

### **SCN for confiscation of goods cannot be issued on mere suspicion**

The Hon'ble Gujarat High Court in ***Anant Jignesh Shah vs. Union of India [R/Special Civil Application No. 12712 of 2020 dated November 6, 2020]*** set aside the order and held that the show cause notice under Section 130 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") cannot be issued on a mere suspicion. There has to be some prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated under Section 130 of the CGST Act.

#### **Facts:-**

Anant Jignesh Shah ("**Petitioner**") is engaged in the business of trading of pan masala, who had placed an order with M/s. Atharva Enterprises, Ujjain, Madhya Pradesh for supply of pan masala amounting to Rs. 35,74,155/-. The said goods were to be transported from Ujjain, Madhya Pradesh on September 8, 2020 in a vehicle bearing No. MP-13-GA-9108 and were to be delivered at Ahmedabad, Gujarat and for the same E-way bill generated was valid for the period between September 08, 2020 to September 13, 2020.

On September 12, 2020, the vehicle carrying the goods got intercepted by the Mobile Squad of the State Tax Officer ("**Respondent No. 2**"), who subsequently confiscated the goods along with the vehicle and passed an order of detention under Section 129(1) of the CGST Act in Form GST MOV-06, dated September 13, 2020. Thereafter, Show Cause Notice ("**SCN**") in Form GST MOV-10 dated, September 15, 2020 got issued.

The SCN stated that the Petitioner had generated E-way Bill No. 631216432684 on September 8, 2020. Thereafter, on September 9, 2020, they had gone to Ujjain by taking goods together with E-way bill Nos. 681216854838, 681216855819, 631216832772 etc. and had returned on September 12, 2020 by loading the goods from Ujjain. At that time, the tax bill dated September 8, 2020 was produced when the vehicle was intercepted. Thus, stated that the Petitioner has generated E-way bill but has transported the goods twice on the very same bill.

Being dissatisfied with the issue of SCN in Form GST MOV-10, hence, the present writ application has been filed.

#### **Issue:-**

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Whether the ground on which the authority proposes to confiscate the goods and the vehicle is tenable in law?

**Held:-**

The Hon'ble Gujarat High Court in ***R/Special Civil Application No. 12712 of 2020 dated November 6, 2020*** held as under:

- Observed that, the ground on which the authority proposes to confiscate the goods and the vehicle is not tenable in law. The SCN appears to have been issued on an assumption that the driver of the vehicle might have indulged in the past in contravention of the provisions of the Act and the Rules made thereunder. It appears the entire basis for the issue of the SCN is conjectures and surmises.
- Noted that, the goods and the vehicle can be detained under Section 129 of the CGST Act only if such goods are transported in contravention of the provisions of the CGST Act or the Rules made thereunder. On inquiry, it was pointed out that when the goods were in transit and detained, it cannot be said that there was any contravention of the provisions of the CGST Act or the Rules. However, the authorities had grave suspicion that the driver of the vehicle might have entered Ahmedabad on the old E-way bill and might have succeeded in getting out thereafter without payment of any tax.
- Held that, the SCN under Section 130 of the CGST Act cannot be issued on a mere suspicion. There has to be some prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated.
- Quashed and set aside the SCN in Form GST MOV-10 dated September 15, 2020. Further, clarified that if there is any other inquiry to be made as regards to any other transaction, it is open for the authority to initiate and carry out such inquiry.

**Relevant Provisions:-**

**Section 129 of the CGST Act:**

*“Detention, seizure and release of goods and conveyances in transit-*

*129. (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) or clause (c).*

*(4) No tax, interest or 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 tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:*

*Provided 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 seven days may be reduced by the proper officer."*

**Section 130 of the CGTS Act:**

*"Confiscation of goods or conveyances and levy of penalty.*

*130. (1) Notwithstanding anything contained in this Act, if 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 amount of penalty leviable under sub-section (1) of section 129:*

*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.”*

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