

226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1564-2022 (O&M)
Date of decision : 15.02.2022

Vijay Mamgain

..... Petitioner

versus

The State of Haryana & ors.

..... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE PANKAJ JAIN**

Present : Mr. Sandeep Goyal, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

AJAY TEWARI, J. (Oral)

1 By this petition the petitioner has challenged the action of the respondents in not releasing the conveyance even though he had paid the fine prescribed under Section 130 (2) proviso of the Central Goods and Services Act, 2017 (for short 'the Act').

2 It is his contention that the scheme of Section 130 of the Act makes it clear that the owner of the goods and the owner of the conveyance are two separate entities and the liability of one can not be foisted upon the other. Section 129 and 130 of the Act, are reproduced herein below:-

"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 the applicable tax and penalty equal to one 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 tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon 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 tax and 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) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing 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) 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 the 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 conveyance 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) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be

liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(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 The facts are that in this case an order of penalty and tax was made against the goods but since the same was not paid within 14 days proceedings under Section 130 of the Act were initiated. At that stage also the owner of the goods did not come forward to pay the tax and penalty or the fine in view of the confiscation. However, the owner of the conveyance i.e. the petitioner went and paid the fine imposed on the vehicle but, since the vehicle was not released he has filed the present writ petition.

4 Learned State counsel states that a perusal of Sub Section 1 of Section 129 of the Act clearly shows that on detention the goods and the

vehicle can only be released on the payment of the applicable tax and penalty and the mere fact that Section 130 of the Act is subsequently invoked would not take away the rigour of Section 129 (1). She has further argued that there is no warrant for the proposition that the owner of the goods and the owner of the conveyance are two separate entities because as per her under the main Sub Section 2 of Section 130 of the Act it is clear that whoever wants the goods or the vehicle to be released has to pay the tax, penalty and fine imposed for all the things i.e. to say for the goods also as well as for the conveyance also. As per her, the proviso would not affect this basic provision.

5 In our opinion, if this argument is to be accepted then the Section might well be rendered unconstitutional. In CWP No.18392 of 2021 titled as ***M/s Shiv Enterprises Vs. State of Punjab and others***, decided on 04.02.2022 this Court held as under:-

"21. Section 129 deals with contravention of the provisions of the Act by person transporting goods or storing goods while in transit. The provision provides for consequence of contravention of the provisions of the Act in form of detention or seizure of goods. In case, transport of goods in transit is found to be in contravention of the provisions of the Act, the same are liable to detention/seizure. On the other hand, Section 130 provides for 5 different situations in which the goods or conveyances are liable to confiscation and the person is liable to penalty under Section 122. Reading of Section 131 further makes it clear that Section 130 is a penal clause and confiscation is a form of punishment over and above other punishments prescribed under the Act. Section 130 is more stringent as compared to Section 129.

25. When the aforesaid principles of law and the bare

provisions of law are applied to the present case, we find that the investigation report relied upon by the respondents to initiate proceedings under Section 130 against the petitioner lacks sting. Under the 2017 Act, a trader is either a 'supplier' qua 'outward supply' or is a 'recipient' of 'inward supply'. The alleged 'intent to evade tax' must have a direct nexus with the activity of trader. The opinion formed by the authorities must reflect such nexus before proceeding under Section 130 of 2017 Act. A trader cannot be accused of having intention to evade payment of tax for act or omission on part of a person not immediately linked to his activity. Learned counsel for the State agreed that even if a trader wants to be prudent, there is no system in place from where he can check as to whether his predecessors in supply chain have paid input tax credit or not. Meaning thereby, it is virtually impossible for a trader to ascertain as to whether input tax has been paid by his predecessors or not and it is for this reason also that the claim to input tax credit has been made subject to scrutiny and assessment. It is the fundamental legal principle embedded in legal maxim "LEX NON COGIT AD IMPOSSIBILIA"-That the law does not compel a man to do that which he cannot possibly perform". Once a person cannot be compelled to do something not possible, definitely he cannot be penalized for not doing so."

6 By this judgment this Court has held that the principle of vicarious liability can not be extended indefinitely. In the present case also to force the owner of the conveyance to pay the tax, penalty and fine on the goods would mean that the owner of the conveyance is also foisted with the vicarious liability of any mis-declaration /fraud by the owner of the goods despite the proviso engrafted on to Sub Section 2 of Section 130 of the Act.

7 Consequently, the argument of the learned State counsel is rejected and it is directed that the conveyance be released forthwith. The goods obviously would be confiscated and disposed of by the respondents in accordance with law.

8 Petition stands allowed.

9 Since the main case has been decided, the pending Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

February 15, 2022
Pooja sharma-1

Whether speaking/reasoned	Yes
Whether Reportable :	Yes