

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/SPECIAL CIVIL APPLICATION NO. 226 of 2023**

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M/S GAIKWAD ENTERPRISES  
Versus  
STATE OF GUJARAT

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Appearance:

KUMAR H TRIVEDI(9364) for the Petitioner(s) No. 1  
MR. MANAN MEHTA, AGP for the Respondent(s)

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**CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA**  
and  
**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

**Date : 10/03/2023**

**ORAL ORDER**  
**(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

Heard learned advocate Mr. Kumar Trivedi for the petitioner and learned Assistant Government Pleader Mr. Manan Mehta for the respondent State.

2. By filling the present petition under Article 226 of the Constitution, challenge is addressed by the petitioner to two orders. The first is order dated 23.11.2022 (GST MOU 06) which is an order passed under section 129(2) of the Central Goods and Services Tax Act, 2017 and the the Gujarat Goods and Services Tax Act, 2017. The other challenge is addressed against order dated 25.11.2022 (MOV 10) passed under section 130 of the Act. By order dated 25.11.2022, the goods of the petitioner came to be confiscated.

3. The facts to be noticed are that the petitioner pursuant to purchase order raised by it, transported the goods in the nature of metal scrap from Pune, Maharashtra to Vijapur, Gujarat through conveyance truck bearing

No. MH-16-AY-9809. When the goods were in transit, the truck was intercepted by the mobile squad of respondent No.2 seeking to seize the goods and conveyance. Notice dated 20.11.2022 was issued which resulted into passing of order dated 23.11.2022 under section 129 of the Act.

3.1 While the goods were seized as above, the authorities proceeded to pass another order under section 130 of the Act confiscating the goods.

3.2 Section 129 of the Act deals with the detention, seizure and release of goods and conveyance in transit. The provisions reads as under,

“Section 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 any 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 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 any amount equal to five percent of the value 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) xxx

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

3.3 Section 130 of the Act on the other hand relates to confiscation of goods or conveyance and levy of penalty. It reads thus,

“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 percent 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) xxxx

(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.”

3.4 As could be seen from the reading of section 129 quoted above, when the goods are seized while in transit, upon conditions contemplated in the section itself, they could be released. Those conditions enumerated are in clauses (a), (b) and (c) of the section. On the other hand, as could be *prima facie* gathered, the confiscation under section 130 would lead to the imposition of penalty proceedings under section 130 are adjudicatory in nature.

4. Learned advocate for the petitioner assailed the impugned orders on various grounds including that while issuing the show cause notice, the authority never intended to invoke the jurisdiction under section 130 of the Act and further that without succeeding steps under section 129 releasing the goods, the invocation of section 130 readily stands to be arbitrary and illegal exercise of powers.

4.1 Learned advocate for the petitioner relied on the decision in **Irshadbhai Hamidbhai Rain vs. State of Gujarat dated 22.7.2022 in Special Civil Application No. 11240 of 2022**, in which in similar circumstances, this court permitted release of the goods on certain

conditions which included payment of penalty and tax and furnishing of bond of the amount equivalent to fine imposed.

4.2 On the other hand, learned Assistant Government pleader Mr. Manan Mehta pressed into service the very provisions of section 130 to submit that the petitioner is yet to face the adjudicatory proceedings and the same cannot be scuttled even indirectly to grant the petitioner total relief.

5. As far as the release of the goods are concerned, the prayer of the petitioner is found reasonable. The goods could be released as per the precedent in **Irshadbhai Hamidbhai Rain** (supra), by imposing stricter condition of securing amount of tax and penalty

5.1 The proceedings would continue under section 130 of the Act. In this regard, attention of the court was invited to the order of the Apex Court in **State of Punjab vs. M/s. Shiv Enterprises and Ors. being Civil Appeal No. 359 of 2023 arising out of SLP (C) No. 19295 of 2022**) wherein in the similar circumstances, the Apex Court was of the view that the proposed notice under section 130 was yet to be adjudicated.

5.2 The supreme court observed as under,

“...it was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceedings for which the notice under Section 130 of the Act was issued. Therefore, we are of the opinion that the High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same. However, at the same time, the order passed by the High Court releasing the goods in question is not to be interfered with as it is reported that the goods have

been released by the appropriate authority.

In view of the above and for the reasons stated above and without expressing anything on merits in favour of either parties, more particularly, against respondent-herein (original writ petitioner), on the aforesaid ground alone, we set aside the impugned judgment and order passed by the High Court to the extent quashing and setting aside the notice dated 14.9.2021, issued under Section 130 of the CGST Act and remand the matter to the appropriate authority, who issued the notice. It will be for the respondent-herein-original writ petitioner to file a reply to the said show cause notice within a period of four weeks from today and thereafter the appropriate authority to pass an appropriate order in accordance with law and on its own merits.”

5.3 In light of the above scenario of facts and position of law emerging, the court finds it appropriate to dispose of the present petition with certain conditions and directions. Learned advocate for the petitioner stated that the petitioner is ready to comply with the conditions of the very nature imposed in **Irshadbhai Hamidbhai Rain** (supra).

6. In that view, it is directed that the respondents shall release the goods and conveyance of the petitioner, confiscated and detained pursuant to impugned order dated 25.11.2022 (GST MOV 10) subject to the following conditions,

- (i) The petitioner shall deposit an amount of interest of Rs. 35,84,117/- if so far not paid by the petitioner.
- (ii) The petitioner shall deposit the amount towards penalty of Rs. 5,46,730/-.
- (iii) The petitioner furnishes bond to the tune of Rs. 35,84,117/-.

6.1 As far as notice under section 130 of the Act (MOV 10) is concerned, the same would culminate into appropriate orders after

adjudication. Therefore, going into the merits of the notice would be premature at this stage. The petitioner has to face the adjudicatory proceedings under section 130 of the Act.

6.2 It is directed that the competent authority shall proceed in accordance with law pursuant to notice dated 25.11.2022 (MOV 10) issued to the petitioner. Reasonable opportunity to the petitioner to defend its case, including to file reply shall be granted and thereafter appropriate order in accordance with law and on merits shall be passed by the competent authority.

6.3 The exercise shall be completed within a period of 10 weeks from the date of receipt of copy of this order.

7. The present petition stands disposed of as partly allowed in the aforesaid terms.

Direct service is permitted.

**(N.V.ANJARIA, J)**

**(NIRAL R. MEHTA, J)**

C.M. JOSHI