* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 09 January, 2025**
Judgment pronounced on 17 January, 2025

\+ W.P.(C) 12142/2022

KAMAL ENVIROTECH PVT. LTD .....Petitioner
Through: Mr. Abhas Mishra, Advocate.

versus

COMMISSIONER OF GST AND ANR ....Respondents
Through: Mr. Anuj Aggarwal, ASC, GNCTD with Mr. Yash Upadhyay and Ms. Ishita Panday, Advocates for R-1 and R-2.

\+ W.P.(C) 12402/2022

M/S ZEON LIFE SCIENCES LTD .....Petitioner
Through: Mr. Keane Sardinha and Mr. Sumit Saini, Advocates.

versus

CHIEF SECRETARY,GOVERNMENT OF DELHI & ORS. .....Respondents
Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel and Mr. Mayank Kamra, Advocates for R-1 to R-5.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

YASHWANT VARMA, J.

1. The writ petitioners have approached this Court aggrieved by the demands raised by the respondents in purported application of the provisions enshrined in Section 129 of the **Central Goods & Services**

Tax Act, 2017[1] and which have subsequently come to be affirmed by the appellate authorities. The Order-in-Original which is impugned by **Kamal Envirotech Pvt. Ltd.**[2] is dated 26 September 2020 and which ultimately came to be affirmed by the appellate authority in terms of its decision rendered on 15 January 2022. In the matter of **M/s Zeon Life Sciences Ltd**.[3], a demand originally came to be created against that writ petitioner by an order dated 12 January 2021, and which too was upheld by the appellate authority by its order of 15 February 2022. The demands themselves emanate from an allegation levelled against the writ petitioners of goods having been transported under an incomplete **E-way Bill**[4], Part B whereof was incomplete or missing. The factum of taxes leviable on such goods having been duly paid is not disputed.

2. The respondents, however, would bid us to hold that Section 129 is a penal provision that necessarily entails a levy and demand of tax. They view that provision as envisaging a compulsory exaction or impost. In fact, they urge us to recognize that provision as being one which contemplates the levy of a statutory penalty. They would contend that notwithstanding the absence of *mens rea*, fraudulent motive or an intent to evade tax, where goods are sought to be transported in contravention of the provisions of the Act, a demand of tax would inevitably arise. It is the correctness of the aforesaid view which is questioned by the writ petitioners.

3. For the purposes of evaluating the challenge that stands raised, we deem it appropriate to notice the essential facts as they appear in W.P.(C) 12142/2022 and which flow along the following lines.

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[1] Act
[2] Kamal Envirotech
[3] Zeon Life Sciences
[4] EWB

4. Kamal Envirotech is stated to have imported goods from Italy under Bill of Entry No. 8906095 on which Customs and **Integrated Goods and Services Tax**[5] had been duly paid. Those goods were being transported to its factory at Neemrana, Rajasthan under **Goods and Services Tax**[6] Invoice No. KEPL/DEL/021. Undisputedly, while Part A of the EWB had been duly filled out, the transporter appears to have failed to generate and complete Part B thereof. In the course of transit, the conveyance was intercepted on 24 September 2020. The GST Officer is stated to have noticed the discrepancy in the EWB as noted above and thus detained the goods for physical verification and inspection. It is the case of the writ petitioner that the discrepancy in the EWB upon being discovered was immediately rectified on 25 September 2020 and a corrected Part B generated that day itself. Post-verification of goods, the GST Officer proceeded to pass an order of detention on 26 September 2020. The said officer proceeded to raise a demand of **Central GST**[7] and **State GST**[8] amounting to INR 19,80,000/- together with penalty of an equivalent amount. It is asserted by the petitioner that it was compelled to get the goods released by submitting a bond under protest on 05 October 2020 whereafter the goods came to be handed over on the next day. Aggrieved by the order in terms of which a tax liability stood created, the petitioner instituted an appeal which came to be dismissed and led to the institution of the present writ petition.

5. Similar facts obtain in W.P.(C) 12042/2022. Suffice it to note that the goods of Zeon Life Sciences are stated to have been intercepted

[5] IGST
[6] GST
[7] CGST
[8] SGST

in the course of transportation on 02 February 2021. It is the case of the writ petitioner that at the time when the vehicle was stopped, they still had time as per the Second and Third Provisos to Rule 138(10) of the **CGST Rules, 2017**[9] to apply for an extension of the EWB and thus overcome the delay caused in the course of transit. It is thus their case that at the time of seizure, no infraction could be said to have occurred. An order of detention thereafter came to be passed on 05 February 2021 together with a proposal for imposition of tax and penalty thereon. Those proceedings ultimately culminated in the writ petitioner being forced to deposit INR 5,28,000/- pursuant to a final order dated 12 February 2021 which came to be passed by the GST officer. Aggrieved by the said demand, Zeon Life Sciences is stated to have moved the appellate authority on 08 March 2021. That appeal came to be dismissed on 15 February 2022 constraining Zeon Life Sciences to institute the instant writ petition.

6. Appearing for the writ petitioners, learned counsels firstly submitted that since the solitary ground for a demand of tax rested on an allegation of goods being transported without the cover of requisite documents, the only penalty which could have been imposed upon them would have been INR 10,000/- as contemplated under Section 122(1)(xiv) of the Act. It was their submission that since the respondents do not rest their case on an allegation of evasion of tax or furnishing of false information, the levy of penalty is wholly arbitrary and illegal. Our attention was then invited to Section 125 and which prescribes a maximum penalty of INR 25,000/- upon a person who may have contravened any of the provisions of the Act and for which no

[9] Rules

penalty is specifically provided for elsewhere.

7. Learned counsels further submitted that the general principles relating to penalty would also be applicable since the breach would clearly fall in the category of 'minor breaches' being an infraction of a mere procedural requirement and would consequently be governed by Section 126. According to the writ petitioners, the mistake in documentation was clearly rectifiable and since it was not made with any fraudulent intent, no penalty could have been imposed upon them by virtue of Section 126.

8. Controverting those submissions, Mr. Aggarwal, learned counsel representing the respondents, argued that Section 129 as existing in the statute book is intended to act as a deterrent and thus the demand of tax as raised was clearly justified. According to Mr. Aggarwal, Section 129 embodies principles akin to that of a statutory penalty and in that sense clearly not concerned with an intent to evade, fraud or gross negligence.

9. For the purposes of evaluating the rival submissions, we at the outset deem it apposite to extract some of the relevant provisions which were alluded to. The subject of penalty is dealt with in Chapter XIX of the Act. Section 122 prescribes the various circumstances in which a penalty may come to be imposed upon a person. It reads as follows:

> "**122. Penalty for certain offences**.—(1) Where a taxable person who—
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> (*i*) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
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> (*ii*) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
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> (*iii*) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which

such payment becomes due;

(*iv*) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(*v*) fails to deduct the tax in accordance with the provisions of sub-section (1) of Section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(*vi*) fails to collect tax in accordance with the provisions of sub-section (1) of Section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of Section 52;

(*vii*) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(*viii*) fraudulently obtains refund of tax under this Act;

(*ix*) takes or distributes input tax credit in contravention of Section 20, or the rules made thereunder;

(*x*) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(*xi*) is liable to be registered under this Act but fails to obtain registration;

(*xii*) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(*xiii*) obstructs or prevents any officer in discharge of his duties under this Act;

(*xiv*) transports any taxable goods without the cover of documents as may be specified in this behalf;

(*xv*) suppresses his turnover leading to evasion of tax under this Act;

(*xvi*) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(*xvii*) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(*xviii*) supplies, transports or stores any goods which he has reasons

to believe are liable to confiscation under this Act;

(*xix*) issues any invoice or document by using the registration number of another registered person;

(*xx*) tampers with, or destroys any material evidence or document;

(*xxi*) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not collected under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

[(*1-A*) Any person who retains the benefit of a transaction covered under clauses (*i*), (*ii*), (*vii*) or clause (*ix*) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.]

[(1-B) [Any electronic commerce operator, who is liable to collect tax at source under Section 52,]—

(*i*) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(*ii*) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(*iii*) fails to furnish the correct details in the statement to be furnished under sub-section (4) of Section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under Section 10, whichever is higher.]

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

(*a*) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(*b*) for reason of fraud or any wilful misstatement or suppression of

facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who—

(*a*) aids or abets any of the offences specified in clauses (*i*) to (*xxi*) of sub-section (1);

(*b*) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(*c*) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(*d*) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(*e*) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to twenty-five thousand rupees."

10. The Act then also provides for the levy of penalty in case a person fails to furnish information or returns. This becomes apparent from a reading of Section 123, which is extracted hereinbelow:

"**123. Penalty for failure to furnish information return**.—If a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees."

11. A failure to furnish statistics, information or returns also exposes a person to the levy of a fine in terms of Section 124 and which reads thus:

> "**124. Fine for failure to furnish statistics**.—If any person required to furnish any information or return under Section 151,—
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> (*a*) without reasonable cause fails to furnish such information or return as may be required under that section, or
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> (*b*) wilfully furnishes or causes to furnish any information or return which he knows to be false,
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> he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty-five thousand rupees."

12. Section 125 which is titled 'General penalty' reads as under:

> "**125. General penalty**.—Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees."

13. While learned counsels representing the writ petitioners had alluded to that provision, we do not find any merit in that submission since Section 125 would come into play only if the case be of a penalty not leviable under any other provision of the Act. Undisputedly, the respondents rest their case on Section 129 and which we propose to notice hereinafter.

14. Reverting then to our discussion, the general principles relating to the imposition of penalty stand embodied and spelt out in Section 126 and which reads thus:

> "**126. General disciplines related to penalty**.—(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.
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> *Explanation*.—For the purpose of this sub-section,—
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> (*a*) a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees;
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> (*b*) an omission or mistake in documentation shall be considered to

be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage."

15. Since Section 129 constitutes the foundation of the impugned demand, the same is reproduced in its entirety hereunder:

"**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 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.

(2) [* * *]

[(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.]"

16. The Act also empowers the proper officer to confiscate goods in circumstances enumerated in Section 130. That provision reads as under:

"**130. 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.

(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) [* * *]

(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."

17. We, at the outset, note that the penalties that are spoken of in Sections 122 and 124 are those which would be attracted in case of infractions of statutory obligations and conditions imposed by the Act. However, Sections 122 and 124 in unequivocal terms couple the levy of penalty to tax evaded, tax not deducted, failure to establish reasonable cause or the wilful furnishing of false information. The penalty which is contemplated under Section 123 is one which would be attracted as a consequence of a failure to respond to a notice that may be issued by the proper officer. Section 125 then speaks of the imposition of a penalty if a person were to contravene any of the provisions of the Act or the Rules made thereunder.

18. The submission of Mr. Aggarwal that Section 129 being a provision creating a statutory penalty and intended to override the scheme of Chapter XIX of the Act by virtue of the non-obstante clause that it incorporates, does not appear to be sound for reasons which we assign hereinafter. We in **HDFC Bank Ltd. v. Commr. of Value Added Tax**[10] had an occasion to explain in some detail the circumstances in which the levy of a penalty in terms of a statutory provision would be justified. Some of the factors that we had identified as being germane for penalties being imposed were guilt, dishonest conduct or acting in conscious disregard of a binding obligation. After noticing various decisions rendered by the Supreme Court on that subject including the celebrated decisions in **Hindustan Steel Ltd. v.**

[10] 2023 SCC OnLine Del 7876

State of Orissa[11] and **State of Gujarat & Ors. v. M/s Saw Pipes Ltd.**[12] we had held as follows:

> "**22.** It appears to us, and which view is reinforced with the respondents seeking to draw support for their submissions from the judgment in *Saw Pipes Ltd*, that they appear to read Section 86 (10, (14) & (15) as envisaging the levy of a statutory penalty. However, in our considered opinion, the aforesaid premise and on which the case of the respondents appears to be founded, is wholly incorrect. As noticed hereinabove, sub-sections (10), (14) & (15) embody the principles of mens rea when they speak of "*false, misleading or deceptive*" conduct of an assessee. It would thus be wholly incorrect to construe those provisions as being representative of penalties statutorily leviable.
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> **23.** We note that there are other sub-sections of Section 86 which embody the principles of a statutory penalty. For instance, sub-section (5) deals with the contingency of an assessee failing to comply with Section 21(1). The aforesaid provision obliges a registered dealer to apprise the Commissioner of circumstances which may warrant amendments in its registration. A similar example of a statutory penalty stands embodied in sub-section (6) and which authorises the levy of a penalty in case a dealer violates Section 22(2). An assessee becomes liable to be penalized under Section 86(9) consequent to a failure to furnish a return or failing to append requisite documents with a return or its refusal to comply with a direction to revise a return. As would be manifest from a close scrutiny of sub-sections (5), (6) and (9) of Section 86, those provisions envisage the levy of penalties consequent to a failure on the part of a registered dealer to discharge certain obligations or a failure on the part of an assessee to comply with statutory duties as imposed. In such situations, the Act envisages penalty to be imposed as a necessary corollary. The aforenoted provisions do not vest the Assessing Officer with any discretion in the matter of imposition of a penalty.
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> **24.** In contrast to the above, sub-sections (10), (14) & (15), and which as we had an occasion to note hereinbefore, envisage the levy of a penalty only in case an assessee is charged with "*false, misleading or deceptive*" conduct. The concept of penalty being founded on mens rea and misleading conduct is no longer a principle which can brook of any doubt. This is evident from the following passage as appearing in the decision of the Supreme Court in *Hindustan Steel Ltd.* and which the Tribunal itself had an occasion to notice:

[11] (1969) 2 SCC 627
[12] 2023 SCC OnLine SC 428

> "8. ….. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provision of the Actor where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."
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> **25.** We also take note of the reiteration of the aforesaid position in law as appearing in the decision of the Supreme Court in *Pratibha Processors*. While the respondents had sought to derive support for their submissions in this respect from the decision of the Supreme Court in *Saw Pipes Ltd.*, we find that those submissions proceed in ignorance of the evident fact that Sections 45(6) and 47(4A) of the 1969 Act constituted instances of statutory penalties.
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> **26.** The penalty under Section 45(6) of the said statute which formed the subject matter of consideration became automatically leviable upon a failure of the assessee to pay the amount of tax as assessed or re-assessed. Similarly, section 47(4A) of the 1969 Act provisioned for the levy of a penalty in a situation where a dealer failed to pay tax within the time prescribed. Those provisions thus contemplated the levy of a penalty and the assessee becoming liable to face penal action in case of an admitted failure to adhere with statutory obligations. The penalty contemplated under Section 45(6) and 47(4A) of the 1969 Act thus did not rest on a discretion which may otherwise have been vested in the authority concerned. It was in the context of the aforenoted two statutory provisions that the observations of the Supreme Court in *Saw Pipes Ltd.* are liable to be appreciated."

19. In our considered opinion, when tested on the principles consistently laid down by the Supreme Court, we find ourselves unable to countenance Section 129 as being representative of a provision that

seeks to levy a statutory penalty. The reasons that weigh upon us in arriving at that conclusion are set out hereinbelow.

20. As is evident from the recordal of submissions that were canvassed by the respondents, emphasis was essentially laid upon the non-obstante clause which prefaces Section 129 as well as their submission that the said provision embodied principles akin to a statutory penalty. It was further urged that neither Section 125 nor Section 126 would regulate or curtail the power conferred by Section 129 of the Act. Suffice it to note that while the former pertains to contingencies where a penalty is not separately provided for, Section 126, according to the respondents, would have no application in light of sub-section (6) thereof. Insofar as the contention resting on Section 126(6) is concerned, the same was urged in light of what Mr. Agarwal submitted, namely, the quantum of penalty under Section 129 having been expressed in absolute and percentage terms.

21. In order to examine the correctness of the rival submissions, it would be apposite to briefly advert to the provisions enshrined in Chapter XIX of the Act and which have been noticed in some detail in the preceding parts of this decision. It becomes pertinent at the outset to note that Sections 122, 123, 124, 125 and the other provisions which are placed in Chapter XIX create distinct provisions insofar as the impositions of penalties are concerned. For instance, Section 122(1) prescribes in absolute terms *"a penalty of ten thousand rupees or an amount equivalent to the tax evaded"* as being leviable in case a taxable person is found to have infracted any of the conditions which are spoken of in clauses (i) to (xxi) of that provision. Similar is the position which obtains under Section 122(1A).

22. Section 122(2), however, while stipulating the contingencies which may lead to a person being held liable for the imposition of penalty provides that the same *"may extend to"* INR 25,000/-. Section 124 stands couched in similar terms, and which too uses the expression "*which may extend to*". Similar is the position which obtains in Section 125. What we seek to emphasise and underscore is the phrase "*which may extend to*" clearly envisaging a discretion vested in the proper officer to examine the extent of penalty that may be imposed on a person dependent upon the nature of the infraction that may be alleged to have been committed.

23. When we proceed further to examine Section 126, we find that the said provision represents an embodiment of a statutory mandate requiring the officer to desist from imposing a penalty in respect of either a minor breach, contravention of a procedural requirement, an omission or a mistake in documentation which may be rectifiable and all of which may have occurred without any underlying fraudulent intent or be the outcome of gross negligence. Of significance is sub-section (2) of Section 126 which stipulates that the penalties that may come to be imposed under the Act should be commensurate with the degree and severity of the breach.

24. We have chosen to describe the principles enshrined in Section 126 as being in the nature of a statutory command and edict bearing in mind sub-section (1) which uses the expression "*no officer under this Act shall impose…*". Similar is the exhortation which stands embodied in sub-section (2) and which bids the proper officer to bear in mind that "*the penalty imposed under this Act shall depend...*". Section 126 is thus a clear manifestation of the legislative objective of penalties being

liable to be imposed bearing in mind the gravity or severity of the breach, an intent to evade tax, fraudulent conduct and thus remove from its reach mistakes which could be termed to be minor in character as well as a failure to comply with procedural requirements or the commission of a mistake in documentation which is rectifiable. The principles enshrined in that section are thus clearly intended to inform the levy of penalty generally and thus imbue and guide the exercise of that power as conferred by different provisions of the Act.

25. The Explanation which stands placed at the end of Section 126(1) fortifies our opinion in this respect with the Legislature clarifying that a minor breach would be one where the amount of tax involved is less than INR 5,000/- and that an omission or mistake shall be considered to be "easily rectifiable" if the same be an error apparent on the face of the record. We also bear in consideration that Section 126 stands placed in Chapter XIX and is titled *"General disciplines related to penalty"*. The principles thus enshrined in that provision are clearly intended to regulate the power to impose penalties generally as well as to guide the proper officer in examining each case and ensuring that the levy of a penalty is commensurate with the severity of the breach.

26. We so hold additionally in light of the unambiguous terms in which that provision stands couched and infused as it is with the legislative policy of absolving a person from the imposition of penalties for what the statute describes to be minor breaches or a failure to abide by procedural requirements. The statute also enjoins officers under the Act to desist from imposing a penalty in cases where the omission or mistake in documentation is found to be easily rectifiable and was one

which was not tainted by a fraudulent intent or the outcome of gross negligence.

27. The mandatory command of the Legislature is manifest from Section 126(1) ordaining "*no officer under this Act shall impose any penalty from minor breaches...*". The moderation which the statute contemplates is further underlined by Section 126(2) which bids officers administering the Act to bear in mind that penalty should be imposed dependent on the facts and circumstances of each case and be commensurate with the degree and severity of the breach.

28. The respondents, however, would argue that the non-obstante clause, and with which Section 129(1) commences, is liable to be read as overriding and eclipsing all other provisions contained in Chapter XIX, including Section 126 of the Act. In our considered opinion, the aforesaid submission proceeds on a fallacious understanding of the extent to which the legislative device of a non-obstante may be intended to extend. Regard may be had to the fact that the non-obstante clause in Section 129 is not ordained to operate in respect of any particular provision or set of provisions contained in the Act. If the submission as addressed by the respondents in absolute terms were to be accepted, Section 129 would be liable to be recognized as being one which overrides all other provisions and thus being the repository of a special and overriding power to levy a penalty irrespective of the principle of moderation which the Legislature had introduced in a provision which precedes its placement under the Act.

29. In our considered view, the non-obstante clause in Section 129 cannot possibly be interpreted as being intended to override what had been specifically provided in Section 126 or annihilate the rules of

guidance which stood embodied therein.

30. The scope and extent of the operation of a non-obstante clause was lucidly explained by the Supreme Court in **R.S. Raghunath v. State of Karnataka**[13] and where the following pertinent observations appear:

> **"11.** In *Aswini Kumar Ghose* v. *Arabinda Bose* [(1952) 2 SCC 237 : 1953 SCR 1 : AIR 1952 SC 369] it was observed as under: (SCR pp. 21-22)
>
> > "It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment."
>
> It was further held that: (SCR p. 24)
>
> > "Nor can we read the non-obstante clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the Original Side Rules of the Calcutta and Bombay High Courts. If, as we have pointed out, the enacting part of Section 2 covers all advocates of the Supreme Court, the non-obstante clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. *The enacting part of a statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. Posteriores leges priores contrarias abrogant* (Broom's *Legal Maxims*, 10th edn., p. 347)."
>
> (emphasis supplied)
>
> In *Dominion of India (now the Union of India)* v. *Shrinbai A. Irani* [AIR 1954 SC 596 : (1955) 1 SCR 206] , it was observed as under: (AIR pp. 599-600, para 10)
>
> > "While recognising the force of this argument it is however necessary to observe that although ordinarily there

[13] (1992) 1 SCC 335

should be a close approximation between the non-obstante clause and the operative part of the section, the non-obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. *If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof a non-obstante clause cannot cut down the construction and restrict the scope of its operation*. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment."

(emphasis supplied)

In *Union of India* v. *G.M. Kokil* [1984 Supp SCC 196 : 1984 SCC (L&S) 631] , it was observed as under: (SCC p. 203, para 11)

> "It is well-known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

In *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram* [(1986) 4 SCC 447] the scope of non-obstante clause is explained in the following words: (SCC p. 477-78, para 67)

> "A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment."

On a conspectus of the above authorities it emerges that the non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of

cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.

12. Further, the influence of a non-obstante clause has to be considered on the basis of the context also in which it is used. In *State of W.B.* v. *Union of India* [(1964) 1 SCR 371 : AIR 1963 SC 1241] it is observed as under: (SCR p. 435)

> "The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

It is also well settled that the Court should examine every word of a statute in its context and to use context in its widest sense. In *Reserve Bank of India* v. *Peerless General Finance and Investment Co. Ltd.* [(1987) 1 SCC 424] it is observed that: "That interpretation is best which makes the textual interpretation match the contextual." In this case, Chinnappa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of statutes held thus: (SCC p. 450, para 33)

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

If we examine the scope of Rule 3(2) particularly along with other General Rules, the context in which Rule 3(2) is made is very clear. It is not enacted to supersede the Special Rules.

13. As already noted, there should be a clear inconsistency between the two enactments before giving an overriding effect to the non-obstante clause but when the scope of the provisions of an earlier enactment is clear the same cannot be cut down by resort to non-obstante clause. In the instant case we have noticed that even the General Rules of which Rule 3(2) forms a part provide for promotion by selection. As a matter of fact Rules 1(3)(*a*) and 3(1) and 4 also provide for the enforceability of the Special Rules. The very Rule 3 of the General Rules which provides for recruitment also provides for promotion by selection and further lays down that the methods of recruitment shall be as specified in the Special Rules, if any. In this background if we examine the General Rules it becomes clear that the object of these Rules only is to provide broadly for recruitment to services of all the departments and they are framed generally to cover situations that are not covered by the Special Rules of any particular department. In such a situation both the Rules including Rules 1(3)(*a*), 3(1) and 4 of General Rules should be read together. If so read it becomes plain that there is no inconsistency and that amendment by inserting Rule 3(2) is only an amendment to the General Rules and it cannot be interpreted as to supersede the Special Rules. The amendment also must be read as being subject to Rules 1(3)(*a*), 3(1) and 4(2) of the General Rules themselves. The amendment cannot be read as abrogating all other Special Rules in respect of all departments. In a given case where there are no Special Rules then naturally the General Rules would be applicable. Just because there is a non-obstante clause, in Rule 3(2) it cannot be interpreted that the said amendment to the General Rules though later in point of time would abrogate the special rule the scope of which is very clear and which co-exists particularly when no patent conflict or inconsistency can be spelt out. As already noted Rules 1(3)(*a*), 3(1) and 4 of the General Rules themselves provide for promotion by selection and for enforceability of the Special Rules in that regard. Therefore there is no patent conflict or inconsistency at all between the General and the Special Rules."

31. In a decision rendered thereafter in **JIK Industries Ltd. v. Amarlal V. Jumani**[14], the Supreme Court succinctly observed as follows:

[14] (2012) 3 SCC 255

"61. On the device of non obstante clause, William Blackstone in his *Commentaries on the Laws of England*(Oxford: The Claredon Press, 1st Edn. 1765-69, p. 331) observed that the device was

"… effectually demolished by the Bill of Rights at the revolution, and abdicated Westminster Hall when [James II] abdicated the Kingdom."

(See *Bennion on Statutory Interpretation*, 5th Edn., Section 48.)

62. Under the scheme of the modern legislation, non obstante clause has a contextual and limited application.

xxxx xxxx xxxx

64. In the instant case the non obstante clause used in Section 147 of the NI Act does not refer to any particular section of the Code of Criminal Procedure but refers to the entire Code. When non obstante clause is used in the aforesaid fashion the extent of its impact has to be found out on the basis of consideration of the intent and purpose of insertion of such a clause.

65. Reference in this connection may be made to the Constitution Bench decision of this Court in *Madhav Rao Jivaji Rao Scindia* v. *Union of India* [(1971) 1 SCC 85] , Hidayatullah, C.J. delivering the majority opinion, while construing the provision of Article 363, which also uses non obstante clause without reference to any article in the Constitution, held that when non obstante clause is used in such a blanket fashion the Court has to determine the scope of its use very strictly (see paras 68-69 at pp. 138-39 of the Report).

66. This has been followed by a three-Judge Bench of this Court in *Central Bank of India* v. *State of Kerala*[(2009) 4 SCC 94 : (2009) 2 SCC (Civ) 17] . Following the principles as laid down in *Madhav Rao* [(1971) 1 SCC 85] this Court in *Central Bank of India* [(2009) 4 SCC 94 : (2009) 2 SCC (Civ) 17] held as follows: (*Central Bank of India* [(2009) 4 SCC 94 : (2009) 2 SCC (Civ) 17] , SCC p. 132, para 105)

> "*105.* '*16.* … When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole act and stands all alone by itself. "A search has, therefore, to be made with a view to determining which provision answers the description and which does not." ' [**Ed.**: As observed in *A.G. Varadarajulu* v. *State of T.N.*, (1998) 4 SCC 231, p. 236, para 16.] "

67. Section 147 in the NI Act came by way of an amendment. From the Statement of Objects and Reasons of the Negotiable Instruments (Amendment) Bill, 2001, which ultimately became Act 55 of 2002, these amendments were introduced to deal with large number of

> cases which were pending under the NI Act in various courts in the country. Considering the said pendency, a Working Group was constituted to review Section 138 of the NI Act and make recommendations about changes to deal with such pendency. Pursuant to the recommendations of the Working Group, the aforesaid Bill was introduced in Parliament and one of the amendments introduced was "to make offences under the Act compoundable". Pursuant thereto Section 147 was inserted after Section 142 of the old Act under Chapter II of Act 55 of 2002.
>
> **68.** It is clear from a perusal of the aforesaid Statement of Objects and Reasons that offence under the NI Act, which was previously non-compoundable in view of Section 320 sub-section (9) of the Code has now become compoundable. That does not mean that the effect of Section 147 is to obliterate all statutory provisions of Section 320 of the Code relating to the mode and manner of compounding of an offence. Section 147 will only override Section 320(9) of the Code insofar as offence under Section 147 of the NI Act is concerned. This is also the ratio in *Damodar* [(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] (see para 12). Therefore, the submission of the learned counsel for the appellant to the contrary cannot be accepted."

32. As was explained by the Supreme Court in *R.S. Raghunath*, while examining the scope and extent of a non-obstante clause, one would have to bear in mind that the usage of the expression "*notwithstanding anything contained…"* cannot be interpreted so as to scuttle down or abrogate other provisions forming part of that enactment and which may not necessarily be in conflict with the provision in which that clause appears. In *R.S. Raghunath*, the Supreme Court pertinently observed that the usage of the expression "notwithstanding anything contained…" could on a holistic examination of the statutory scheme be found to have been possibly placed by way of abundant caution as opposed to limiting the ambit and scope of the special rules. It was in this context that it held that absent a patent conflict or inconsistency between two competing sets of statutory provisions, the non-obstante clause would not be liable to be construed as obliterating all other provisions.

33. Of significance are some of the succinct observations which appear in *JIK Industries* where it was pertinently observed that in modern legislation, a non-obstante clause has a contextual and limited application. *JIK Industries* too was a case where Section 147 of the **Negotiable Instruments Act, 1881**[15] employed such a clause without reference to any particular section of the **Code of Criminal Procedure, 1973**[16]. In such a situation, the Supreme Court opined that the non-obstante clause and the extent of its impact would have to be evaluated on the basis of the intent and purpose of insertion of such a clause.

34. Of equal significance were the observations rendered by the Constitution Bench of the Supreme Court in **Madhav Rao Jivaji Rao Scindia v. Union of India**[17] which were noticed in paragraph 65 of the report and where it had been held that a non-obstante clause used in a "blanket fashion" would necessarily entail the Court determining the scope of its application against strict parameters. It was thus held that a broad and general sweep of the phrase "notwithstanding anything contained in this Act" cannot be interpreted as inexorably intended to override all other provisions of the statute or one which is contemplated to eclipse the other parts of the enactment completely. If the contention as advanced by the respondents were to be accepted, it would amount to us recognizing Section 129 as casting an unshakable shadow over all other provisions contained in Chapter XIX of the Act. We thus find ourselves unable to accord such an interpretation or read Section 129 in the manner as suggested.

35. It becomes pertinent to note that Section 129 is primarily

[15] NI Act
[16] CrPC
[17] (1971) 1 SCC 85

concerned with the detention, seizure and release of goods while in transit. Those are subjects which are not specifically dealt with or regulated by Sections 122 to 124, and which provisions are concerned more with specific instances of a transgression of a provision of the Act. Although clause (xiv) appearing in Section 122(1) does allude to the subject of transport of taxable goods, it deals with a situation where the goods are being transported without the cover of documents at all and as may be mandatorily required. What thus needs to be borne in mind is that Section 129 is intended to merely regulate the subject of detention and release of goods, and which is one not considered in or factored for in any of the other provisions placed in Chapter XIX. It is for this reason that the provision commences with a non-obstante clause and thus introducing adequate measures regulating the subject of detention and release of goods or conveyances.

36. That then leads us to examine whether the expression "contravention of the provisions of this Act" as appearing in Section 129, would also extend to and encompass minor breaches, mistakes or omissions which could be said to be either easily rectifiable or untainted by fraudulent intent. It is relevant to note that the contingencies which are spoken of in Section 122(1), are essentially those which deal with a positive violation of a statutory obligation or duty. Those contingencies cannot possibly be viewed as being minor aberrations since they extend to situations such as supply of goods without the issuance of an invoice, collection of tax coupled with a failure to deposit the same with the Government, tax deducted not being transmitted to the treasury, utilization of input tax credit without actual receipt of goods or services, a refund that may have been

fraudulently obtained, failure to obtain registration, as well as falsifying or substituting financial records.

37. Similarly, Section 122(1A) applies to a person who retains the benefit of a transaction referred to in clauses (i), (ii), (vii) and (ix) of sub-section (1) thereof. Section 122(2) deals with a situation where a tax has either not been paid, short paid, erroneously refunded, or where input tax credit may have been wrongly availed or utilized. Section 122(3) brings within its ambit persons who aid or abet any of the offences specified in Section 122(1). Section 124 applies to contingencies where a person may have failed to furnish information or submit a return or would have wilfully furnished information or return which he knows to be false.

38. What we seek to emphasize is that the transgressions and contraventions of statutory obligations, and which are amplified in Section 122, clearly cannot be placed in the category of a minor infraction nor are those mistakes which could be said to be easily rectifiable. The expression "contravention" as appearing in Section 129 would thus have to be understood bearing in mind the special provisions which are contained in Section 126 and which indubitably carves out an exception with respect to minor breaches as well as mistakes and omissions which could be easily rectified. In fact, and as would be manifest from the discussion which ensues, even the **Central Board of Indirect Taxes and Customs**[18] had understood Section 129 as being tempered by the limits that the statute itself imposes while seeking to moderate the power to levy a penalty.

39. The decision of the Gujarat High Court in **Synergy Fertichem P.**

[18] CBIC

Ltd. v. State of Gujarat[19], was one which provided an occasion for that High Court to examine the scope and interplay between Sections 129 and 130 of the Act. The petitioners before the Gujarat High Court had argued that a purposive interpretation of Section 129 would lead one to the irresistible conclusion that it would apply only to cases where it was established that the contravention of the Act was with an intent to evade tax. The applicability of Section 129, it was contended, would only be in respect of a "substantial contravention and which may have resulted in a loss of tax revenue". It was thus contended that every contravention, even if it be minor or technical in character, would not justify the imposition of a penalty under Section 129. After chronicling the submissions which were addressed before it, the Gujarat High Court at the outset noted that both Sections 129 and 130 commence with a non-obstante clause. They thus firstly proceeded to examine the scope of a non-obstante clause and had an occasion to notice an entire body of precedent which had evolved on that subject and some of which have been noticed by us in the preceding parts of this judgment.

40. Some of the significant decisions which were noticed by that High Court appear in the following paragraphs of the report:

> **65.** In ICICI Bank Ltd. v. SIDCO Leathers Ltd. [2006] 131 Comp Cas 451 (SC) ; (2006) 67 SCL 383 (SC), the Supreme Court, at paras 34, 36 and 37, held as follows (paras 36, 38 and 39 in pages 467 and 468 in 131 Comp Cas) :
>
> > "34. Section 529A of the Companies Act no doubt contains a non obstante clause but in construing the provisions thereof, it is necessary to determine the purport and object for which the same was enacted.. .
> >
> > 36. The non obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy.. .

[19] 2019 SCC OnLine Guj 6127

> 37. A non obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same."

66. The Supreme Court, in the case of Central Bank of India v. State of Kerala [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; (2009) 4 SCC 94, held as follows (para 32, page 541 in 21 VST) :

> "103. A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the court is required to find out the extent to which the Legislature intended to do so and the context in which the non obstante clause is used. This rule of interpretation has been applied in several decisions."

67. In State of West Bengal v. Union of India (1964) 1 SCR 371, it was observed that :

> "68.. .. the court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute ; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

68. In Madhav Rao Jivaji Rao Scindia v. Union of India (1971) 1 SCC 85, Hidayatullah, C.J. observed that :

> "... the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but 'for that reason alone we must determine the scope' of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. A search has, therefore, to be made with a view to determining which provision answers the description and which does not."

41. The Gujarat High Court also had an occasion to take into consideration the decision in *R.S. Raghunath*, relevant passages whereof have been extracted hereinabove. Of equal significance were the principles enunciated by the Supreme Court in **A. G. Varadarajulu v. State of Tamil Nadu**[20] and which were noticed in paragraph 70 of the report and are reproduced below:

[20] (1998) 4 SCC 231

> **"70.** In A. G. Varadarajulu v. State of Tamil Nadu (1998) 4 SCC 231, the Supreme Court relied on Aswini Kumar Ghose's case AIR 1952 SC 369. The court while interpreting the non obstante clause contained in section 21A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 held :
>
> > "It is well-settled that while dealing with a non obstante clause under which the Legislature wants to give overriding effect to a section, the court must try to find out the extent to which the Legislature had intended to give one provision overriding effect over another provision. Such intention of the Legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369, Patanjali Sastri, J. observed:
> >
> > > "The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously;'"

42. The scope and extent of applicability of the non-obstante clause was ultimately explained by the Gujarat High Court in the following terms:

> **"71.** A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that inspite of the provisions or Act mentioned in the non obstante clause, the provision following it will have its full operation or the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment or the provision in which the non obstante clause occurs. (See Principles of Statutory Interpretation, 9th Edition, by justice G. P. Singh, Chapter V, Synopsis IV at pages 318 and 319).
>
> **72.** When two or more laws or provisions operate in the same field and each contains a non obstante clause stating that its provision will override those of any other provisions or law, stimulating and intricate problems of interpretation arise. In resolving such problems of interpretation, no settled principles can be applied except to refer to the object and purpose of each of the two provisions, containing a non obstante clause. Two provisions in the same Act each containing a non obstante clause, requires a harmonious interpretation of the two seemingly conflicting provisions in the same Act. In this difficult exercise, there are involved proper consideration of giving effect to the object and purpose of two provisions and the language

> employed in each. (See for relevant discussion in para 20 in Shri Swaran Singh v. Shri Kasturi Lal (1977) 1 SCC 750).
>
> **73.** Normally the use of the phrase by the Legislature in a statutory provision like "notwithstanding anything to the contrary contained in this Act" is equivalent to saying that the Act shall be no impediment to the measure (See Law Lexicon words "notwithstanding anything in this Act to the contrary"). Use of such expression is another way of saying that the provision in which the non obstante clause occurs usually would prevail over the other provisions in the Act. Thus, the non obstante clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting provision to which the non obstante clause is attached. (See Bipathumma v. Mariam Bibi (1966) 1 Mysore Law Journal 162, at page 165).”

43. In our considered opinion, the law on the subject has been correctly enunciated in *Synergy Fertichem* and where Pardiwala J. [as his Lordship then was] rightly observed that non-obstante clauses are not always liable to be regarded as intended to repeal or completely supersede all the other provisions of the law. His Lordship explained the purpose of such a clause as essentially intended to remove obstructions which may otherwise arise in the implementation of the enacting provision to which the non-obstante clause is attached. However, and as has been consistently held by courts, the extent of its application is to be discerned from the context in which it is employed and if worded in broad and sweeping terms to be construed strictly. Ultimately, as the decisions noticed by us explain, one would have to ascertain the extent to which the Legislature intended it to apply.

44. As was noticed by us in the preceding parts of this decision, Section 129 is principally concerned with the release of goods and conveyances which may have been detained or seized. That is clearly not a subject which is regulated or controlled by any of the other

provisions contained in Chapter XIX of the Act. The use of the non-obstante clause is thus liable to be appreciated and construed in the aforesaid light. In our considered opinion, since the subject of levy of penalty in connection with goods being transported in contravention of the Act had not been previously dealt with, the Legislature thought it fit and appropriate to deploy the non-obstante in order to deal with that subject. The extent of the "*notwithstanding*" phrase which introduces Section 129 into the statute book is thus liable to be construed in that light and thus the limit of its essay acknowledged accordingly.

45. We also find ourselves unable to read Section 129 as embodying an intendment of the Legislature to either override or completely supersede and obliterate Section 126. Accepting such an interpretation would clearly amount to depriving a person of the benefit of the principles of moderation and modulation which Section 126 introduces and enjoins to be borne in consideration while considering the levy of a penalty. The provisions contained in sub-section (6) of Section 126 also cannot possibly be read as whittling down the application of sub-sections (1) and (2) of Section 126 when it ordains that it would not apply to cases where penalties stand specified either as a fixed sum or percentage. The prescription of a fixed sum or percentage for purposes of quantification of penalty, as was noticed above, is one which the Act adopts principally in sub-sections (1), (1A), (1B) and (2) of Section 122. We have already found that the transgressions which are spoken of in Section 122(1) can neither be said to be trivial nor rectifiable. Section 126(6) would thus operate only insofar as transgressions would fall within the ambit of the sub-sections referred to above. All the other provisions comprised in Chapter XIX either use the expression "which

may extend to" or "shall not exceed". Those are thus instances where the penalty in any case cannot be described to be a fixed sum or one expressed as a fixed percentage.

46. Section 126(6) of the Act provides that its provisions will not apply in cases where the penalty under the Act is specified as a fixed sum or as a fixed percentage. This is further reflective of the Legislature seeking to distinguish between discretionary penalties and those that are predetermined. By excluding fixed penalties from the scope of this section, the law ensures clarity and consistency in its application, underscoring the principle that certain penalties are non-negotiable and uniformly applicable irrespective of the circumstances of the breach.

47. It would also be pertinent to note that in *Synergy Fertichem*, the Gujarat High Court emphasized that authorities must distinguish between trivial breaches and serious contraventions under the Act. The High Court clarified that confiscation is penal in nature and should only apply in cases of a clear intent to evade tax as opposed to mere procedural lapses such as an incomplete EWB when other valid documents are present. Further, issuing confiscation notices under Section 130 at the initial stage, without proper grounds or evidence of an intent to evade tax, the High Court held would be unjustified and would render Section 129 ineffective. The Court ultimately came to conclude that a reasoned and fair approach is essential to avoid an unnecessary detention of goods and conveyances. It would be pertinent to refer to the following principles which the High Court came to formulate in *Synergy Fertichem*:

"**97.** The questions whether the movement of the consignments sans

valid e- way bills constitutes a substantive error or a mere technical breach are to be considered by the assessing officer, having regard to the provisions of sections 122, 125 and 126 of the Act as well all relevant instructions and Circulars issued by the Board, including the circular extracted above.

98. A Division Bench of the Kerala High Court in the case of Assistant State Tax Officer v. Indus Towers Limited [2018] 55 GSTR 404 (Ker) ; [2018] KHC 498 ; (2018) 3 KLT SN 53, had an occasion to consider a question of release of goods ordered as provided under sub-section (1) or order passed under sub-section (3) of section 129 of the Act. It was held thus (page 419 in 55 GSTR) :

> ".. . The finding that the transaction would not fall within the scope of taxable supply under the statute, cannot be sustained for reason of there being no declaration made under rule 138. The resultant finding that mere infraction of the procedural rules cannot result in detention of goods though they may result in imposition of penalty cannot also be sustained. If the conditions under the Act and Rules are not complied with, definitely section 129 operates and confiscation would be attracted.. .. ."

99. It is practically impossible to envisage various types of contravention of the provisions of the Act or the Rules for the purpose of detention and seizure of the goods and conveyances in transit. The contravention could be trivial or it may be quite serious sufficient enough to justify the detention and seizure. This litigation is nothing but an outburst on the part of the dealers that practically in all cases of detention and seizure of goods and conveyance, the authorities would straightway invoke section 130 of the Act and thereby would straightway issue notice calling upon the owner of the goods or the owner of the conveyance to show-cause as to why the goods or the conveyance, as the case may be, should not be confiscated. Once such a notice under section 130 of the Act is issued right at the inception, i.e, right at the time of detention and seizure, then the provisions of section 129 of the Act pale into insignificance. The reason why we are saying so is that for the purpose of release of the goods and conveyance detained while in transit for the contravention of the provisions of the Act or the rules, the section provides for release of such goods and conveyance on payment of the applicable tax and penalty or upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) to clause (1) of section 129. Section 129(2) also provides that the provisions of sub- section (6) of section 67 shall mutatis mutandis apply for detention and seizure of goods and conveyances. We quote section 67(6) as under :

> "67(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond

> and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be."

100. Section 129 further provides that the proper officer, detaining or seizing the goods or conveyances, is obliged to issue a notice, specifying the tax and penalty payable and, thereafter, pass an order for payment of such tax and penalty. Clause (4) provides that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. Clause (5) provides that on payment of the amount, referred to in sub-section (1) of the proceedings in respect of the notice, specified in sub-section (3) are deemed to be concluded, and in the last, clause (6) provides that if the tax and penalty is not paid within 14 days of detention or seizure, then further proceedings would be initiated in accordance with the provisions of section 130.

101. We are of the view that at the time of detention and seizure of goods or conveyance, the first thing the authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rules. The second step in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was with an intent to evade the payment of tax. Section 135 of the Act provides for presumption of culpable mental state but such presumption is available to the Department only in the cases of prosecution and not for the purpose of section 130 of the Act. What we are trying to convey is that in a given case, the contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was with the necessary intent to evade payment of tax.

102. In such circumstances, referred to above, we propose to take the view that in all cases, without any application of mind and without any justifiable grounds or reasons to believe, the authorities may not be justified to straightway issue a notice of confiscation under section 130 of the Act. For the purpose of issuing a notice of confiscation under section 130 of the Act at the threshold, i. e., at the stage of section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction, the authority concerned is convinced that the contravention was with a definite intent to evade payment of tax. We may give one simple example. The driver of the vehicle is in a position to produce all the relevant documents to the satisfaction of the authority concerned as regards payment of tax, etc., but unfortunately, he is not able to produce the e-way bill, which is also one of the important documents so far as the Act, 2017 is concerned. The authenticity of the delivery challan is also not doubted. In such a situation, it would be too much for the authorities to straightway jump to the conclusion that the case is one of confiscation, i. e, the case is of intent to evade payment of tax.

> **103.** We take notice of the fact that practically in all cases, after the detention and seizure of the goods and the conveyance, straightway notice is issued under section 130, and in the said notice, one would find a parrot like chantation "as the goods were being transported without any valid documents, it is presumed that the goods were being transported for the purposes of evading the tax". We have also come across notices of confiscation, wherein it has been stated that the driver of the conveyance is presumed to have contravened the provisions of the Act or the Rules with an intent to evade payment of tax. This, in our opinion, is not justified. The resultant effect of such issue of confiscation notice at the very threshold, without any application of mind or without there being any foundation for the same, renders section 129 of the Act practically otiose. We take cognizance of the fact that once the notice under section 130 of the Act is issued, then the vehicle is not released even if the owner of the goods is ready and willing to pay the tax and the penalty that may be determined under section 129 of the Act. Such approach leads to unnecessary detention of the goods and the conveyance for an indefinite period of time. Therefore, what we are trying to convey is that all cases of contravention of the provisions of the Act or the Rules, by itself, may not attract the consequences of such goods or the conveyance confiscated under section 130 of the Act. Section 130 of the Act is altogether an independent provision which provides for confiscation in cases where it is found that the intention was to evade payment of tax. Confiscation of goods or vehicle is almost penal in character. In other words, it is an aggravated form of action, and the object of such aggravated form of action is to deter the dealers from evading tax."

48. We are in complete agreement with the view expressed by the Gujarat High Court and which correctly explains the interplay between Sections 129 and 130 of the Act. The harsh consequences which would follow a confiscation clearly warrant the provisions of the Act being accorded an interpretation which would be fair, reasonable and in consonance with the requirement of Article 14 of the Constitution. In any event, Section 129 can neither be construed as envisaging an inevitable levy of tax nor the imposition of a penalty. As noticed hereinabove, the said provision is primarily concerned with the release of seized and detained goods.

49. It would also be relevant to notice the important message and note of guidance which was conveyed by the CBIC in its Circular No. 64/38/2018-GST dated 14 September 2018, relevant parts whereof are extracted below:

> "3. Section 68 of the CGST Act read with rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding Rs 50,000/- should carry a copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part B of FORM GST EWB-01 amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto fifty kilometres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.
>
> 4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section 129 of the CGST Act may be initiated.
>
> 5. Further, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:
>
> a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
>
> b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

d) Error in one or two digits of the document number mentioned in the e-way bill;

e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

6. In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis."

50. Upon noticing the above, the Gujarat High Court in *Synergy Fertichem* held:

"**96.** As far as the determination of penalty is concerned, it is the Assessing Officer/State Tax Officer who is the competent and proper person for such determination/quantification. However, a holistic reading of the statutory provisions and the circular noted above, indicates to me that the Department does not paint all violations/transgressions with the same brush and makes a distinction between serious and substantive violations and those that are minor/procedural in nature."

As is evident from the above, even the CBIC accepts the position that the Act does not contemplate the imposition of an inevitable levy of penalty under Section 129.

51. We are also of the firm opinion that the levy of penalties under the Act must be guided by the salutary principles which stand embodied in Section 126. That statutory provision is undoubtedly an embodiment of the legislative intent of levy of penalties being guided by principles of moderation, restraint and reasonableness.

52. Consequently, and for all the aforesaid reasons, we allow the present writ petitions and quash the impugned orders dated 15 January

2022 and 15 February 2022. The demand of tax and penalty thereunder are consequently set aside. The petitioners shall be entitled to all consequential reliefs.

53. Accordingly, these writ petitions stand disposed of.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 17, 2025/kk/neha