Synergy Fertichem Pvt. Ltd. & Ors. v. State of Gujarat & Ors.

Whether Sections 129 (detention, seizure and release of goods in transit) and 130 (confiscation of goods and conveyance) of the CGST Act, 2017 are sequential — i.e., whether Section 130 can only be invoked after non-compliance of Section 129(6) — or w

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Case Law No: GIB-AHC-2019-03
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The lead petitioner is a company engaged in import and sale of Ceramic Pigment Ink. It placed an order for a consignment from its principal in Spain, imported through Ahmedabad Airport. The company filed a bill of entry for home consumption and paid applicable customs duty as well as IGST before commencement of movement of goods. While the goods were being transported from Ahmedabad Airport to the company's warehouse in Vadodara, the truck was intercepted on the Ahmedabad-Vadodara Expressway by the GST Authorities. The transporter duly produced all documents including the bill of entry evidencing prior payment of IGST. The vehicle was detained solely on the ground that the e-way bill had not been generated — the clearing and forwarding agent had urgently dispatched the consignment given its perishable nature without waiting for the e-way bill. On learning of the detention, the company promptly generated the e-way bill. However, the authorities refused to release the goods and raised a demand for release which far exceeded the value of the goods themselves. The authorities proceeded to issue a Show Cause Notice directly under Section 130 of the CGST Act demanding payment of tax, 100% penalty and redemption fine equal to the value of goods in lieu of confiscation — without first following the procedure under Section 129 of the Act. Five writ applications raising identical issues were clubbed and disposed of by a common judgment.

Relevant Facts

IGST had been paid in full at the time of import — before movement commenced. Bill of entry for home consumption accompanying the goods evidenced prior payment of tax. The only lapse was non-generation of e-way bill at the time of transport — attributable to the C&F agent acting in urgency given the perishable nature of the goods and their limited shelf-life. Despite tax having already been paid, the authorities levied 100% penalty under Section 129 AND simultaneously invoked Section 130 for confiscation with redemption fine equal to the full value of goods. The Show Cause Notice under Section 130 was issued without first completing Section 129 proceedings — i.e., without issuing the Section 129(3) notice, granting hearing, and allowing the 14-day compliance window. The petitioners' central argument was that Section 130 is entirely dependent on non-compliance with Section 129(6) and cannot be independently invoked. The Revenue's case was that both sections carry non-obstante clauses making them independent of each other.

Court Observations (Verbatim — Final Conclusions)

"*(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.*"

— Para 182(i) — Core ratio: Sections 129 & 130 are independent

"*(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.*"

— Para 182(ii) — On "intent to evade" in Section 130

"*(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.*"

— Para 182(iii) — Strong case needed for invoking Section 130 at threshold

"*(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.*"

— Para 182(iv) — Mandatory written reasons & superior authority approval

"*(vi) Section 130 of the Act is not dependent on clause (6) of Section 129 of the Act.*"

— Para 182(vi) — Rejecting assessee's sequential argument

"*(xiv) The goods are not liable to be detained on the ground that the tax paid on the product was less. In such circumstances, the Inspecting Authority is expected to alert the Assessing Authority to initiate appropriate proceedings 'for assessment of any alleged sale at which the dealer will have his opportunities to put forward his pleas on law and on fact. The process of detention of the goods cannot be resorted to when the dispute is bona fide, especially concerning the exigibility of tax and, more particularly, the rate of that tax.*'"

— Para 182(xiv) — Inspecting authority has no jurisdiction on valuation

"*(xvi) The extraordinary powers under Article 226 of the Constitution, directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under extraordinary situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.*"

— Para 182(xvi) — Restricted scope of writ interference

Summary of Mixed Outcomes

Against Assessee

Sections 129 & 130 held independent — Section 130 can be invoked without first completing Section 129. Section 130 is NOT dependent on Section 129(6) non-compliance. Mens rea not required for Section 130.

For Assessee

Strong evidence of "definite intent to evade" mandatory at threshold. Written reasons + superior authority approval mandated. Detention for valuation disputes not permissible. Goods directed to be released pending confiscation proceedings.

Final Verdict

The Court laid down 16 general principles on the interpretation of Sections 129 and 130 of the CGST

Act and directed all matters to be listed before the tax bench for deciding individual confiscation challenges on merits. The primary argument of the assessees — that Section 130 cannot be independently invoked and is subject to Section 129(6) — was rejected. However, the Court ordered interim release of goods and conveyances in all petitions pending confiscation proceedings, subject to final outcome. No final adjudication on the merits of individual petitions was undertaken.

ADDITIONAL FOOTNOTES

Cases Referred by Court

Noushad Allakkat v. State Tax OfficerReferred
(2019) 61 GSTR 297 — Kerala High Court — On the interplay of Sections 129 and 130

Assistant State Tax Officer & Anr. v. [Respondent]Referred
Kerala High Court Division Bench — On detention/seizure and confiscation under GST

Sodhi Transport Co. & Anr. v. State of Uttar PradeshRelied upon
(1986) 62 STC 381 (SC) — Detention provisions in transit justified to check tax evasion; upheld under Article 301

State of Rajasthan & Anr. v. D.P. MetalsRelied upon
(2001) 124 STC 611 (SC) — Constitutional validity of transit detention provisions

State of Kerala & Ors. v. A.P. MammikuttyRelied upon
AIR 2015 SC 3009 — Purposive interpretation applicable to taxing statutes

J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh & Ors.Relied upon
AIR 1961 SC 1170 — Harmonious construction when both provisions contain non-obstante clauses

Indra Kumar Patodia & Anr. v. Reliance Industries Ltd.Relied upon
AIR 2013 SC 426 — General non-obstante clause to be interpreted contextually

Union of India & Anr. v. Hansoli DeviRelied upon
AIR 2002 SC 3240 — Interpretation which renders any part of statute otiose is to be avoided

Raajratna Metal Industries Ltd. v. State of GujaratRelied upon
SCA No. 15093 of 2018 (Gujarat HC, decided 20.06.2019) — Non-obstante clause to be read contextually

Shri Kamal Kumar Sharma v. State of AssamRelied upon
(2006) 144 STC 458 (Gauhati HC) — Inspecting authority has no jurisdiction over valuation disputes

Jeyyam Global Foods (P) Ltd. v. Union of IndiaRelied upon
(2019) 64 GSTR 129 (Madras HC) — Inspecting authority has no power to determine classification under Section 129

N.V.K. Mohammad Sulthan Rawther and Sons v. Union of IndiaRelied upon
(2019) 61 GSTR 307 (Kerala HC) — On similar grounds on classification/valuation at checkpost

Central Bank of India v. State of KeralaRelied upon
[2009] 4 SCC 94 — On construction of non-obstante clauses

A.G. Varadarajulu v. State of Tamil NaduRelied upon
(1998) 4 SCC 231 — On non-obstante clauses and overriding effect in case of conflict

Hardeep Singh v. State of PunjabRelied upon
2014 (3) SCC 92 — On statutory interpretation principles

Finesse Creation Inc. (Bombay HC)Referred
On concept of redemption fine — arises only in event goods are available for confiscation

Raja Impex (Punjab & Haryana HC)Referred
On confiscation proceedings and redemption fine when goods already released

State of Rajasthan v. Rajasthan Chemist AssociationRelied upon
(2006) 147 STC 542 (SC) — Tax cannot be imposed on market value without establishing it was the actual transaction value