Act, 2017 are independent of each other; section 129 is not required to be invoked before passing order of confiscation under section 130**

**GST : Writ jurisdiction is not to be exercised if factual aspects or perusal of record is warranted, instead appeal is to be filed under CGST Act**

■ ■ ■

**[2022] 144 taxmann.com 86 (Andhra Pradesh)**

**HIGH COURT OF ANDHRA PRADESH**

**J .K. Yugandhar Singh**

**v.**

**Deputy Assistant Commissioner\***

**C. PRAVEEN KUMAR AND SMT. V. SUJATHA, JJ.**

**WRIT PETITION NO. 22975 OF 2021**

**MARCH 29, 2022**

**Detention of goods and vehicle during transit - Petitioner contended that even assuming that petitioner transported goods without having valid documents, procedure under section 129(3) of State Goods and Services Tax Act, 2017 was required to be followed, and Officer detaining or seizing goods or conveyance should have issued a notice under section 129(3) and given opportunity of hearing as required under section 129(4) without waiting for 14 days under sub-sections (3) and (6) of section 129 of State Goods and Services Tax Act, 2017 - HELD : Sections 129 and 130 of Central Goods and Services Tax Act, 2017 are independent of each other; while section 129 ibid talks about detention, seizure and release of goods and conveyances in transit, section 130 talks about confiscation of goods or conveyance and levy of tax, penalty and fine thereof - Section 129 ibid was not required to be invoked before passing order of confiscation under section 130 ibid [Section [129](#) read with section [130](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 8] [In favour of revenue]**

**Writ Jurisdiction - Availability of alternative remedy - Personal hearing - Detailed written reply was given by petitioner explaining his stand but same was not accepted - Factual aspects or perusal of record if warranted, petitioner ought to have preferred appeal, as provided under CGST Act, 2017 - Scope of interference under Article 226 of Constitution of India being very limited, order passed by authority warranted no interference [Section [107](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 9] [In favour of revenue]**

## **CASE REVIEW**

*Synergy Fertichem (P.) Ltd. v. State of Gujarat* [[2019](#)] [112 taxmann.com 370](#)/[2020] [33 G.S.T.L. 513 \(Guj.\)](#) (para 7) and *Sangeetha Jewellers v. Dy. Asstt. Commissioner* [[2021](#)] [124 taxmann.com 102](#) (para 8) followed.

## **CASES REFERRED TO**

## ORDER

---

**C. Praveen Kumar, J.** - The present Writ Petition came to be filed, seeking issuance of Writ of Mandamus, declaring the action of the respondent no. 1 in passing the "Order of Confiscation of Goods and Conveyance and Demand of Tax, Fine and Penalty" *vide* proceedings, dated 22-9-2021, under section 130 of the State Goods and Service Tax Act, 2017 [for short, "SGST Act, 2017"], as violative of sub-sections (3) and (6) of section 129 and of sub-section (4) of section 130 and the Rules made thereunder.

2. The facts, which led to filing of the present Writ Petition, are as under:-

- (a) The petitioner herein is doing business in purchase and sale of all kinds of scrap such as Battery, Aluminium Scrap, Brass Scrap and Copper Scrap. It is said that the petitioner used to purchase scrap from petty shops and small traders in loose quantity, put it together until it weighs 10 or 11 tonnes and then sell the same to dealers in Kurnool and Anantapur Towns. The petitioner's annual turnover is around 20 to 30 Lakhs. It is said that at the time of rollout of the GST regime, the petitioner was instructed by the GST Officers that no registration is required for business entities having an annual sale turnover of 40 Lakhs. Hence, the petitioner is doing business without obtaining any registration.
- (b) While things stood thus, on 10-9-2021, the petitioner who procured scrap from various petty dealers, loaded the same in a vehicle bearing No. AP 02 TC 7299 and was proceeding towards a weigh bridge for weighment of the goods. When the said vehicle along with the scrap was on its way to the weigh bridge, the respondent no. 1 herein is said to have stopped the vehicle and issued orders, for physical verification, in Form GST MOV-02, dated 10-9-2021. The said form came to be issued mainly on the ground that the petitioner transported the goods without any way bills. On physical verification, it was found that the petitioner was carrying 11,989 Kgs of scrap material. After issuance of physical verification report, the respondent no. 1 issued "Order of Detention" of the vehicle and thereafter on the very next day, the respondent no. 1 issued notice, for confiscation of the goods and accordingly proposals were sent, for levying penalty and fine.
- (c) The petitioner claims to have submitted his letter setting out reasons as to how the authorities erred in levying the tax. However, the order impugned came to be passed on 22-9-2021, ordering confiscation of the goods and conveyance. Exercising the power under section 130 of SGST Act, 2017, the material along with vehicle came to be confiscated. It was further informed to the petitioner that all goods should be released on payment of tax, penalty and fine within 45 days from the date of said order.

3. Assailing the same, the present Writ Petition came to be filed, mainly contending that the order impugned, came to be passed without giving an opportunity of hearing the petitioner.

4. A counter came to be filed by the respondents disputing the averments made in the affidavit, filed in support of the Writ Petition. It is said that the driver of the vehicle did not carry any documents and as per the provisions enshrined in section 68 r/w. Rule 138A of SGST Act and the Rules therein, a copy of e-way bill should accompany the goods.

- (a) It is further stated that the goods vehicle was intercepted on the highway at Tapovanam, and the plea taken by the petitioner that it was being intercepted while it was going towards weigh bridge, is incorrect. It is further stated in the counter that the provisions of rule 138(1) of SGST Rules, 2017 only speaks about the obligation vested upon the registered person to generate e-way bill who causes the movement of goods consignment value exceeding Rs. 50,000/- and that it does not prohibit carrying e-way bill by the unregistered person.
- (b) It is further stated that the case on hand is one of confiscation of goods under Section 130 of SGST Act, 2017 and not a case of levy of tax on assessment and thus the value of the goods is not the criteria in adoption of the action of confiscation. Reiterating the averments in the counter filed, learned Government Pleader for Commercial Taxes-II, would submit that the action of the authorities can not be found fault with.

5. As seen from the record, the main argument of learned counsel for the petitioner is that the authorities have not followed the procedure required under law while passing the order of confiscation of goods and conveyance, more particularly, section 129 of the SGST Act, 2017. According to him, even assuming for the sake of argument that the petitioner has transported the goods without having valid documents, the procedure under section 129(3) of the SGST Act, 2017 is required to be followed, meaning thereby that the Officer detaining or seizing goods or conveyance shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c). According to him, sub-section (5) of section 129 of SGST Act, 2017 postulates that on payment of the tax referred to in Sub-Section (1), all proceedings in respect of the notice specified in Sub-Section (3) shall be deemed to be concluded. Hence, it is said that the respondent no. 1 herein issued the order of detention on 13-9-2021, without issuing any notice under section 129(3); without giving any opportunity of hearing as required under section 129(4) and without waiting for 14 days under sub-section (3) and (6) of section 129 of SGST Act, 2017.

6. The principal argument advanced by Sri G.Narendra Chetty, learned counsel for the petitioner is that order came to be passed without giving an opportunity of hearing as required under section 130(4) of the Act. He further submits that the provisions of sections 129 and 130 of the Act are interdependent and without following the procedure under section 128 of the Act, the order of confiscation under section 132 of the Act cannot be invoked. Insofar as sections 129 and 130 of the Act namely as to whether it is mandatory to follow section 129 before passing an order of confiscation under section 130 of the Act.

7. While dealing with sections 129 and 130 of the Act, a Division Bench of Gujarat High Court in *Synergy Fertilchem (P.) Ltd. v. State of Gujarat* [2019] 112 taxmann.com 370/[2020] 33 G.S.T.L. 513, held as under:

'182. We would sum up our conclusion of the points raised in the writ applications 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. .

(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.

(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.

(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 clause (6) of Section 129 of the Act.

(vii) Sections 129 and 130 respectively of the Act are mutually exclusive and independent of each other. 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) Similarly, the reference to Sections 73 and 74 respectively of the Act is not warranted for the purpose of interpreting Sections 129 and 130 of the Act, more particularly, when they all are independent of each other. The provisions of sections 73 and 74 of the Act are similar to the provisions of section 11A of the Central Excise Act and section 28 of the Customs Act, which deal with the adjudication proceedings. Despite this, section 110 is present in the Customs Act, which speaks about seizure and similarly, section 129 is present in the Act for detention/seizure. Therefore, Sections 129 and 130 of the Act have *non-obstante* clauses, whereby they can be operated upon in spite of sections 73 and 74 of the Act.

(x) The provisions of sections 73 and 74 respectively of the Act deal with the 'demands and recovery' to be made by the assessing officer based upon the assessment, whereas the provisions of Section 129 of the Act deal with the 'detention/ seizure'. While assessing the returns, if the assessing officer finds that the amount of tax has not been paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized for any reason, either with *mala fide* intention or without the same, as the case may be, the provisions of section 73/74 of the Act would be invoked. However, the provisions of section 129 of the Act deal with situation where the evasion of tax/contravention of the Act/Rules is detected during transit itself, requiring the adoption of summary like proceedings. Therefore, the said provisions operate in different spheres.

(xi) The comparison of the provisions of Customs Act/ Excise Act on one hand and the provisions of the Act on the other, as sought to be drawn on behalf of the writ applicants, is not correct. Section 110(1) of the Customs Act is not comparable to section 129(1) of the Act inasmuch as, the provisions of Section 110 of the Customs Act contemplates that the proper officer may seize the goods which are liable for confiscation, whereas the provisions of section 129 contemplate that the proper officer may detain/ seize the goods/ conveyance in transit in contravention of the provisions of the Act or the Rules.

(xii) The provisions of sections 110(2) and 124 of the Customs Act do not contemplate that the goods which are seized are to be released in a specific time limit, much less, within a period of six months. Apropos this, the said sections merely cast a duty on the department to issue a show cause notice within a period of six months from the date of seizure of goods, but the same does not contemplate as to in how much time, the same has to be adjudicated upon. Therefore, the contention raised on behalf of the writ applicants that the goods which are seized are to be released within a short span of time and that the legislature has not contemplated to retain the goods pending the confiscation proceedings. is not tenable. In addition to the above, even otherwise, the provisions of section 110A of the Customs Act, which deal with the 'provisional release' of the goods, do not contemplate the release of the goods only on payment of penalty and interest but the proposed amount of fine is also to be included for provisional release of the goods. In view of this, the amount of fine should be taken into account while directing the provisional release of the goods/ conveyance as per section 129(2) read with section 67(6) of the Act read with Rule 140 of the Rules.

(xiii) Although there is no serious challenge to the validity of the provisions of sections 129 and 130 respectively of the Act, yet it is a settled principle of law that the power to levy tax includes all the incidental powers to prevent the evasion of such tax. The power to seize and confiscate the goods in the event of evasion of tax and the power to levy penalty are meant to check tax evasion and is intended to operate as a deterrent against the tax-evaders and are, therefore, ancillary or incidental to the power to levy tax on the goods and thus, fall within the ambit and scope of the legislative powers."

8. From the judgment of the Division Bench of the Gujarat High Court, it is clear that sections 129 and 130 of the Act are independent feature and the Act does not contemplate invoking section 129 before passing an order of confiscation under section 130 of the Act. The view taken by the Gujarat High Court was also upheld

by the Division Bench of this Court in *Sangeetha Jewellers v. Dy. Asstt. Commissioner* [2021] 124 taxmann.com 102. Hence, we are in agreement with the view expressed by the Division Bench on this aspect.

9. Coming to the second ground raised by the learned counsel for the petitioner namely that an opportunity of personal hearing is not given, it has to be noted that pursuant to the notice given, the petitioner herein submitted written objections, which are referred to in the order. The order also states that the owner of the goods, in his reply stated that no personal hearing is required, as he has submitted his reply. Of course, this aspect is disputed by the learned counsel for the petitioner, but from the record, a detailed written reply was given explaining his stand, which was not accepted. If factual aspects or perusal of record is warranted, the petitioner ought to have preferred an appeal, as provided under the Act. The scope of interference under Article 226 is very limited, hence the order passed by the authority warrants no interference.

10. At this stage, learned counsel for the petitioner mainly submits that he may be directed to pay tax and penalty as ordered. He also submits that the quantum of fine imposed towards confiscation of goods apparently is on a higher side. According to him, it is almost equal to the value of the goods. He also disputes levy of fine for confiscation of the conveyance as it is almost equal to the present day value of the vehicle.

11. Sri Y.N.Vivekananda, learned Government Pleader for Commercial Tax appearing for the respondents, submits that since there is clear violation of the provisions of the Act, order under challenge requires no interference.

12. Taking into consideration the facts in issue and the two findings recorded by us earlier, we hereby disposed of the writ petition directing the petitioner to pay tax and penalty as ordered in the impugned order. But insofar as the payment of fine, we feel that the amount of Rs. 9,00,000/- as ordered appears to be on higher side, as such the same is reduced to Rs. 4,00,000/-. Insofar as fine relating to confiscation of conveyance is concerned, having regard to the fact that it is lying with the authorities since pretty long time, we feel that an amount of Rs. 1,40,774/- as ordered to be paid may be reduced to Rs. 1,00,000/-. No costs.

13. All pending miscellaneous petitions if any, shall stand closed.

ANURAG

---

\*In favour of revenue.