

HIGH COURT OF ANDHRA PRADESH

MAIN CASE No: W.P.No.12843 of 2022

PROCEEDING SHEET

Sl. No	DATE	ORDER	OFFICE NOTE
	04.05.2022	<u>AVSS,J & RNT,J</u> Issue notice to the respondents. Heard Sri Sameer Gupta, learned counsel appearing for Sri S.Vivek Chandra Sekhar, learned counsel for the petitioner and Sri Y.N.Vivekananda, learned Government Pleader for respondents. It is submitted by the learned counsel for the petitioner that the action impugned in the present Writ Petition is totally one without jurisdiction and that as per Article 265 of the Constitution of India, no tax should be levied or collected except by authority of law. It is further contended that by invoking the provisions of Section 130 of the Central Goods and Services Tax Act, 2017, (for short ‘the Act’), 1st respondent herein acted without jurisdiction. It is further submitted by the learned counsel that vide Finance Act, 2021, Sections 129 and 130 were amended to the effect that ‘Non-Obstente’ Clause was removed from Section 130, while retaining the Non-Obstente clause in Section 129 of the Act and that the said amendment came into effect from 01.02.2022 and as such from the said date, Section 129 of the Act shall have over riding effect on Section 130 of the Act. It is further contended by the learned counsel that language of Section	

	129 clearly indicates that the same is specific provision which deals with the goods in transit. It is further stated by the learned counsel that in respect of cases pertaining to goods in transit, if at all any penalty is leviable, the same shall be levied under Section 129 of the Act. It is further submitted that the Non-Obstante clause in Section 129 of the Act is indicative of the legislative intent to prevent the application of any other provisions of the Act with respect to goods in transit. It is further stated by the learned counsel that show cause notice, which is impugned in the Writ Petition also makes it manifest that the goods were inspected when they were in transit under Section 68(3) of the Act. In support of his contentions and submissions, learned counsel has places reliance on the judgment of the Gujarat High Court in the case of Synergy Fertilchem Private Limited vs. State of Gujarat, reported in 2020 (33) G.S.T.L.513 (Guj.). Learned counsel also placed on record an interim order passed by Gujarat High Court dated 30.03.2022, in M/s.Shanti Metal Industries vs. State of Gujarat. On the other hand, strongly resisting the Writ Petition, it is submitted by Sri Y.N.Vivekananda, learned Government Pleader that the deletion of Non-Obstante clause from Section 130 of the Act does not take away power of the respondent authorities to invoke the said provision of law and the provisions of Sections 129 and 130 are independent and the authorities are authorized to exercise the power under the said provisions of law. It is further submitted by the learned Government Pleader that the contention of the learned counsel for the petitioner, if accepted, the same would render	
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	Section 130 of the Act redundant. When same issue came up for consideration before the Gujarat High Court, Division Bench of the Gujarat High Court in the case of <i>M/s.Shanti Metal Industries vs. State of Gujarat</i>, granted interim order subject to the petitioner therein depositing penalty and directed release of goods and conveyance. The issues raised in the present Writ Petition are required to be re-examined after filing counter by the respondents. Having regard to the contentions advanced by the learned counsel for the petitioner, there shall be stay of further proceedings pursuant to the impugned show cause notice dated 16.04.2022 and the subject goods and conveyance shall be released subject to the petitioner paying 1/4th of the amount proposed by the respondent authorities in the impugned show cause notice and on execution of personal bond for rest of the amount. AVSS,J RNT,J vsl	
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