

GST Authority cannot detain goods/conveyance in transit for non-payment of tax by other person in supply chain

The Hon'ble Punjab and Haryana High Court in *M/s. Shiv Enterprises v. State of Punjab and others [CWP-18392-2021 dated February 04, 2022]* held that, GST Authorities cannot detain goods in conveyance without passing appropriate orders if goods are accompanied with the documents as prescribed and cannot proceed against the taxpayer for contravention of any provision of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"). Further held that it is not the liability of the taxpayer to find out that whether or not other person in the supply chain has paid the tax and is the fundamental legal principle, that the law does not compel a man to do that which he cannot possibly perform.

Facts:

M/s. Shiv Enterprises ("**the Petitioner**") is engaged in selling copper scrap. The Petitioner sold scrap to its customer and while the goods were in transit, the vehicle containing such goods were checked and were detained inspite of producing all the documents. Subsequently order for physical verification / inspection of the conveyance, goods and documents in Form MOV-02 was issued and conveyance was stationed at the office of Assistant Commissioner ("**the Respondent**").

Further no other order was passed within 14 days as per the procedure under Section 129(6) of the CGST Act nor the goods were released. Later, the Petitioner filed reply to Form GST MOV-02 through e-mail and was intimated that inward supply to the sellers/suppliers of the Petitioner did not have inward supply and is only engaged in outward supply and not paying any tax. Thus, the Petitioner is liable to be proceeded under Section 130(1) CGST Act.

The Respondent contended that the Petitioner has evaded tax in several occasions and the procured goods are covered by fraudulent invoices generating by the non-existent firms to

claim inadmissible ITC in clear violation of Section 16(2)(c) of the CGST Act, which is why Show Cause Notices (“SCNs”) under Section 130 of the CGST Act were issued.

Being aggrieved, the Petitioner has filed this petition, challenging the detention of the goods under Section 129 of the CGST Act and for release of the same.

Issue:

Whether the Respondents can detain goods on grounds of inadmissible ITC without any explanation as per Section 129(6) of the CGST Act even after furnishing all the statutory documents?

Held:

The Hon’ble Punjab and Haryana High Court in ***CWP-18392-2021 dated February 04, 2022*** held as under:

- Noted that, the Petitioner can be held liable only when 'intent to evade tax' has some direct nexus with its action, where the goods in transit are in contravention of the provisions of the CGST Act. The Petitioner cannot be accused of having intention to evade payment of tax for act or omission on part of a person not immediately linked to its activity.
- Further noted that, wrongful claim of ITC may be result of a bonafide claim as well and does not necessarily involve intent to evade payment of tax. Moreover, wrongful claim of ITC is not one of the conditions enumerated under Section 130 of the CGST Act that could entail confiscation of the goods. Section 130 of the CGST Act being penal in nature has to be construed strictly.
- Observed that, the goods and conveyance in transit were accompanied with the documents as prescribed and there has been no discrepancy/ allegation by the Respondents, that the Petitioner has contravened any provision of the CGST Act or the

Central Goods and Services Tax Rules, 2017 (“the CGST Rules”) with an intent to evade payment of tax. Further, it is virtually impossible for the Petitioner to ascertain as to whether tax has been paid or not by its predecessors in the supply chain and it is for this reason also that the claim to ITC has been made subject to scrutiny and assessment.

- Opined that, it is the fundamental legal principle, that the law does not compel a man to do that which he cannot possibly perform. Thus, once a person cannot be compelled to do something not possible, definitely he cannot be penalized for not doing so.
- Held that, in case the goods in transit are accompanied with the documents as prescribed, the Respondent need not proceed under Section 129 of the CGST Act and is mandatorily conclude inspection in a prescribing time limit. Further held that, the goods/conveyance cannot be detained without passing appropriate orders in accordance with law.
- Directed the Respondent to release the goods and conveyance.

Relevant Provisions:

Section 129(1) of the CGST Act:

“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, —

.....

(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 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."

Section 130(1) of the CGST Act:

"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 of the CGST Act 2017.”

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