

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 227 of 2021

Mohin Khan S/o Shri Ali Husain Khan Aged About 28 Years R/o Village Sarapada, Muslim Sahi Bhuneshwar, Thana Laxmisagar, Tahsil Bhuneshwar, District Khurda (Orissa) **---- Petitioner**

Versus

State Of Chhattisgarh Through District Magistrate Mahasamund District Mahasamund Chhattisgarh **---- Respondent**

For Petitioner:	Shri Sunil Sahu, Advocate.
For State:	Shri DP Singh, Dy. Advocate General along with Shri TR Dhurve, Joint Commissioner, State Tax, Raipur.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

15.09.2021

1. The Petitioner has filed this Petition under Section 482 of the Cr.P.C. challenging the order dated 05.02.2021, passed by learned Sessions Judge, Mahasamund (C.G.) in Criminal Revision No. H-05/2021, arising out of the order dated 23.01.2021 passed by learned Judicial Magistrate First Class, Mahasamund in Mis. Criminal Case No.S-45/2021, by which the application filed by the Petitioner for grant of permission to release the Truck bearing registration No.OD-02-AY-8394 on *supurdnama* has been rejected.
2. While rejecting the application for *supurdnama*, it has been observed in the order dated 23.01.2021 that the Assistant Commissioner, The Chhattisgarh Goods and Services Tax has written a letter to PS. Komakhan contending that there is an allegation of tax eviction to the tune of Rs.72 lacs with regard to the illegal transport of Gold Steef Cigarettes and the Department of Goods and Services Tax has already initiated the proceedings thereto. This order has been challenged by the Petitioner by filing

a Revision under Section 397 Cr.P.C before the learned Sessions Judge, Mahasamund, which was registered as Criminal Revision No.05/2021. Learned Sessions Judge, Mahasamund, vide impugned order dated 05.02.2021, has rejected the said Revision by affirming the finding that the goods which were carried in the vehicle were being transported in violation to the Good and Services Tax Act.

3. Learned Counsel for the Petitioner submits that since the vehicle is lying idle around 9 months, no fruitful purpose would be served if the vehicle remains idle in the custody of the police personnels exposed to the extreme weather conditions. The vehicle would get decayed day by day and would further deteriorate by passage of time to the extent that it would become unusable after some time and therefore, in the interest of justice, the vehicle may be released to the Petitioner. He further undertakes to give any sort of conditions required till the finalization of the criminal case or for that matter any other proceedings initiated by the authorities.
4. This Court has, vide order dated 13.09.2021, directed the Deputy Advocate General to seek instructions from the concerned authorities for proper adjudication of the case and further directed that concerned Officer of the said Department should remain present before this Court on the next date of hearing.
5. In pursuance of the said order, Shri TR Dhurve, Joint Commissioner, Chhattisgarh Goods and Services Tax has appeared before this Court today.
6. Learned State Counsel would submit that Sections 129 and 130 of GST Act deal with, detention, seizure and release of goods and conveyances in transit and Confiscation of goods or conveyances and levy of penalty respectively, which read as follows:-

“Detention, seizure and release of goods and conveyances in transit.--(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this

Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-

- (a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
- (b) on payment of penalty equal to the fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. Of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;]
- (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2)***

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1)]

(4) (No penalty) shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section(3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.]”

“130. Confiscation of goods or conveyances and levy of penalty.- (1) Notwithstanding anything contained in this Act, if any person--

- (I) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax, or
- (ii) does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) supplies any goods liable to tax under this Act without having applied for registration; or
- (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorized by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

7. From perusal of the aforesaid provisions of the Sections, it is evident that vehicle in which the goods were being transported, is in violation of the Goods and Services Tax Act and the same can be seized or detained.
8. Section 129 of the Central/Chhattisgarh Goods and Services Tax Act, 2017 (hereinafter referred to as the "GST Act") is a special

provision providing for detention and seizure of goods in transit. While Section 129(1) of the GST Act provides for detention of goods being transported in contravention of the provisions of the GST Act, the latter portion of the very same provision requires release of the goods if the owner of the goods comes forward and makes payment of tax and penalty equal to 100% of the tax payable on such goods if the goods are taxable and in case of exempted goods on payment of an amount equal to 2% of the value of goods or Rs.25,000/- whichever is less. Even if the owner of the goods does not come forward to make payment of tax and penalty then Section 129(1)(b) of the GST Act provides for release of the goods on payment of tax and penalty equal to 50% of the value of the goods reduced by the tax amount paid thereon in case of taxable goods and in case of exempted goods on payment of an amount equal to 5% of the value of goods or Rs.25,000/- whichever is less.

9. The provisions of Section 130 of the GST Acts deal with confiscation of goods, which have been transported in violation of the GST Act while, the provisions of Section 129 deal with detention, seizure and release of goods and conveyances in transit, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance shall be liable to detention or seizure and shall be released as mentioned therein. The power of detention is only under Section 129 of the GST Act. The provisions of Section 129 of the GST Act confer the power to seize and detain the goods but such power is not conferred under the provisions of Section 130. From bare perusal of the provisions of Sections 129 and 130 of the GST Act, it is clear that both the sections begin with non-obstante clauses and are carved with specific objectives and contemplate different procedures insofar detaining the conveyance and seizing goods and taking and holding

possession of the things confiscated. A significant feature of the provisions of Section 129 of the Act is the provision for release of the detained conveyance and seized goods on provisional basis. The provisions of Section 129(1)(c) of the Act enable furnishing security for an amount equivalent to the amount payable under Section 129(1)(a) or Section 130(1)(v). The provisions of Section 129(2) of the Act stipulate that the provisions of Section 67(6) of the Act, which relate to power of “inspection, search, seizure and arrest”, shall apply *mutatis mutandis* for detention and seizure of goods and conveyances. The provisions of Section 67(6) of the Act states that goods seized under sub-section (2) thereof, 'shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or non-payment of applicable tax, interest and penalty payable as the case may be.

10. From perusal of Sections 129 and 130 of the GST Act, it is quite apparent that both the Sections start from word notwithstanding anything contained in this Act. The expression “notwithstanding anything contained in this Act” appearing in opening of any provision conveys that inspite of the provisions or the Act mentioned thereafter it shall have full operation. It is used to override the mentioned law in specified circumstances. It is with a view to give the enacting part of the section, in case of conflict, an overriding effect over the Act or provision mentioned in the non obstante clause. It conveys that in spite of the provisions or the Act mentioned in the non-obstante clause, the enactment following such expression shall have full operation. It is used to override the mentioned law/provision in specified circumstances. If the circumstances and situation are one and the same, then provisions of Sections 129 and 130 of the GST Act will override any other law for the time being in force.
11. From perusal of the records, it is quite clear that GST Department has already initiated proceedings for confiscation of the vehicle,

which is evident from the letter dated 04.01.2021 written by the GST Officer, Mahasamund to the Police Station Komakhan. This factual matrix with regard to the request made by the GST Department to the SHO, Police Station Komakhan for confiscation of the vehicle has not been disputed by the Petitioner or he has not pointed out that the findings recorded by both the Courts below on this aspect of the matter are perverse or contrary to the record, as such, I am of the view that since the proceedings have already been initiated by the GST Department, therefore, the learned trial Magistrate has no jurisdiction to entertain the application filed by the Petitioner for grant of *supurdnama*. Thus, the rejection of the application for grant of *supurdnama* by the learned Sessions Judge, Mahasamund vide its order dated 05.02.2021 arising out of the order dated 23.01.2021 passed by the learned Judicial Magistrate, First Class, Mahasamund is legal and justified, therefore, the instant Cr.M.P is liable to be disposed of.

12. Hon'ble the Supreme Court in **Union of India Vs. G.M. Kokil & others** reported in **AIR 1984 SC 1022** has held as under:-

"10..... It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non obstante clause in Section 70, namely, "notwithstanding anything in that Act" must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act..... "

13. Again the Apex Court in **Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram**, reported in **AIR 1987 SC 117** has held as under:-

"68. A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is

more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned in the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this court in *South India Corporation (P.) Ltd. v. Secretary, Board of Revenue*, AIR 1964 SC 207 ; [1964] 4 SCR 280.

69. It is well settled that the expression 'notwithstanding' is in contradistinction to the phrase 'subject to', the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-section (1) of section 15 with sub-section (1) of section 15A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned single judge in the judgment under appeal."

14. Before parting with the case, I would observe that as reflected in the orders, the proceedings of confiscation have already been commenced by the concerned GST authorities and the vehicle can be given on interim *supurdnama* by considering the law laid down by the Hon'ble Supreme Court in the matter of *Sunderbhai Ambalal Desai v. State of Gujarat* reported in **(2002) 10 SCC 283**, which has also been reiterated by the Hon'ble Supreme Court in the matter of *General Insurance Council and others Vs. State of Andhra Pradesh and others* reported in **(2010) 6 SCC 768** wherein, the Hon'ble Supreme Court has given direction with regard to seized vehicle and held as under :-

"13. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the insurer. We also feel, it is necessary that in addition to the directions issued by this Court in ***Sunderbhai Ambalal Desai v. State of Gujarat* reported in (2002) 10 SCC 283**, considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

“(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/ guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer.”

15. In view of the above settled legal position, it is clear that the learned Judicial Magistrate, First Class and the Sessions Judge have not committed any illegality or irregularity in rejecting the application filed by the Petitioner for grant of *supurdnama* within the powers conferred under Section 482 Cr.P.C.
16. In view of the aforesaid situation, the application filed by the petitioner is disposed of reserving liberty in favour of the petitioner to move an appropriate application before the concerned authorities for releasing of the vehicle as per the provisions of the GST Act.
17. With the above observation, the instant Cr.M.P. stands disposed of with the aforesaid liberty granted in favour of the petitioner.

Sd/-
(Narendra Kumar Vyas)
Judge