

Gold carried with discrepancy in documents is sufficient to suspect GST evasion

The Hon'ble Kerala High Court in the matter of ***Sasi Pathirakunnath and Anr. v. Assistant State Tax Officers and Ors. [WP(C) No. 31445 of 2022 dated January 18, 2023]*** held that, there is no malice or lack of jurisdiction of the Revenue Department to initiate proceedings and passing the order for confiscation of gold and levy of penalty, as the discrepancy in the quantity mentioned in the documents and the quantity recovered was sufficient reason for the Revenue Department to suspect Goods and Services Tax ("**GST**") evasion. Further held that, it will be open to the assessee to raise all their contentions before the appellate authority.

Facts:

Sasi Pathirakunnath ("**Petitioner No. 1**") is the proprietor of the establishment 'A One Gold' situated in Thrissur District, Kerala and Nikhil Suresh ("**Petitioner No. 2**") is its acquaintance (collectively referred to as "**the Petitioners**").

The officials of Railway Protection Force ("**RPF**") intercepted the Petitioner No. 2, while travelling on a train on September 7, 2022, who was carrying gold ornaments ("**the Goods**") given by Petitioner No. 1. The Petitioner No. 2 furnished certain documents on its mobile phone, which the RPF did not find to be satisfactory.

Thereafter, the Petitioner No. 1 later brought certain documents to the RPF to establish that the Goods were bona fide and were transported with full compliance of the GST laws. However, the officials of the RPF, handed over the matter to the Revenue Department ("**the Respondent**") as the weight of the Goods mentioned in the documents was 825 gms and the actual weight was 724.99 gms. The Petitioner No. 2 stated that it had forgotten to handover 100 gms of the Goods, which was in its pocket.

The Respondent contended that discrepancy showed that there was an attempt to evade taxes. Further, the explanation of that they forgot to handover about 100 gms of the Goods was not credible.

The Petitioners contended that, during the interception of the Goods, all the necessary documents were available to show that the Goods were being transported in accordance with GST laws. Further, the proceedings were initiated and concluded under Section 130 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") without considering the documents provided by the Petitioners. Furthermore, the initiation, continuation and conclusion of proceedings and passing of order demanding penalty and fine ("**Impugned Order**") under Section 130 of the CGST Act was unwarranted and without jurisdiction as the Goods in question were supported by valid documents.

Being aggrieved, this petition has been filed.

Issue:

Whether the Respondent was right in initiating proceedings and passing the Impugned Order under Section 130 of the CGST Act?

Held:

The Hon'ble Kerala High Court in **WP(C) NO. 31445 OF 2022** held as under:

- Noted that, there was no satisfactory explanation for the fact that there was a discrepancy in the quantity mentioned in the documents produced by the Petitioners and the quantity actually recovered. Further, the contention of the Petitioners that the Petitioner No. 2 had forgotten to handover about 100 gms of the Goods which he was carrying in its pocket could not be accepted.
- Opined that, the discrepancy in the quantity mentioned in the documents and the quantity was sufficient reason for the Respondent to suspect tax evasion.

- Held that, there was no malice or ill will or lack of jurisdiction by the Respondent in initiating the proceedings and passing the Impugned Order under Section 130 of the CGST Act.
- Permitted the Petitioners to challenge the Impugned Order before the Appellate Authority.

Relevant Provisions:

Section 130 of the CGST Act:

“ 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.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose

of such goods or conveyance and deposit the sale proceeds thereof with the Government.”

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