

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15178 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS.JUSTICE HARSHA DEVANI****and****HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

INDIA LOGISTICS AND CARGO MOVERS

Versus

THE STATE OF GUJARAT

Appearance:

MANASVI THAPAR(8198) for the Petitioner(s) No. 1

MS MAITHILI MEHTA, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 24/09/2019****ORAL JUDGMENT****(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. Rule. Ms. Maithili Mehta, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents.

2. Having regard to the controversy involved in the present petition and with the consent of the learned advocates for the respective parties, the matter was taken up for final hearing.

3. By this petition under article 226 of the Constitution of India, the petitioner has challenged the notice dated 16.5.2019 issued in Form GST MOV-10 (Annexure-A) as well as the detention/confiscation order dated 16.5.2019/28.5.2019 issued by the third respondent in Form GST MOV-11 and seeks a direction to the respondent authorities to forthwith release truck No.GJ-27-X-3752 along with the goods contained therein.

4. The facts stated briefly are that the petitioner, a sole proprietorship firm, which is inter alia engaged in the business of transport, procured about 61 different customers. On 16.5.2019 at 13:50 hours while the goods were in transit in vehicle No.GJ-27-X-3752, the third respondent – State Tax Officer, Mobile Squad, Enforcement, Division-2, Ahmedabad intercepted the vehicle at Narol Char Rasta and found that the e-way bills of three parties, namely, Anjani Synthetics Limited dated 30.4.2019, Neelam Fabrics dated 15.5.2019 and Bhansali Cotfab dated 16.5.2019 were not generated. The statement of the driver in charge of the vehicle came to be recorded in Form GST MOV-1. It appears that the goods in respect of 58 customers wherein there were valid e-way bills came to be released; however, the vehicle with the goods in

respect of the above three parties came to be detained on the spot on 16.5.2019 by issuing a notice in Form GST MOV -10 under section 130 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") as well as the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the "GGST Act"). [Both the above Acts together are hereinafter referred to as the "GST Acts"]. It appears that the petitioner provided justification for not generating the above mentioned e-way bills; however, there was no response from the respondents. It further appears that the petitioner agreed to pay the tax and penalty as calculated on the basis of transaction value in the invoice as envisaged under section 129 of the GST Acts. However, the second respondent passed an order dated 28.5.2019 increasing the value of goods by 20% and confiscating the goods under section 130 of the GST Acts. Being aggrieved by the continued detention/seizure of its goods, the petitioner has filed the present writ petition seeking the reliefs noted hereinabove.

5. Mr. Manasvi Thapar, learned advocate for the petitioner, submitted that the continued detention/seizure of the goods and vehicle of the petitioner, despite the petitioner having agreed to pay tax and penalty as stipulated under section 129 of the GST Acts, is wholly without jurisdiction, arbitrary and illegal. It was submitted that section 129(1) of the GST Acts clearly provides for release of any goods detained/seized under the section on payment of applicable tax and penalty equal to hundred percent. Therefore, non-release of the goods detained despite the petitioner having shown willingness to make such payment is wholly without jurisdiction, arbitrary and illegal. It was further submitted that the confiscation notice has directly

been issued on 21.5.2019 in purported exercise of powers under section 130 of the GST Acts without completing the procedure under section 129 thereof and thereafter the third respondent has proceeded to pass the impugned order of confiscation dated 28.5.2019, which is wholly without jurisdiction and illegal.

5.1 It was further submitted that the impugned order of confiscation is pre-determined and without application of mind. It was urged that while admittedly the notice for confiscation is dated 16.5.2019, it was served upon the petitioner on 21.5.2019 and that despite the petitioner having made submissions objecting to the confiscation, in the impugned order of confiscation, it has been recorded that the petitioner has not filed any objections. It was submitted that this indicates that the impugned order has been passed in a pre-determined manner without application of mind and therefore also, the same is arbitrary and illegal is required to be set aside. It was further submitted that the goods were duly accompanied by tax invoice as well as transport receipt and only e-way bills of the above three customers could not be generated by the petitioner due to reasons which have been stated before the respondent authorities. It was submitted that there was no intention on the part of the petitioner to evade payment of tax under the GST Acts and hence, the continued detention of the goods and the truck is arbitrary and illegal. It was accordingly, urged that the impugned order of confiscation deserves to be quashed and set aside and that the respondents are required to be directed to release the goods as well as the conveyance.

6. Opposing the petition, Ms. Maithili Mehta, learned Assistant Government Pleader, placed reliance upon the averments made in the affidavit-in-reply filed on behalf of the third respondent wherein it is stated that the vehicle in question was confiscated on 16.5.2019 directly in exercise of powers under section 130 of the Goods and Services Tax Act, 2017. The ground for confiscation of the said vehicle was that qua three e-way bills, Part-B was not found from the vehicle, meaning thereby, out of 61 consolidated e-way bills, Part-B was only for 58 consignments and Part-B of e-way bills of three consignments was not traceable. It is further submitted that the authorities could find invoices qua all 61 consignments but out of those 61 invoices, 14 invoices were quite doubtful as they did not bear the signatures of the authorized persons issuing the said invoices. [The details of the 14 invoices are set out in the affidavit-in-reply.] It was submitted that the authorities have, therefore, presumed that the said invoices are fake and are drawn with an intention to evade tax.

6.1 It is further submitted that the earlier representation dated 20.5.2019 was given by the petitioner who is the transporter and that neither the purchaser nor the suppliers have given any explanation in respect of the 14 invoices which do not bear any signature and that the explanations dated 20.5.2019 and 28.5.2019 are mainly qua non-possession of Part-B of the e-way bill. It is categorically averred in the affidavit-in-reply that mainly due to the fact that 14 invoices were not properly signed, the authorities have exercised powers under section 130 of the Goods and Services Tax Act, 2017 and calculated tax and penalty considering the provisions of section 130 of the Goods and Services Tax Act, 2017. The

learned Assistant Government Pleader accordingly, urged that the authorities have duly followed the provisions of law and having found serious irregularities, have passed the order of confiscation under section 130 of the Goods and Services Tax Act, 2017 which is just legal and proper. It was accordingly, urged that the petition being devoid of merits deserves to be dismissed.

7. In the backdrop of the facts and contentions noted hereinabove, it is an admitted position that in this case no detention order under section 129 of the CGST Act/GGST Act has been made in this case and the respondents have directly resorted to the provisions of confiscation under section 130 of the said Acts.

8. A perusal of the notice dated 16.5.2019 issued under section 130 of the CGST Act/GGST Act whereby the third respondent proposes to confiscate the goods and conveyance, reveals that the vehicle in question was intercepted in exercise of powers under sub-section (3) of section 68 of the CGST Act/GGST Act as well as other statutory provisions and it was found that certain discrepancies as reproduced hereunder were noticed:

“(i) After verification of documents, tendered during the movement of goods in vehicle, valid e-way bill not generated for the following bills.

a. Anjani Synthetic Limited bill no.F.1286/1920 dated:30.04.2019

b. Neelam Fabrics bill no.55 dated 15.05.2019

c. Bhansali Cotfab bill no.211 dated 16.05.2019

(ii) Transporter is aware about consolidated e-way bill as he has generated the same for 58 transactions of which goods transported through the same truck, while he has not included above mentioned 3 transaction in that

consolidated e-way bill. In addition to that documents tendered for the goods in movement there are 14 bill of supply found without authorized signature and no clarification received from taxable persons. So those invoices are not valid invoices because not bearing signatures of suppliers.

(iii) With reference to bill of M/s. Anjani Synthetics Ltd. Dated;30.04.2019, submitted that the goods was sent to transporter with bill of supply and e-way bill part – A on 30.04.2019, but confirmation was not received from recipient, so the goods was stored in godown of transporter till 16.05.2019 after receiving the confirmation goods was dispatched. But he has not provided any proof for supporting his submission. Also transporter has not included the same transaction in his consolidated e-way bill. So, it is presumed that he is also involved in evasion of the tax for the above bill.

(iv) The documents tendered for the transactions mentioned in (i) are not valid according to sec.68 of GGST Act, 2017 as there is no signature of authorized person.

(v) As per the above detail it is clear that taxable persons are evading tax by not generating e-way bill part-B.

(vi) No supplier came forward for the clarification for not generating e-way bill part-B and about bill of supply without authorized signature.

(vii) Value of goods are increased by 20% for the calculation of tax, penalty and fine u/s.130.”

9. By the said notice, the petitioner was called upon to appear before the third respondent by 27.5.2019. It is the case of the petitioner that the notice dated 16.5.2019 was served upon it on 21.5.2019. It appears that in the meanwhile, the petitioner, by a communication dated 20.5.2019, requested the respondent to release the goods in respect of which there was no dispute, pursuant to which, the goods pertaining to 58 parties appear to have been released. The petitioner by a separate communication of the same date also offered explanations in respect of the goods of the three parties in respect of which disputes were raised. By a communication

dated 21.5.2019 one of the three parties, viz., Anjani Synthetics Limited, tendered its explanation for the deficiencies pointed out by the third respondent.

10. Thereafter, by the impugned order dated 28.5.2019, the following goods and conveyance came to be confiscated by the third respondent in exercise of powers vested under section 130 of the CGST Act/GGST Act and other statutory provisions whereby tax, penalty and fine in lieu of confiscation of goods and conveyance came to be imposed:

DETAILS OF GOODS CONFISCATED

SL No.	Description of goods	HSN Code	Quantity	Value
1	CLOTH A		7,291 MTR	Rs.6,79,301
2	CLOTH N		598.25 MTR	Rs. 65,580
3	CLOTH B		1,786.70 MTR	Rs.2,18,237

DETAILS OF CONVEYANCE CONFISCATED

SL No.	Description	Details
1	Conveyance Registration No.	GJ 27 X 3752
2	Vehicle Description	
3	Engine No.	
4	Chasis No.	

It appears that the petitioner has also given an explanation dated 28.5.2019.

11. A perusal of the impugned order dated 16.5.2019/28.5.2019 reveals that the notice in Form GST MOV-10 dated 16.5.2019 was issued on 21.5.2019. By virtue of the impugned order, goods in respect of only three parties and the

conveyance have been confiscated. The goods confiscated are in respect of the three parties referred to hereinabove.

12. In the impugned order in paragraph 5, it has been recorded thus:

“5. The person in charge has not filed any objections/ the objections filed were found to be not acceptable for the reasons stated below:

a)”

Thereafter, in paragraph 6, it has been recorded thus:-

“6. In view of the above, the following goods and conveyance are confiscated by the undersigned by exercising the powers vested under section 130 of the Central Goods and Services Tax Act and under section 130 of the State Goods and Services Tax Act/Section 21 of the Union Territory Goods and Services Tax Act or under section 20 of the Integrated Goods and Services Tax Act which are listed as under:”

SL No.	Description of goods	HSN Code	Quantity	Value
1	CLOTH A		7,291 MTR	Rs.6,79,301
2	CLOTH N		598.25 MTR	Rs. 65,580
3	CLOTH B		1,786.70 MTR	Rs.2,18,237

13. On reading the impugned order of confiscation in its entirety, it is manifest that the third respondent has not assigned any reason whatsoever as to why the goods and conveyance were required to be confiscated. Despite the fact that the petitioner and Anjani Synthetics Limited had submitted explanations in respect of the discrepancies noticed by the third respondent, there is no reference to the same in

the impugned order. Thus, the third respondent without applying his mind to the facts of the case appears to have mechanically passed the impugned order without assigning any reasons worth the name for confiscating the goods and conveyance. The respondents should be aware that orders of confiscation under section 130 of the CGST Act/GGST Act have serious civil consequences for the transporter as well as the owner of the goods. Therefore, the least that is expected of the authorities discharging duties under these Acts is that they should properly apply their minds to the facts of the case before taking drastic action under the provisions of section 130 of the CGST Act/ GGST Act. Passing orders in a perfunctory manner has been done in the present case without considering the explanations tendered by the affected parties and without assigning reasons therefore, amounts to abdication of duties on the part of the concerned officer and causes immense prejudice to the parties.

14. It may further be noted that while the impugned order is bereft of any reasons, in the affidavit-in-reply filed on behalf of the third respondent, it has been stated that Part-B of the e-way bill for three consignments was not traceable. Another ground put forth is that, in all, there were 61 consignments, and that out of 61 invoices, 14 invoices were doubtful as they did not bear the signature of the authorised person issuing the said invoices. However, a perusal of the details of the 14 invoices as reflected in the impugned order shows that none of them relate to the three parties whose goods are sought to be confiscated. It has been stated by the third respondent that none of the purchasers/suppliers have given any explanation qua the 14 invoices which clearly indicates that even the

affidavit-in-reply has been filed without proper application of mind, inasmuch as, the goods relating to the 14 invoices have not been confiscated. In the affidavit-in-reply, it has also been stated that mainly due to the fact that 14 invoices are not properly signed, the authorities have exercised powers under section 130 of the CGST Act and calculated tax, penalty and fine thereunder. If that be so, since none of the 14 invoices relate to the parties whose goods are confiscated, under the circumstances, the goods belonging to them could not have been confiscated by the respondent authorities.

15. In the light of the above discussion, it appears that the impugned order has been passed without any application of mind and without considering the explanation submitted by the petitioner and Anjani Synthetics Limited and in undue haste. Moreover, despite the fact that out of 61 consignments, the third respondent has noticed deficiencies only in respect of three consignments, the conveyance of the petitioner is also sought to be confiscated, that too without assigning any reasons as to how the petitioner has sought to evade payment of tax.

16. It may be noted that while there appears to be a format for an order under section 130 of the CGST Act, such format also provides a column for assigning reasons therefor. However, as noted hereinabove, that column has been left blank. At this juncture it may be apposite to refer to the decision of the Supreme Court in **Kranti Associates (P) Ltd. v. Masood Ahmed Khan**, (2010) 9 SCC 496, wherein the court in the context of necessity to give reasons, has held thus:

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid

decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain, (1994) 19 EHRR 553 and Anya v. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

17. Thus, it was incumbent upon the third respondent to give reasons in support of his conclusion that the goods in question and the conveyance are required to be confiscated. However, the impugned order is totally bereft of any reasons, in the absence of which the order stands vitiated due to non-application of mind on the part of the maker of the order. The impugned order dated 28.5.2019, therefore, cannot be sustained. Since the court is inclined to set aside the impugned order on the ground that it is a non-speaking order, ordinarily, it would remand the matter to the authority to decide the same afresh by assigning proper reasons. However, in the facts of the present case, the third respondent has filed an affidavit-in-reply which has been extensively referred to hereinabove. As discussed earlier, on the grounds set forth in the affidavit-in-reply, the goods in question could not have

been confiscated. Under the circumstances, no useful purpose would be served in remanding the matter to the third respondent.

18. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned order dated 28.5.2019 passed by the third respondent in exercise of powers under section 130 of the CGST Act/GGST Act is hereby quashed and set aside. The respondents are directed to forthwith release the conveyance, namely, truck No.GJ-27-X-3752 along with the goods contained therein. Rule is made absolute accordingly.

Direct service is permitted.

(HARSHA DEVANI, J)

(SANGEETA K. VISHEN, J)

Z.G. SHAIKH