

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6121 of 2019**

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KABIR ENTERPRISE THROUGH PROPRIETOR GOVINDBHAI
BHAGUBHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:

MR.D K.PUJ(3836) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 2,3

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the
Respondent(s) No. 1

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 27/03/2019

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Leave to delete the respondent No.3 from the array of the respondents.

2. Mr. D. K. Puj, learned advocate for the petitioner has invited the attention of the court to the notice for confiscation of goods or conveyance and levy of penalty under section 130 of the Central Goods and Services Act, 2017 read with the relevant provisions of State/Union Territory Goods and Services Act, 2017/The Integrated Goods and Service Tax Act, 2017 and Goods and Services Tax (Compensation to States) Act, 2017 issued in FORM GST MOV-10, to submit that despite the fact that under section 129 of the Central Goods and Services Tax Act, 2017, the concerned 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. Referring to the impugned notice, it was pointed out 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.

3. A perusal of the impugned notice reveals that in paragraphs 2, 3 and 4 thereof, there are various blanks which have not been filled in which makes it manifest that the procedure as required under the provisions of the Act as referred to in paragraphs 2, 3 and 4 have not been followed by the competent authority prior to issuance of the said notice.

4. **Issue Notice** to the respondents returnable on 3rd April, 2019. The respondents shall also show cause as to why costs should not be imposed upon the respondents for non-compliance of the relevant statutory provisions.

5. It is clarified that in the meanwhile, it would be open for the respondents to release the vehicle together with the goods upon payment of the tax amount in terms of the impugned notice. Direct service is permitted.

(HARSHA DEVANI, J)

(BHARGAV D. KARIA, J)

Z.G. SHAIKH