

The power of detention and confiscation can not be invoked together

The Hon'ble Karnataka High Court in *M/S Rajeev Traders v. Union of India [Writ Petition No.100849 of 2022 (T-RES) dated August 16, 2022]* allowed the writ petition stating that the power to confiscate goods is a distinct and independent power conferred under the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") which can be exercised only in cases where the power to detain and seize has not been invoked. Once the power to inspect, seize or detain the goods and conveyances is invoked either under Section 67 or Section 129 of the CGST Act, the power to confiscate under Section 130 of the CGST Act would not be available.

Facts:

M/S Rajeev Traders ("**the Petitioner**") transported seven trucks containing areca nuts. The assessing authority ("**the Respondent**") inspected the conveyance, goods, and documents, and passed an order vide Form GST MOV-02 for physical verification stating that the person in charge of the conveyance had not tendered e-way bill for the goods in movement and the documents tendered were found to be defective.

Further, during the physical verification, it was found that there was a difference in the quantity of goods mentioned in the invoice and the quantity found upon physical verification. For this, an order of detention vide Form GST MOV-06 dated September 28, 2021, was passed under Section 129 of the CGST Act. Subsequently, Form GST MOV-10 dated September 29, 2021 was issued for confiscation of goods, conveyances, and levying of penalty under Section 130 of the CGST Act.

The Petitioner submitted a reply dated October 27, 2021 to Form GST MOV-10. After granting a personal hearing to the Petitioner a confiscation order vide Form GST MOV-11 dated November 24, 2021 ("**the Impugned order**") was passed under Section 130 of the CGST Act.

Being aggrieved by the Impugned order the Petitioner filed an appeal under Section 107(11) of the CGST Act, which was dismissed by the Respondent. Also, the goods that were confiscated were sold in a public auction.

After the dismissal of the appeal, the Petitioner filed this writ petition contending that once the goods in transit were detained under Section 129 of the CGST Act, the Respondent did not possess the power to initiate confiscation proceedings under Section 130 of the CGST Act.

Issue:

Whether the Proper officer, while detaining the goods which are in transit in the exercise of his power under Section 129 of the CGST Act, possesses the power to initiate proceedings to confiscate under Section 130 of the CGST Act and thereafter conduct an enquiry and proceed to pass Impugned order for confiscation of the goods?

Held:

The Hon'ble Karnataka High Court in ***[Writ Petition No.100849 of 2022 (T-RES) dated August 16, 2022]*** held as under:

- Observed that for transporting the goods without an e-way bill, the taxable person (i.e., a person who is registered under Section 22 of the CGST Act) would be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded.
- Held that in this case, the Respondent possessed the power to impose a penalty for transporting the goods without the cover of documents and also impose a penalty for supplying the goods without payment of tax.
- Further, observed that the entire procedure adopted by the Respondent from converting the detention proceedings into a confiscatory proceeding, ultimately leading to the order of confiscation is wholly illegal and contrary to the statutory scheme of the CGST Act.

- Concluded that, since the confiscated goods were already sold in a public auction, the Respondents were directed to pay the Petitioners, the sale proceeds of the auction after deducting the penalty prescribed under Section 129(1) (a) of the CGST Act, within a period of four weeks from the date of receipt of a certified copy of this order.

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 penalty equal to two 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 penalty;

(b) on payment of penalty equal to 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 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 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.

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of 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 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 of the CGST Act

“Confiscation of goods or conveyances and levy of penalty.

130. (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.

(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.”

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