

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11007 of 2019**

JAI JAWAN JAI KISAN SUPPLIERS

Versus

STATE OF GUJARAT

Appearance:

MR UCHIT N SHETH(7336) for the Petitioner(s)No. 1

for the Respondent(s)No.2

MS MAITHILI MEHTA, AGP for the Respondent(s)No. 1

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR.JUSTICE A.C. RAO**Date: 26/06/2019****ORALORDER****(PER: HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

Let notice be issued to the respondents, returnable on 24th July 2019. Ms.Mehta, the learned AGP waives service of notice for and on behalf of the respondents – State.

Having heard the learned counsel appearing for the parties and having gone through the materials on record, we propose to pass an interim order with regard to the release of the goods seized by the officers of the Goods and Services Tax department.

It appears from the materials on record that the writ-applicant herein is engaged in the business of betel nuts. He is a registered dealer under the Goods and Services Tax Act (for short, 'the GST Act').

The writ-applicant is operating from the State of Tamil Nadu. It appears that the consignment of betel nuts was being transported from Vellor, State of Tamil Nadu, to Delhi. While the goods were in transit and passing through the State of Gujarat, the vehicle was intercepted by the officers of the GST and the same came to be detained on the ground that E-Way Bill was not produced when demanded. In such circumstances, the vehicle along with the goods came to be seized.

It appears that immediately the writ-applicant preferred a representation dated 22nd April 2019 addressed to the State Tax Officer (2), Mobile Squad, Division-1, Ahmedabad, stating that the writ-applicant is ready and willing to deposit the requisite amount without prejudice to his rights and contentions, and on deposit of such amount, the vehicle along with the goods may be released.

It appears that one another representation dated 30th April 2019 addressed to the State Tax Officer (2), Mobile Squad, Division-1, Ahmedabad, along with the copy of the challan.

To cut-short the controversy for the time being, the writ-applicant deposited an amount of Rs.1,85,500=00. However, according to the authorities, the amount due and payable is Rs.3,93,750=00.

There are many larger issues involved in this petition, more particularly, with regard to the interpretation of Sections 129 and 130 of the GST Act. Many petitions have been admitted and are pending for consideration in this regard.

We propose to pass an order directing the respondent authorities to release the goods on the writ-applicant depositing the balance amount, i.e. Rs.2,08,250=00.

In passing the aforesaid order, we take support of one order passed by a co-ordinate Bench of this Court dated 8th March 2019 in the Special Civil Application No.4730 of 2019. The order reads thus:

“1. On 06.03.2019 this Court had passed an order in the following terms:

“1. Mr.Uchit Sheth, learned advocate for the petitioners invited the attention of the court to the provisions of sections 129 and 130 of the Central Goods and Services Tax Act, 2017, to point out the procedure which is required to be followed by the respondent authorities in case where any goods are in transit in contravention of the provision of the Act or the rules made thereunder. It was pointed out that firstly, under section 129 of the Act, the officer is required to issue a notice as contemplated under sub-section (3) thereof and thereafter, after affording an opportunity of hearing to the person concerned, pass an order thereunder. It was submitted that it is only if there is no compliance of the order passed under section 129 of the Act, that the provisions of section 130 of the IGST Act can be resorted to. The attention of the court was invited to the impugned

show-cause notice dated 1.3.2019, to submit that the same seeks to impose penalty, redemption fine and confiscation under section 130 of the Act without initiating any proceedings under section 129 of the Act, which is not permissible in law. It was further submitted that the integrated goods and services tax has already been paid on the goods in question at the time of import thereof and that the goods in question are perishable goods with a limited shelf-life.

2. Having regard to the submissions advanced by the learned counsel for the petitioners, Issue Notice returnable on 8th March, 2019. Direct Service is permitted today."

2. In response to the notice, Mr. Soham Joshi, learned Assistant Government Pleader, has appeared on behalf of the respondents.

3. The learned Assistant Government Pleader has invited the attention of the Court to the detention order dated 14.02.2019 issued by the proper officer under sub-section (1) of section 129 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") and other relevant statutes. It was submitted that the goods in question were not accompanied by an E-way bill during the course of transit and therefore, the respondents are fully justified in passing the detention order under section 129(1) of the CGST Act.

4. Subsection (3) of section 129 of the CGST Act provides that the proper officer detaining or seizing the goods or conveyances 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). Sub-section (4) provides that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

5. In the present case, the show-cause notice dated 01.03.2019 has been issued under section 130 of the CGST Act calling upon the petitioner to show cause as to why the goods in question as well as the vehicle should not be confiscated for non-payment of an amount of Rs.60,72,639/-, as detailed therein. On a query by the Court, the learned Assistant Government Pleader is not in a position to point out that the procedure, as contemplated under subsections (3) and (4) of section 129 of the CGST Act, has been followed. Thus, prima facie, it appears that the show-cause notice under section 130 of the CGST Act has been issued without complying with the requirements of section 129 of the CGST Act. It is also an admitted position that the goods in question are perishable in nature.

6. In the aforesaid premises, in the opinion of this Court, the petitioner has made out a strong prima facie case for the grant of interim relief. By way of interim relief, the respondents are hereby directed to forthwith release

the goods in question and the Truck bearing registration no. GJ-07-UU-7250 detained/seized under purported exercise of powers under sections 129 and 130 of the CGST Act. However, the petitioner shall file an undertaking before this Court within a week from today to the effect that in case the petitioner, ultimately, does not succeed in the petition, he shall duly cooperate in the further proceedings.

7. *Stand over to 27.03.2019, so as to enable the respondents to file affidavit-in-reply, if any, in the matter. Direct service is permitted today.”*

The vehicle bearing registration no.GJ-03-AT-1362 as well as the goods, i.e. betel nuts, detained/seized under purported exercise of powers under Sections 129 and 130 of the GST Act shall be released immediately upon the writ-applicant depositing the amount of Rs.2,08,250=00 with the concerned department.

The writ-applicant shall file an undertaking before this Court within a week from today to the effect that in case the writ-applicant ultimately does not succeed in the petition, he shall duly cooperate in the further proceedings.

Post this matter for further hearing on 24th July 2019. Direct service is permitted.

(J. B. PARDWALA,J.)

(A. C. RAO,J.)

/MOINUDDIN