

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Writ Petition Nos.15481, 15482, 15486 and 15487 of 2023

COMMON ORDER: *(Per Hon'ble Sri Justice U. Durga Prasad Rao)*

The 1st petitioner is the owner of the goods and 2nd petitioner is the owner of the vehicle in the above writ petitions and they seek writ of mandamus declaring the action of 1st respondent in detaining their goods and vehicles while in transit with valid invoices as illegal and consequently to set aside the Form GST MOV -01, dated 12.06.2023 and confiscation notices in Form GST MOV -10, dated 14.06.2023 proposing to confiscate the goods and vehicles and pass such other orders deemed fit.

2. Petitioners' case succinctly is thus:

(a) 1st petitioner who is common in the above batch of writ petitions is a trader in iron scrap under a valid registered GST No.37AATCA9148B1ZD. He purchased the iron scrap from the 4th respondent under invoice, dated 12.06.2023 and in turn sold the same in favour of M/s Radha Smelters Private Limited, Sankarampet, Medak District, Telangana State under valid invoice number. The 1st petitioner engaged the vehicles of the 2nd petitioner for transporting goods from

Vijayawada to Sankarampet and consignment was sent along with valid documents such as invoice, way bill, weighment slip etc., While goods were in transit the 1st respondent detained the vehicles along with the goods on 12.06.2023 on the alleged ground that the vendor of the 1st petitioner i.e., the 4th respondent has no place of business at Vijayawada and accordingly issued impugned proceedings in the name of 4th respondent by deliberately ignoring the documents produced by the drivers at the time of check.

(b) It is further case of the petitioners that the 4th respondent having sold the scrap has no interest and in case of default on his part, the 1st respondent may initiate action against the 4th respondent. However, under the guise of initiating proceedings against the 4th respondent, the 1st respondent cannot put the petitioners in trouble as long as the transaction is covered by all relevant and applicable documents.

(c) It is further case of the petitioners that the 1st respondent did not follow the procedure contemplated under APGST/ CGST Act, 2017 and in straight away issued proceedings proposing to confiscate the goods under transit without issuing notices in GST MOV -02, 03, 04, 05, 06 07, 08 or GST MOV -09 before issuing notice of

confiscation in Form GST MOV -10. It is also contended that the documents served on the 2nd petitioner do not contain DIN Number. The 1st respondent has no right or jurisdiction to detain the goods and vehicle of the petitioners.

Hence, the writ petition.

3. The 1st respondent filed counter mainly contending thus:

(a) On 12.06.2023 the 1st respondent while conducting check of vehicles at Mahanadu Road, Auto Nagar, Vijayawada found the lorries of the petitioners transporting iron scrap covered by Bill and E-way Bill, which on verification revealed that 4th respondent was transporting iron scrap from Vijayawada destined to be delivered to M/s Radha Smelters Pvt Ltd., Sankarampet, Medak District, Telangana State. It is noticed that 4th respondent without having any place of business in Vijayawada dispatched goods therefrom. The consignment was not accompanied by the purchase voucher/invoice and payment of consideration. Hence the proper officer recorded statement of the drivers in Form GST 01. The Joint Commissioner (ST), Kurnool was requested to verify the genesis of the goods and bonafides of the seller dealer. Basing on the report of the Joint Commissioner (ST) Kurnool the registering authority suspended the

registration of 4th respondent on 13.06.2023. Since the goods are moved in violation of section 113 of APGST Act, notice of confiscation in Form GST MOV-10 was issued proposing to confiscate the goods and conveyance. Subsequently two reminders were issued to 4th respondent on 23.06.2023 and 03.07.2023. However, the seller remained silent. The transport is covered by bill and way bill issued by the 4th respondent and verification of the same shows that the 4th respondent sold iron scrap against bill and way bill without any purchase details. In the circumstances the vehicle and goods were detained by following due process of law. Further, the Joint Commissioner (ST), Kurnool informed that the seller is a fake dealer who obtained registration by showing fictitious document and hence the same was suspended. The Assistant Commissioner (ST), Kurnool-I, inspected the business premises of the seller in Kurnool and recorded panchanama through mediators which shows that the seller is a non-existing entity. In such a scenario, it is questionable as to how the buyer has purchased the goods from a bogus and non-existing seller.

(b) It is contended that the tax invoice and e-Way bill were raised by the 4th respondent implying that he is the owner of the goods. The 1st petitioner failed to establish the ownership of goods under

dispute but submitted a letter dated 26.06.2023 without signature claiming ownership of the goods. As the letter is without signature, the 1st respondent issued an endorsement dated 30.06.2023 to the address of the registered person which was returned with the endorsement as address is incomplete. This creates a doubt about the existence of the 1st petitioner also. Since the notices in this case were issued through the GST portal by generating reference number and date, DIN need not be generated for them.

(c) It is also contended that since the petitioners failed to establish the ownership of goods and genuineness of the purchases allegedly made from the non-existing dealer, it is not obligatory on the part of proper officer to issue notice to the petitioners. The writ petition is premature as the proceedings are pending and not attained finality. The respondent thus prayed to dismiss the writ petition.

4. The petitioners filed reply affidavit in W.P.No.15481/2023 and opposed the counter averments. It is contended that the suspension of registration of 4th respondent on 13.06.2023 pending enquiry relating to its genuineness, basing on the report of the Joint Commissioner (ST), Kurnool, is incorrect because the inspection of the premises of the 4th respondent according to Joint Commissioner's report was held only on

01.07.2023 and that being so, the suspension of registration cannot precede to 13.06.2023. It is further contended that at the time of interception of vehicle for check up, the 1st petitioner is the owner of the goods-cum-seller and M/s. Radha Smelters Private Limited is the buyer and the transaction is covered by valid invoice and waybill and those documents were accompanying the goods and therefore, if at all the 1st respondent suspected the genuineness of the documents, he ought to have initiated proceedings against the 1st petitioner. The 1st respondent deliberately ignored the documents produced at the time of check which shows the source of goods and issued proceedings in the name of 4th respondent. As per Section 129 of the CGST / APGST Act, 2017, action if any can be initiated against the person who is transporting goods in contravention of the provisions of the Act. In the instant case, the 1st petitioner is transporting goods with valid documents. Instead of issuing proceedings in the name of petitioner, the 1st respondent issued notices against 4th respondent who has no interest in the matter after selling the consignment for valuable consideration to the petitioner. Under law there is no requirement that the petitioner shall verify whether 4th respondent has any registered place of business at Vijayawada. Having verified the credentials of

GST registration number of the 4th respondent on the Department web portal, the petitioner purchased the goods and paid the consideration through the bank transaction. However, the subsequent suspicion against the genuineness of a registration of 4th respondent entertained by the Department has no bearing with the transaction entered into by the petitioner with 4th respondent. It is further contended that in view of deletion of non-obstante clause in Section 130 of the CGST Act, 2017, by virtue of the Finance Act, 2021, Section 129 of the GST Act will have overriding effect on Section 130 of the said Act and thereby, in respect of goods in transit, the procedure prescribed under Section 129 of the CGST Act has to be followed. At any rate, since no notice was issued in the name of the petitioners, the confiscation proposals against 4th respondent cannot be made applicable against the petitioners.

5. Heard Sri V.Siddharth Reddy, learned counsel for petitioners, and learned Government Pleader for Commercial Taxes-1 representing the respondents. Both the learned counsel reiterated their pleadings in the respective arguments.

6. Severely fulminating the action of the 1st respondent in issuing notice dated 12.06.2023 in Form GST MOV-01 and notice dated 14.06.2023 in Form GST MOV-10 U/s 130 of CGST/APGST Act proposing to confiscate the goods and conveyance, learned counsel for petitioners would submit that the aforesaid notices were issued to 4th respondent on the main allegations, as if, the consignor i.e., the 4th respondent has no place of business at Vijayawada but making movement of goods i.e., MS Scrap without any details of purchase and further, his registration was suspended for obtaining the registration with fabricated documents. Learned counsel strenuously argued that in fact the 1st petitioner has purchased the subject goods from the 4th respondent and sold to M/s Radha Smelters Private Limited and transporting through conveyance of the 2nd petitioner and therefore as on the date of interception i.e., 12.06.2023 the 1st petitioner was the owner of the goods but not the 4th respondent. Driver of the goods produced all relevant documents before the 1st respondent but he selectively perused only the invoice issued by the 4th respondent and came to conclusion as if the details of the Vendor of the 4th respondent and concerned bills were not produced and detained the vehicle. Learned counsel would lament that if the 1st respondent had any

suspicion about the genuineness of the business of the 1st petitioner and his GST registration, he ought to have issued notice U/s 129 of CST/APGST Act and initiated proceedings. Without doing so he straight away issued notice of confiscation against the 4th respondent while detaining the goods pertaining to the 1st petitioner which is illegal and unjust. He further argued that without initiating proceedings U/s 129 against the petitioners, resorting to Section 130 of the Act against 4th respondent and on that ground proposing to confiscate the goods of the 1st petitioner is illegal. He placed reliance on the order dated 16.08.2022 in **W.P.No.100849/2022 (T.Res) (M/s Rajeev Traders v. Union of India)** passed by learned single Judge of the High Court of Karnataka, Dharwad Bench.

7. In oppugnation learned Government Pleader would argue, the vehicles were intercepted at Auto Nagar, Vijayawada on 12.06.2023 by the 1st respondent and having found they contained iron scrap, he enquired the drivers who produced the invoices dated 12.06.2023 which showed that the consignment was destined from Vijayawada to Sankarampet, Medak, Telangana. The invoices further showed that M/s K.S Enterprises, i.e., the 4th respondent is the owner of the consignment and the 1st petitioner is the buyer and the consignee is M./s Radha

Smelters Pvt Ltd. Learned G.P would weightily point out that since the 4th respondent has no place of business at Vijayawada wherefrom the goods were sought to be transported and as the driver at that time could not show the bill of purchase, the mode of payment of purchase price by 1st petitioner to 4th respondent and mode of transportation from Kurnool to Vijayawada, the 1st respondent suspected the bonafides of 4th respondent and detained the vehicles and informed the Joint Commissioner (ST) Kurnool to examine bonafides of seller i.e., the 4th respondent. The enquiry revealed that the 4th respondent was not doing business in the given address at Kurnool and there was no such person. Therefore, the GST registration of the 4th respondent was suspended on 13.06.2023 pending further enquiry and notice of confiscation in Form GST MOV - 10 was issued U/s 130 of CGST/APGST Act, 2017 to 4th respondent.

8. Refuting the argument of the petitioners that no notice was issued and action was initiated against the petitioners but their stock and vehicle were illegally detained by initiating proceedings against the 4th respondent, learned G.P would submit that since the origin of the goods as per the invoice is relatable to 4th respondent who happens to be a fictitious person, proceedings were initiated against him by issuing notices. The 4th respondent shall appear and prove the authenticity of his

business. Be that as it may, since the 1st petitioner claims to be the purchaser from the 4th respondent, though proceedings were not separately launched against him, he owes a responsibility to establish the authenticity of the transaction between him and the 4th respondent by producing invoice and purchase bill issued by the 4th respondent and also the mode of payment of consideration to him and further, produce relevant document as to the place of purchase of the goods i.e., Kurnool or Vijayawada or some other place and mode of transportation to Vijayawada if delivery was obtained at some other place. Learned G.P would thus argue that the burden of proving the genuineness of the transaction between the 1st petitioner and the 4th respondent lay on the former. He would submit that the petitioners can attend the enquiry and establish their innocence by producing the relevant documents. Learned GP defended the action of the 1st respondent in straight away initiating proceedings U/s 130 of CGST/APGST Act on the submission that the very existence of 4th respondent and his obtaining GST registration were doubtful.

9. The point for consideration is:

(1) Whether 1st respondent is legally justified in detaining the goods and vehicles of petitioners without initiating any proceedings against them but only against the 4th respondent U/s 130 of CGST/APGST Act, 2017 ?

10. **POINT**: The authority of a proper officer to inspect the goods in movement can be traceable to Section 68 of CGST/APGST Act, 2017 which reads thus:

“68. Inspection of goods in movement:

- (1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.
- (2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.
- (3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.”

11. Then, the details of documents required to be carried under sub-section (1) are narrated in Rule 138A of CGST/APGST Rules, 2017, as per which the following documents and devices to be carried by a person in charge of a conveyance:

- i. The invoice or bill of supply or delivery challan, as the case may be; and
- ii. A copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Chief Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in **Part A of FORM GST EWB-01**

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12. Authorized by above provisions, in the instant case the proper officer/1st respondent intercepted the lorries at Auto Nagar, Vijayawada, on 12.06.2023 which were found carrying iron scrap covered by bill and e-way bills. They revealed that the consignor i.e., the 4th respondent without having place of business at Vijayawada, transporting the goods from Vijayawada to Sankarampet, Medak in Telangana State. According to 1st respondent, the enquiry conducted by Joint Commissioner (ST), Kurnool, revealed the 4th respondent was not doing business in the given address at Kurnool and there was no such person and therefore, his GST registration was suspended w.e.f. 13.06.2023 and enquiry was initiated against 4th respondent by issuing notice of confiscation in Form GST

MOV-10 under Section 130 of the CGST / APGST Act, 2017. The contention of the Revenue is that since the existence and business activities of the 4th respondent are highly doubtful, confiscation proceedings U/s 130 of the CGST / APGST Act, 2017 can be launched directly against 4th respondent without reference to the petitioners and as the 1st petitioner claims to be the purchaser from 4th respondent, he has to establish that he is a bonafide purchaser from 4th respondent for valuable consideration by paying the due tax without knowing the credentials of 4th respondent by participating in the enquiry proceedings initiated against the 4th respondent.

Per contra, the contention of 1st petitioner is that he is the bonafide purchaser from 4th respondent for valuable consideration on verifying GST registration of the 4th respondent on the web portal and sold the goods to M/s. Radha Smelters Private Limited, Medak in Telangana and was transporting the goods from Vijayawada to the consignee through the conveyance of 2nd respondent backed by invoice and e-way bill etc. and in spite of producing the relevant records by the driver, the 1st respondent did not consider them and issued confiscation proceedings against 4th respondent, the original seller. Their prime contention is that since the interception was made while the goods were in transit, if at all any doubt

is entertained against the bonafides of the petitioners, the 1st respondent shall issue notice u/s 129 of the CGST / APGST Act against the petitioners and proceed accordingly, but the Revenue cannot impose the proceedings initiated against 4th respondent on the petitioners.

13. In the light of the above respective contentions, the bone of contention in this case is whether the Revenue can confiscate the goods of the petitioners basing on the proceedings initiated against the 4th respondent.

14. In **M/s Rajeev Traders' case** (Supra) High Court of Karnataka, (Dharwad Bench) a learned single Judge has drawn the distinction between Section 129 and 130 of CGST Act as follows:

“103. It is to be stated that the power to detain under Section 129 cannot be converted to a proceeding under Section 130 of the Act since both these provisions operate independently of each other and in completely different contexts. The power to detain is only to stop the transit of the goods and thereby prevent its movement till the tax and penalty is paid. However, the power to confiscate is the process of divesting the owner of the goods of all title to the goods for a contravention of the provisions of the Act and Rules. The intent behind conferring power to detain the goods under Section 129 is fundamentally to ensure that the applicable tax and penalty is recovered whereas the intent behind confiscation under

Section 130 is to divest the owner of the goods itself and also impose liability of payment of the applicable tax and penalty.”

15. In **Synergy Fertichem Pvt Ltd v. State of Gujarat**¹ a division bench of Gujarath High Court also explained the distinction between Section 129 and 130 CGST Act as follows:

“(i) Section 129 of the Act talks about detention, seizure and release of goods and conveyances in transit. On the other hand, Section 130 talks about confiscation of goods or conveyance and levy of tax, penalty and fine thereof. Although, both the sections start with a non-obstante clause, yet, the harmonious reading of the two sections, keeping in mind the object and purpose behind the enactment thereof, would indicate that they are independent of each other. Section 130 of the Act, which provides for confiscation of the goods or conveyance is not, in any manner, dependent or subject to Section 129 of the Act. Both the sections are mutually exclusive.”

16. Thus as can be seen from the two provisions and their narration given in the above two decisions, it is clear that the proceedings for detention of goods can be initiated while the goods are in transit in contravention of provisions of the CGST/APGST Act. In the instant case also the 1st respondent has detained the goods of the 1st petitioner while they were in transit from Vijayawada to Sankarampet, Medak, Telangana State. That being the factual scenario, the question is whether 1st

¹ 2020(33) G.S.T.L 513 (Guj.) = MANU/GJ/3200/2019

respondent can confiscate the goods of the 1st petitioner without initiating any proceedings against him U/s 129 but initiating proceedings U/s 130 of CGST/APGST Act against the 4th respondent on the ground of dubious credentials of the 4th respondent. In our considered view though the 1st respondent may initiate proceedings against the 4th respondent U/s 130 of the Act in view of his absence in the given address and not holding any business premises at Vijayawada, however, he cannot confiscate the goods of the 1st petitioner merely on the ground that the 1st petitioner happen to purchase goods from the 4th respondent. Even assuming that the petitioners, particularly the 1st petitioner partakes in the enquiry proceedings against the 4th respondent, his responsibility will be limited to the extent of establishing that he bonafidely purchased goods from the 4th respondent for valuable consideration by verifying the GST registration of the 4th respondent available on the official web portal and he was not aware of the credentials of the 4th respondent. Further, he has to establish the mode of payment of consideration and the mode of receiving of goods from the 4th respondent through authenticated documents. Except that he cannot be expected to speak about the business activities of the 4th respondent and also whether he obtained GST registration by producing fake documents. In essence, the

petitioners have to establish their own credentials but not the 4th respondent. In that view, the 1st respondent is not correct in roping the petitioners in the proceedings initiated against the 4th respondent without initiating independent proceedings U/s 129 of CGST/APGST Act against the petitioners. As the 1st petitioner claims to have purchased goods from the 4th respondent whose physical existence in the given address is highly doubtful as per the enquiry conducted by the Joint Commissioner (ST), Kurnool, the 1st petitioner as observed supra, owes a responsibility to prove the genuineness of the transactions between him and the 4th respondent. Therefore, the 1st respondent can initiate proceedings U/s 129 of CGST/APGST Act against the petitioners and conduct enquiry by giving opportunity to the petitioners to establish their case.

17. These writ petitions are accordingly disposed of giving liberty to the 1st respondent to initiate proceedings against the petitioners U/s 129 of CGST/APGST Act, 2017 within two weeks from the date of receipt of a copy of this order and conduct enquiry by giving an opportunity of hearing to the petitioners and pass appropriate orders in accordance with governing law and rules. In the meanwhile, the 1st respondent shall release the detained goods in favour of 1st petitioner on his deposit of 25% of their value and executing personal bond for the balance and he

shall also release the vehicles in favour of the 2nd petitioner in the respective writ petitions on their executing personal security bonds for the value of the vehicles as determined by concerned Road Transport Authority. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

VENKATA JYOTHIRMAI PRATAPA, J

03.08.2023

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03rd August, 2023

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