IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

***

W.P.Nos.13375 & 14045 of 2024

W.P.No.13375 of 2024

Between:

M/s.Cluster Enterprises,
Revenue Ward No.20, 20/444,
Individual Shop, Walers Road, Nellore,
SPSR Nellore District, Andhra Pradesh,
Rep. by its Partner Smt. Shaik Rameeza.

… **Petitioner**

And

$ 1. The Deputy Assistant Commissioner (ST)-2
O/o.Regional Vigilance & Enforcement,
Kadapa, Kadapa District, Andhra Pradesh.

2. The Assistant Commissioner (ST)(FAC),
Proddutur-II Circle, Kadapa Division, Andhra Pradesh.

3. The Commissioner of State tax,
Government of Andhra Pradesh, D.No.12-468-4,
Adjacent to NH-16, Service Road,
Kunchanapally, Guntur District,
Andhra Pradesh.

4. State of Andhra Pradesh,
Rep.by its Principal Secretary (Revenue)(GST) Department,
Secretariat Building, Velagapudi,
Amaravathi, Guntur District.

... **Respondents**

W.P.No.14045 of 2024

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... **Respondents**

Date of Judgment pronounced on : 24-07-2024

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

HON'BLE SRI JUSTICE HARINATH.N

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether the Lordship wishes to see the fair copy of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

HON'BLE SRI JUSTICE HARINATH.N

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... **Respondents**

! Counsel for petitioner : Sri V. Bhaskar Reddy, learned Senior Counsel appearing on behalf of Sri V. Siddharth Reddy

^Counsel for Respondents 1 to 4 : G.P. for Commercial Tax

<GIST :

>HEAD NOTE:

? Cases referred:

APHC010268282024

**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3488]

WEDNESDAY, THIS THE TWENTY FORTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION NOs: 13375 of 2024 & 14045 of 2024

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... **Respondents**

Counsel for petitioner : Sri V. Bhaskar Reddy, learned Senior Counsel appearing on behalf of Sri V. Siddharth Reddy

Counsel for Respondents 1 to 4 : G.P. for Commercial Tax

The Court made the following Common Order:

Dt: 24.07.2024

(per Hon'ble Sri Justice R.Raghunandan Rao)

Both these Writ Petitions arise, essentially, out of the same set of facts and raise similar questions of fact and law. In such circumstances, both these Writ Petitions are disposed of by way of this Common Order.

2. Heard Sri V. Bhaskar Reddy, learned Senior Counsel appearing on behalf of Sri V. Siddharth Reddy, learned counsel for the petitioner and the learned Government Pleader for Commercial Tax.

3. The petitioners herein are dealers of scrap iron and were transporting scrap iron for sale to a dealer in Telangana State. The vehicles in which this scrap iron was being transported was stopped for verification and inspection on 27.04.2024 by the Deputy Assistant Commissioner (ST)-2, Office of the Regional Vigilance & Enforcement Department, Kadapa. He is arrayed as the 1st respondent in both the Writ Petitions.

4. After verifying the documents available with the driver of the conveyance, the 1st respondent issued a notice in Form GST MOV-10, under Section 130 of the Central Goods and Service Tax Act, 2017 [for the short "the CGST, Act"], on 01.05.2024 calling upon the petitioners to show-cause why the goods under transport and as well as the vehicle in which the

goods have been transported should not be confiscated. These notices were served on the driver of the vehicle.

5. Thereafter, the petitioners have filed their objections dated 08.05.2024, setting out the grounds why the proposed action should be dropped. After receipt of these objections, the 1st respondent passed orders, in both cases, dated 25.05.2024, confiscating the goods as well as the vehicle under Section 130 of the CGST, Act, Section 130 of the State Goods and Services Act /Section 21 of the Union Territory Goods and Service Tax, Act and under Section 20 of the Integrated Goods and Service Tax Act, 2017. The petitioners were also informed that the above said goods and conveyance could be released on payment of the penalty and fine set out in the said orders.

6. Aggrieved by these two orders, the petitioners have approached this Court by way of the present Writ Petitions.

7. Sri V. Bhaskar Reddy, learned Senior Counsel appearing on behalf of Sri V. Siddharth Reddy, learned counsel for the petitioner in the matter, would submit that the proceedings, including the orders of confiscation dated 25.05.2024, are invalid and without jurisdiction. He would submit that in the event of any goods being transported in contravention of the provisions of the CGST Act, the authorities can at best initiate action, for detention and seizure, under Section 129 of the CGST, Act and only in the event of such action culminating in an order of seizure and detention and

subsequent failure of the dealer to pay the amounts demanded under the said order of detention can the authorities initiate action under Section 130 of the CGST Act. He would submit that in the present case the 1st respondent, without invoking the provisions of Section 129 of the CGST Act had straight away issued notices under Section 130 of the CGST Act, which is impermissible and is not in accordance with the scheme of the Act. He relies upon Circular No. 41/15/2018-GST, dated 13.04.2018 issued by Central Board of Indirect Taxes and Customs.

8. He would contend that even assuming that there is a possibility of invoking Section 130 of the CGST Act directly, such invocation would require formation of a *Prima face* satisfaction that there has been transport of goods with an intention to evade tax. A perusal of the show-cause notice does not reveal any such formation of satisfaction and consequently, notices under Section 130 of the CGST, Act could not have been issued directly. He would submit that the order of confiscation, dated 25.05.2024, in both the cases, contain reasons which were not available in the show-cause notices and the petitioners were not given an opportunity to answer such findings in as much as they were never put to the petitioners.

9. The Notices were only served on the driver of conveyance and statements were taken from the driver without any opportunity being given to the petitioners to show that the said statements may not be correct. He would also contend that the show-cause notices as well as the orders of

detention show that the some kind of an inquiry was conducted by the authorities and the report of such inquiry was not furnished to the petitioners even after a specific request was made in the reply to the show-cause notices.

10. He would contend that any detention of goods or conveyance can only be done on issuance of Form MOV-6 under Section 129 of the CGST Act and there is no provision under Section 130 of the CGST Act for detention of the goods. He would submit that detention of the goods without issuance of such Form MOV-6 is clearly impermissible and beyond of the jurisdiction and authority of the 1st respondent.

11. He would also contend that Central Board of Indirect Taxes and Customs had issued a circular bearing No.128/47/2019-GST, dated 23.12.2019 instructing all officials of the respective GST Departments that all communications/orders should contain Document Identification Numbers so as to authenticate the issuance of such communications/orders. He would further submit that in the present case no such DIN is available on the order of confiscation dated 25.05.2024 and consequently, the said orders would have to be set aside.

12. The learned senior counsel, in summation of the above contentions would submit that orders of confiscation suffer from lack of jurisdiction apart from a clear violation of the principles of natural justice.

13. The learned Government Pleader for Commercial Tax, in reply, would submit that the provisions of Sections 129 & 130 of the CGST Act deal with different situations. He would submit that Section 129 of the CGST Act would be applicable where there is transport of goods in contravention of the provisions of the CGST Act. This contravention could be on account of negligence or any other reason without intent to evade payment of taxes. However, Section 130 of the CGST has a larger ambit. While Section 129 of the CGST is applicable only when the goods are being transported, the provisions of Section 130 would apply across all fact situations, including during transport of goods, wherever there is an intent to evade tax. He would submit that the distinction between these two provisions is whether any action has been taken by a dealer with an intent to evade tax or not.

14. The learned Government Pleader for Commercial Tax would submit that wherever the authorities, on a *prima facie* view, are of the opinion that there is a clear intention to evade payment of tax, it would be open to the authorities to initiate action under Section 130 of CGST directly and without having to involve Section 129 of CGST, Act.

15. The learned Government Pleader for Commercial Tax on the question of the principles of natural justice and the manner in which the show-cause notices have been issued prior to the passing of the order, would submit that the show-cause notices have clearly made out a case for invocation of Section 130 of CGST, Act and that the show-cause notices

have set out the grounds on which the provisions of Section 130 of CGST Act are being invoked. He would further submit that the impugned orders dated 25.05.2024, passed by the 1st respondent would also cover all the issues which had been recorded in the order of confiscation.

16. The learned Government Pleader for Commercial Tax further would submit that DIN number is only necessary where the orders are being served on the dealers even before they are uploaded on the portal. He would submit that wherever the orders are uploaded on the portal of the department, it is not necessary to affix any DIN number on such orders.

17. V. Bhaskar Reddy, learned Senior Counsel, in reply, would submit that there is no distinction between orders uploaded on the portal of the department and the orders which are served directly on the dealers. He would submit that the circular clearly covers both kinds of orders and there can no order without a DIN number.

18. Both sides have relied upon the Judgment of the High Court of Gujarat at Ahmedabad, in the case of **Siddhbali Stone Gallery Vs. State of Gujarat**, which had followed its own Judgment in the Case of **Synergy Fertichem Pvt. Ltd Vs. State of Gujarat** [Special Civil Application No.4730 of 2019].

Consideration of the Court:

19. The contentions raised on both sides gives rise to the following issues.

1) Whether action can be taken under Section 30 of the CGST Act only after action had been initiated under Section 129 of the CGST Act?

2) Whether action taken under Section 130 of the CGST Act, without a prior invocation of Section 129 of the Act would render the proceedings under Section 130 of the CGST Act invalid?

3) Whether non affixture of DIN Number on the order of confiscation would render the said order invalid?

20. At the outset, it is clarified that this Court is not going into the merits of the case in as much as the said merits of the case require a determination of facts and this Court declines to go into these facts.

21. Section 129 and 130 of the Act reads as follows:

> **129. 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 penalty;

(b)on payment of penalty equal to 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 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) Omitted vide the Finance Act, 2021, effective from 01.01.2022 by Central Government.

(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 days 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) Where 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 be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised 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 penalty equal to hundred per cent of the tax payable on such goods;

> 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) Omitted vide the Finance Act, 2021, effective from 1-1-2022**.
>
> (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.

22. Sri V. Bhaskar Reddy, the learned Senior Counsel contends that authorities would have to first initiate action under Section 129 of the Act in the event of any prima facie contravention of the provisions of Act or Rules in transporting goods. Thereafter, opportunity is to be given to the dealer or the person in-charge of the conveyance to show that there has been no contravention of the Act or Rules. The provisions of Section 130 would also be invoked, in the event of the detaining authority, coming to a further conclusion that there has been a contravention of the Act and Rules in the transport of the concerned goods on account of the attempt of the

dealer to evade tax. The learned Senior Counsel would show that any other interpretation would not be in accordance with the scheme of Section 129 and 130 of the Act. He would submit that the conditions for invocation of Section 129 and 130 are essentially the requirement that there has been a contravention of the provisions of the Act or the Rules. It is only after such a finding is given and a further question of whether the transport of goods was done in contravention of the Act and Rules for the purposes of evading tax arises that the provisions of Section 130 of the CGST Act can be applied. The learned Senior Counsel would further submit that, leaving it open to the authority on the spot, to decide whether he will proceed under Section 129 or section 130 of the CGST Act, would give uncanalised and arbitrary power to the authority to initiate, either the provisions of Section 129 for detaining and seizing the goods or the provisions of Section 130 for confiscating the goods and levying penalty. Such uncanalised power would be against the principles of equality and reasonableness and would amount to delegation of power without any regulation. The learned senior counsel would submit that such an interpretation can be avoided if any action in relation to any contravention of the Act or Rules, in the transport of goods, commences only by way of proceedings under Section 129 and subsequently under Section 130 if there is prima facie case of an attempt to evade tax.

23. The learned senior counsel also relied on the circular dated 13.04.2018 mentioned above. This circular set out the procedure for

interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyance. Clause-II (a) to (j) set out the procedure for exercising the power under Section 129 of the CGST Act for seizure or detention of goods and conveyances. Clause-II (k) reads as follows:

> "In case the proposed tax and penalty are not paid within seven days from the date of the issue of the order of detention in Form GST MOV-06, action under section 130 of the CGST Act shall be initiated by serving an notice in FORM GDT MOV-10, proposing confiscation of the goods and conveyance and imposition of penalty."

24. While this argument looks attractive at first blush, clause-II (l) reads as follows:

> "Where the proper officer is of the opinion that such movement of goods is being effected to evade payment of tax, he may directly invoke section 130 of the CGST Act by issuing a notice proposing to confiscate the goods and conveyance in FORM GST MOV-10."

A reading of clause-II (l) shows that the CBIC had also understood the scheme of Section 129 and 130 of the CGST Act to be two provisions that operate in two separate fields and that provisions of Section 130 can always be invoked directly without a prior invocation of Section 129 of the CGST Act.

25. The question of the interplay between Section 129 and 130 of the CGST Act was considered, by a Division Bench of the High Court of

Gujarat and Ahmadabad, in a case of **Synergy Fertichem Pvt. Ltd Vs. State of Gujarat** [Special Civil Application No.4730 of 2019]. This judgment was followed by the High Court of Gujarat in the case of **Siddhbali Stone Gallery Vs. State of Gujarat** in Special Civil Application No.17533 of 2019. In **Synergy Fertichem Pvt. Ltd Vs. State of Gujarat,** the Division Bench of the Hon'ble High Court of Gujarat was considering a similar question of whether proceedings under Section 130 of the CGST Act can be initiated without any prior proceedings under Section 129 of the CGST Act. The view taken by the Hon'ble High Court of Gujarat has been summarised in paragraphs 101 and 102 of the said Judgment which are extracted.

> 101. We are of the view that at the time of detention and seizure of goods or conveyance, the first thing the authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rules. The second step in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was with an intent to evade the payment of tax. Section 135 of the Act provides for presumption of culpable mental state but such presumption is available to the Department only in the cases of prosecution and not for the purpose of section 130 of the Act. What we are trying to convey is that in a given case, the contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was with the necessary intent to evade payment of tax.
>
> 102. In such circumstances, referred to above, we propose to take the view that in all cases, without any application of mind and without any justifiable grounds or reasons to believe, the authorities may not be justified to straightway issue a notice of confiscation under section 130 of the Act. For the purpose of issuing a notice of confiscation under section 130 of the Act at the threshold, i. e., at the stage of section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction, the authority concerned is convinced that the contravention was

> with a definite intent to evade payment of tax. We may give one simple example. The driver of the vehicle is in a position to produce all the relevant documents to the satisfaction of the authority concerned as regards payment of tax, etc., but unfortunately, he is not able to produce the e-way bill, which is also one of the important documents so far as the Act, 2017 is concerned. The authenticity of the delivery challan is also not doubted. In such a situation, it would be too much for the authorities to straightway jump to the conclusion that the case is one of confiscation, i.e, the case is of intent to evade payment of tax.

26. While respectfully agreeing with the said analysis of the inter play between sections 129 and 130 of the CGST Act, one further aspect needs to be noticed by this Court. Section 129 applies only when goods are being transported. The provisions of Section 129 would not apply in relation to a situation where the goods are not in transit. The language of Section 129(1) specifically states that detention or seizure of goods can be carried out while the goods are in transit, in contravention of the Provisions of the Act or the Rules made there under. In the case of Section 130 confiscation of goods or conveyances and levy of penalty can be done subject to any of the five conditions enumerated in Section 130 (1) being available. Section 131(v) provides for confiscation of a conveyance where goods are being transported in such conveyance, in contravention of the Act or the rules. This would mean that invocation of Section 129 will not precede all cases where Section 130 is invoked.

27. The Division Bench of the Hon'ble High Court of Gujarat, after observing, as extracted above, had cautioned that a simple statement that

the goods were being transported with an intention to evade tax, in notices of confiscation would not be sufficient and there would have to be specific reasons, recorded in writing as to why Section 130 of the Act is being invoked at the very threshold and that there must be material based on which alone the authority could have formed such an opinion and invocation of Section 130 becomes necessary.

28. In the present case, the conveyances and goods were stopped and detained on 27.04.2024. Thereafter, a statement was taken from the driver of the conveyances, in FORM GST MOV-01 on 27.04.2024. After recording the statement, the 2nd respondent issued FORM GST MOV-10 dated 01.05.2024, invoking the provisions of Section 130 of the CGST Act. In this notice, the discrepancies which were noticed by the 2nd respondent, were set out, and it was stated that these discrepancies lead to a *prima facie* conclusion that the transport of goods was done with an intention to evade tax. Thereafter, objections were submitted by the petitioner on 08.05.2024 and the order of confiscation was passed on 25.05.2024. The initiation of the proceedings, under Section 130 of the CGST Act, cannot be faulted at that stage. However, the 2nd respondent would have to make good the prima facie satisfaction that the petitioners were trying to evade tax.

29. In the objections of 08.05.2024, the petitioner had taken an objection that a general statement that the documents verified by the 2nd

respondent revealed that the transaction is of a suspicious nature without giving details of the documents which were found to be of a suspicious nature and without giving any details as to why the authority had thought that the said documents were of a suspicious nature. The petitioner had, after pointing out the lack of reasons/grounds in the show cause notice had also sought a copy of the enquiry report on the basis of which it was found that there were discrepancies in relation to the purchase orders produced by the in charge of the conveyance and the e-way bills submitted to the authority. In the order of confiscation, various details relating to the names of suppliers and the e-way bills which were not available in relation to such supplies etc., were included. These details were not available in the show cause notice issued to the petitioner. Further, there is no DIN number attached to the order of confiscation dated 25.05.2024.

30. It is a settled principle of law that a show cause notice would have to set out the entire case against the noticee and noticee should be given an opportunity to rebut the same. In that process, the noticee can always ask for the material on the basis of which the show cause notice has been issued. Any deviation from the above requirement would amount to violation of principles of natural justice. In the present case, the order of confiscation contains various details which were not placed before the petitioners in the show cause notices of 01.05.2024. The 2nd respondent did not choose to respond to the request of the petitioners for supply of the

material on the basis of which the show cause notice has been issued would also amount further violation of the principles of natural justice.

31. The requirement of every order or communication of the tax authorities to contain a DIN number is found in Central Board of Indirect Taxes and Customs circular bearing No.128/47/2019-GST, dated 23.12.2019. This circular does not make any distinction between proceedings/orders communicated directly to the dealers and proceedings which are uploaded on the portal. The non mention of DIN militates against the validity of the proceedings, dated 25.05.2024.

32. Accordingly, these writ petitions are allowed and the confiscation order in FORM GST MOV-11 dated 25-05-2024 issued by the 2nd respondent vide Ref.No.ZD370524023072S and confiscation order in FORM GST MOV-11 dated 25-05-2024 issued by the 2nd respondent vide Ref.No ZD370524023029J are set aside and the matters are remanded back to the 2nd respondent for proper adjudication following principles of natural justice. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J.

HARINATH.N, J.

RJS/BSM

HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION Nos.13375 & 14045 of 2024

(per Hon'ble Sri Justice R. Raghunandan Rao*)*

Date: 24.07.2024

RJS/BSM