2025:KER:100

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

WP(C) NO. 40450 OF 2023

PETITIONER:

SHISH JEWELS PRIVATE LIMITED,
PLOT NO.196, SURAT SPECIAL ECONOMIC ZONE,
SACHIN, SURAT, GUJARAT,
REPRESENTED BY ITS MARKETING MANAGER,
ANSON ANDACHAN, PIN - 394230

BY ADVS.
K.SREEKUMAR
AJI V.DEV
ALAN PRIYADARSHI DEV
S.SAJEEVAN
AMMU CHARLES

RESPONDENTS:

1 THE INTELLIGENCE OFFICER,
INTELLIGENCE UNIT NO. 3,
STATE GOODS AND SERVICES TAX DEPARTMENT,
2ND FLOOR, KUREEKAL BUILDING,
EDAPALLY, KOCHI, PIN - 682024

2 M/S.DUBAI GOLD AND DIAMONDS, (FIRDOUS JEWELS AND DIAMONDS PVT LTD.),
M.M 21/621 D,E,F,G, DOWN HILL,
MALAPPURAM, PIN - 676519

THE COMMISSIONER OF STATE TAX,

3 S.G.S.T. DEPARTMENT, TAX TOWER, KILLIPPALAM, KARAMANA -P.O, THIRUVANANTHAPURAM, PIN - 695002

4 THE INTELLIGENCE OFFICER, UNIT NO IV, STATE GOODS AND SERVICES TAX DEPARTMENT, 2ND FLOOR, SGST COMPLEX, MATTANCHERRY, PIN - 682002

R BY SPL.GP SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.06.2024, ALONG WITH WP(C).18326/2023, THE COURT ON 06.01.2025 DELIVERED THE FOLLOWING:

2025:KER:100

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

WP(C) NO. 18326 OF 2023

PETITIONER:

SHISH JEWELS PVT.LTD.,
PLOT NO.196, SURAT SPECIAL ECONOMIC ZONE,
SACHIN, SURAT, GUJARAT ,
REPRESENTED BY THE MARKETING MANAGER,
ANSON ANDACHAN, PIN - 394230

BY ADVS.
K.SREEKUMAR
AJI V.DEV
ALAN PRIYADARSHI DEV
S.SAJEEVAN

RESPONDENTS:

1. **THE INTELLIGENCE OFFICER,**
UNIT NO. IV, STATE G.S.T. DEPARTMENT,
2ND FLOOR, SGST COMPLEX,
MATTANCHERRY, PIN - 682002

2. **DUBAI GOLD AND DIAMONDS,**
(FIRDOUS JEWELS AND DIAMONDS PVT LTD.),
M.M 21/621 D,E,F,G, DOWN HILL,
MALAPPURAM-676519, PIN - 676519

3. **THE COMMISSIONER OF STATE TAX,**
S.G.S.T. DEPARTMENT, TAX TOWER,
KILLIPPALAM, KARAMANA -P.O,

THIRUVANANTHAPURAM-695002.

BY ADVS.
SREELAL N.WARRIER, SC, CENTRAL GST (CGST)
P.RANI DIOTHIMA
SAIJESH A.(K/000405/2023)
SPL.GP SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21.06.2024, ALONG WITH WP(C).40450/2023, THE COURT ON 06.01.2025 DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner in these writ petitions is engaged in the wholesale trade of gold, precious metals and ornaments made therefrom to various jewellery shops in different States and is a registered dealer under the provisions of the Goods and Services Tax Act (GST Act). Since common issues arise for consideration in these writ petitions, they are disposed of by this common judgment. The status of parties and the documents referred to in this judgment will be as obtaining in W.P.(C) No.40450 of 2023.

2. The principal place of business of the petitioner is at Gujarat. The petitioner obtained

registration under the GST Act in Kerala and is preparing to start business at Thrissur. According to the petitioner, as part of business, the petitioner deputes Marketing Executives as carriers to exhibit its goods to dealers in different States. Only if the dealers approve the exhibited goods, the petitioner supplies the required ornaments, along with tax invoice. In the case of diamond gold jewellery unlike gold jewellery, the petitioner has also to obtain a certificate from the laboratory certifying the purity of the precious stones. Only upon receipt of the laboratory certificate, the petitioner proceeds to sell the approved diamond gold jewellery along with the certificate and tax invoice. In order to transport the sample ornaments for approval of dealers, the petitioner issues delivery challans in the name of its Marketing Executives in accordance with Rule 55(1)(c) of the Central/State Goods and Services Tax Rules, 2017 (GST Rules, 2017).

3. While so, the petitioner issued Exts. P2 and P2(a) delivery challans dated 25.05.2023 respectively for 1044.074 and 3287.716 grams of net weight diamond gold jewellery in the name of Mr. Anson Andachan, one of the petitioner's Marketing Executives, to exhibit and solicit orders from the dealers in Kerala. Ext. P3 is the copy of the authorization dated 08.07.2022 given to Mr. Anson Andachan to market the goods on behalf of the petitioner. The petitioner states that, pursuant to the aforesaid authorization, Mr. Anson Andachan

approached the 2nd respondent, M/s. Dubai Gold and Diamonds, Malappuram, on 26.05.2023 to exhibit the diamond gold jewellery mentioned in the delivery challans. However, at that time, the 4th respondent, the Intelligence Officer, State Goods and Services Tax Department, Ernakulam along with other officials of the Department entered the premises of the 2nd respondent, conducted search and upon finding certain discrepancies in the stock of the 2nd respondent, proceeded to seize the entire ornaments including that of the petitioner under Section 67 of GST Act. The petitioner states that the jewellery seized from the petitioner’s Marketing Executive amounts to 607.39 grams and 3188.27 grams, of 22KT Diamond gold jewellery. The 4th respondent issued Ext.P4 combined seizure order in respect of the goods of the 2nd respondent and the petitioner. Contending that the 4th respondent and his officials have no right to seize the ornaments of the petitioner which were accompanied by valid delivery challans as prescribed under GST Rules, 2017 from the premises of the 2nd respondent, the petitioner filed W.P (C) No. 18326 of 2023 before this Court challenging *inter alia* Ext.P4 seizure order and for direction to release forthwith the detained goods unconditionally. In the said writ petition, this Court passed an interim order on 20.06.2023 as follows:

> "Admitted. Learned Government Pleader takes notice for the respondents. Respondents may file counter affidavit, if any, within a period of one month. Having considered the pleadings and materials on

record and after hearing the learned counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents and taking note of the submission made by the learned Government Pleader that pursuant to the search conducted by the first respondent it was found that the goods were being carried in contravention of the provisions of the CGST Act and that the respondents are proposing to initiate proceedings under Section 138 (*sic* 130) of the Act, I do not find any valid grounds of prima facie case to pass an interim order directing the respondents to release the gold seized from the petitioner as per Ext. P4 order pending disposal of the writ petition. Nonetheless, it will be up to the respondents to finalise proceedings pursuant to Ext. P4 as expeditiously as possible."

4. Immediately after the issuance of interim

order on 20.06.2023, on the very same day, Ext. P5 show cause notice was issued by the 1st respondent Intelligence Officer under Section 130 of the SGST Act. The petitioner sent Exts. P6 and P7 letters to the 1st respondent requesting for release of the goods seized, along with duly executed bond for the value of the goods and a challan evidencing payment of the amount equivalent to the penalty quantified in the show cause notice *in lieu* of bank guarantee. The 1st respondent, by Ext. P8 communication dated 13.07.2023, rejected the request stating that Section 130 of the SGST Act does not provide for provisional release of goods seized. The petitioner states that Ext.P8 was issued without providing the petitioner an opportunity of being heard. Challenging Exts. P5 and Ext. P8, W.P (C) No. 40450 of 2023 is preferred.

5. The petitioner states that Section 130 proceedings are yet to be finalized by the 1st respondent and the petitioner has been cooperating with the proceedings. It is contended that, in the meantime, the Department has no authority to retain the seized goods in its custody without any valid reason and as per Section 67(6) of the GST Act, the seized goods shall be released, on a provisional basis, upon execution of a bond and furnishing of a security. The petitioner refers to Rule 140(1) of the GST Rules, 2017 and contends that the seized goods have to be released on a provisional basis upon execution of a bond and furnishing of a security in the form of a bank guarantee equivalent to the amount of

applicable tax, interest and penalty payable. The petitioner states that the goods seized are stock-in-trade goods brought to the dealer for approval before sale and were accompanied by delivery challans and have been accounted for in the books. There is no reason for continued seizure of the goods. It is contended that there is no contravention of the GST Act and Rules by the petitioner and there is no reason for invocation of Section 130 proceedings when no intention to evade tax emerges in the case. It is contended that the deprivation of the goods has severely affected the petitioner’s business and has infringed the fundamental rights of the petitioner guaranteed under Article 14 of the Constitution of India. Accordingly, it is contended that the petitioner is entitled to interim release of the goods pending adjudication of Ext. P5 show cause notice. Ext. P5 is also being challenged on its merits. It is further contended that Ext. P8 letter has been issued without taking into consideration the true purport of the provisions of GST Act. Non-release of the goods to the petitioner amounts to deprival of its constitutional right to property. Accordingly, the petitioner seeks to quash Exts. P5 and P8, and to declare that release of goods under Section 67(6) of GST Act on provisional basis is permissible even upon initiation of Section 130 proceedings under the GST Act. A direction is sought to the respondents to release the seized goods forthwith.

6. This Court, by common order dated

18.01.2024 in the above writ petitions, directed the 1st respondent not to finalise the adjudication proceedings.

7. A counter affidavit has been filed on behalf of the 1st respondent contending that the writ petition is premature and no writ petition under Article 226 of the Constitution would lie against a show cause notice issued under Section 130 of the GST Act. It is stated that the request for provisional release of the goods was made by the petitioner only on 05.07.2023 i.e., after the commencement of confiscation proceedings on 20.06.2023 by issuing show cause notice. It is further stated that Section 130 does not contemplate provisional release of goods which are proposed to be confiscated and the 1st respondent has

no authority to release the goods pending adjudication and until the culmination of adjudication, the party from whom the goods were seized cannot claim release of such goods and that legal proceedings cannot be whittled down on grounds of expediency. Accordingly, it is contended that the petitioner has no legal right to claim provisional release of the goods pending adjudication under Section 130. It is further stated that the petitioner has participated in the adjudication and availed its right to cross examine on 12.01.2024 and personal hearing was held on 08.02.2024 and objection was filed on 09.02.2024 and what remains is to pass final orders in the matter and therefore, provisional release of the goods at the final stage of the proceedings would serve no purpose in law.

8. Heard Sri.K.Srikumar, the learned Senior Counsel for the petitioner and Sri.Mohammed Rafiq, the learned Special Government Pleader (Taxes).

9. Sri.Srikumar relies on the judgment of this Court in ***Golden Traders v. Assistant State Tax Officer*** [(2022) 142 taxmann.com268 (Kerala) : (neutral citation No. 2022 KER 36959) and contends that Section 130 of the GST Act does not prohibit interim release of goods which are detained pending finalisation of proceedings under Section 130. Reliance is placed on the judgment of the High Court of Gujarat in ***Dhanlaxmi Metals v. State of Gujarat*** [(2022) 144 taxmann.com 53 (Gujarat)] wherein the Court has taken the view that provisional release of

goods is possible even after initiation of Section 130 proceedings. The learned senior counsel also relied on the decision in ***State Tax Officer v. Balakrishnan*** [2022 (1) KLT 83] wherein it has been held that the provisions of Section 130 of the GST Act contemplate release of goods on payment of fine in lieu of confiscation during the process of adjudication under Section 130(2) and during post adjudication under Section 130(3). Relying on the decision in **Synergy Fertichem (P.) Ltd. *v.* State of Gujarat** [(2019) 103 taxmann.com 426/72 GST 641], Sri.Srikumar contends that Section 130 proceedings cannot be initiated for allegations of trivial contraventions, if any. The decision of the Hon'ble Supreme Court in **Weston Components Ltd. v.**

Commissioner of Customs, New Delhi [(2000) 1 SCC 565] is relied on by the learned senior counsel to contend that even if the goods were released on bond being executed, the same would not take away the power of the Customs authorities to levy redemption fine if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the Customs authorities to confiscate the said goods. Sri.Srikumar also refers to the amendment brought out to Section 130 of the GST Act substituting the phrase “Notwithstanding anything contained in this Act” with the word “Where”, and submits that since the *non obstante* clause in Section 130 no longer exists, the remedy of provisional release under Section 67

(6) is available even after the initiation of Section 130 proceedings. It is further contended that if the goods are not provisionally released pending adjudication, it will lie with the department unused for several years till all the appeal remedies are exhausted.

10. Sri.Mohammed Rafiq would rely on the decision of the Hon’ble Supreme Court in ***State of Punjab v. Shiv Enterprises and Others*** [(2023) 109 GSTR 100 : 2023 SCC OnLine SC 271] to contend that the writ petition filed against Ext.P5 show cause notice under Section 130 of the GST Act is not maintainable. Relying on the decision of the Hon'ble Supreme Court in ***Union of India v. Lexus Exports (P) Ltd.*** [(1997) 10 SCC 232], Sri.Rafiq would contend that the proceedings of confiscation are

proceedings in *rem* and until the culmination of the adjudication, the party from whom the goods were seized cannot claim release of such goods and that legal proceedings cannot be whittled down on grounds of expediency. Sri.Rafiq also submits that the decision in **Balakrishnan** (supra) cannot be relied upon since the writ appeal arising from the said case has been subsequently withdrawn leaving open the contentions of the parties.

11. Section 67 of the Central Goods and Services Tax Act, 2017 deals with the power of the proper officer to inspect, search and seizure. Section 67(6) provides that the goods seized under sub-Section (2) shall be released, on 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. Section 130 of the GST Act reads as follows:

"**S. 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.

[xxx]

(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."

12. The primary contention of the petitioner is that the petitioner is entitled to provisional release of the goods under Section 67(6) of the GST Act pending adjudication of the notice under Section 130. The question as to whether interim release of goods can be ordered pending adjudication of notice under Section 130 of the GST Act came up for consideration before this Court in **Golden Traders** (supra). Distinguishing the judgment of the Hon'ble Supreme Court in **Lexus Exports** (supra) and referring to the

decision in **Balakrishnan** (supra), this Court held as follows:

> "6. However, the question remains as to whether the petitioner is entitled to the interim release of the goods pending adjudication of the notice under section 130 of the CGST Act. Though the learned special Government Pleader has referred to the judgment of the Supreme Court in **Lexus Export (P) Ltd.**(Supra), I am of the view that the said precedent has no application in deciding a matter arising under section 130 of the CGST Act. That case dealt with the provisions of the Customs Act, 1962. Under the provisions of the Customs Act, 1962, confiscation may be absolute if the goods in question are prohibited goods within the meaning of Customs Law. In the case of a domestic transaction like that in the present case, the question of ordering an absolute confiscation does

not arise as even the provisions do not contemplate such course. The objection raised by the department is that there is an attempt to evade the payment of tax. There is no provision in Section 130 which prohibits the interim release of goods which are detained pending finalization of proceedings under Section 130. The State can insist on conditions being imposed to ensure that its revenue is protected. I am fortified in taking this view in the light of the detailed order of a Learned Judge of this Court in R.P No. 630 of 2021 and connected case (reported as **State Tax Officer** v. **Balakrishnan; 2022 (1) KLT 83)** where this Court after considering various precedents including that of the Supreme Court in **Lexus Exports (supra)** held as under:-

> “26. Absence of the use of the words ‘provisional release’ or non-reference to section 67(6) of the Act is not determinative of the intent of the section. Since section 130 of the

Act is a code by itself, the provisions of section 130 must be viewed independently to understand its scope. None can find fault if the legislature in its wisdom thought it fit to incorporate a provision into section 130 itself for release of the goods in lieu of confiscation at two stages - during adjudication and after adjudication. When the intention of a section is manifest from the words employed, it would be insidious to interpret the section differently, by referring to other sections of the same enactment. Absence of the words provisional release or absence of reference to section 67(6) of the Act is not determinative when section 130(2) of the Act itself is manifest of such a release.

27. The two different stages in which the goods can be released- during adjudication and post-adjudication are obviously created with a purpose. The purpose of the two-stage release is that, if the owner of

the goods, even before being deprived of his title to the goods or conveyance, is ready to pay the fine stipulated by the officer, then without further wrangles, if the goods and or conveyance can be released to the said owner, the same avoids unnecessary procedural formalities. If the fine in lieu of confiscation is paid at the initial stage, no prejudice would be caused to the revenue also, since by virtue of section 130(7) even after adjudication, an option to pay fine in lieu of confiscation is to be offered peremptorily. Thus, in view of the above deliberations, I am of the firm view that section 130(2) of the Act applies before the order of confiscation is issued.

28. The decision relied upon by the learned Senior Government Pleader rendered by the Karnataka High Court in M/s.Meghdoot Logistics case, according to me, can be distinguished. Though the said

decision observes in paragraph 21 that there is no provision for a provisional release of the seized goods under section 130 of the Act, this Court is of the considered view that the question of release under section 130(2) of the Act never arose for consideration in that case and the observations were only obiter dicta of the Court. The aforesaid decision arose on an issue under section 129 of the Act and in the process of distinction, a passing reference alone was made to section 130. In such a view of the matter, I am not persuaded to follow the said judgment.

29. In the decision in Special Civil Application No.4043 of 2020 by the High Court of Gujarat in Kannan v. State of Gujarat, though it was observed that the competent authority has the power to pass an order of provisional release of goods, subject to certain terms and conditions, this Court is of the view that section 130(2) contemplates a

> release not provisional or absolute but a release peculiar to the Act during the course of adjudication. Further, the provisions of section 125 of the Customs Act though contains similar wordings as in section 130(2) of the Act, the interpretations adopted therein cannot be adopted in their entirety since specific distinctions are available in the various clauses of section 130 of the Act.
>
> 30. Thus, I answer the first question that though section 130(2)is not a case of provisional release, the sub-clause confers power upon the competent officer to release the goods on payment of fine in lieu of confiscation, while the proceedings for confiscation are continuing and before orders of adjudication are passed.

Of course, **Balakrishnan (supra)** is an order in a review petition seeking review of an interim order and the main writ petition is yet to be decided. However, that by itself is no reason to hold otherwise as I am in complete agreement with the views expressed by the learned judge in **Balakrishnan (supra)**. I must also note that though the order in **Balakrishnan (supra)** was the subject matter of an appeal, the Division Bench through order in W.A No. 1728 of 2021 did not stay the operation of the order and instead directed its compliance. It was observed:

> "................Prima facie, we are of the view that the provisions of the GST Act, as also the provisions of the Customs Act that was referred to by Sri.Mohammed Rafiq, the learned Special Government Pleader for the State, suggest that the ultimate object of the statutory provisions dealing with confiscation of goods is only to secure the value of the goods that are liable for confiscation, and not to absolutely seize/confiscate goods that are admittedly not in the nature of prohibited goods. We, therefore, feel

> that no prejudice would be caused to the revenue at this stage if the goods are released to the dealer against the amounts directed to be collected in the order dated 7.9.2021. The legal issue regarding the legality of an order, permitting a provisional release of goods liable for confiscation, can be decided at the time of final disposal of the writ petition.

I am, therefore, of the view that the petitioner is entitled to an order directing the release of goods pending adjudication of Ext.P9 notice. As a result, it is directed that pending adjudication of Ext.P9 notice, the goods and conveyance detained in terms of Expt.P9 order shall be released to the petitioner on the petitioner depositing a sum of Rs.1,00,000/- (Rupees One Lakh Only) and furnishing a simple bond for the balance amount."

13. This Court, in **Golden Traders** (supra),

has categorically held that there is no provision in Section 130 of the GST Act which prohibits the interim release of goods seized pending adjudication of show cause notice under Section 130. The said judgment has become final. In **Dhanlaxmi Metals** (supra), while considering the question whether the authorities under the GST Act have power for provisional release of goods, the High Court of Gujarat held as follows:

> "36. In view of above, once the goods are to be treated as seized under section 67(2) of the GST Act, the same would be liable to be provisionally released under section 67(6) of the GST Act by the GST authority either upon execution of bond and furnishing of security in such manner and of such quantum as may

be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be. Therefore, as the petitioners are ready to either execute a bond and furnish the security in prescribed manner and/or make payment of applicable tax, interest and penalty, the respondents authorities were not justified in denying the provisional release of the goods and conveyance as it is mandatory for the authority to exercise powers under section 67 (6) of the GST Act for provisional release of the goods and conveyance as there is mandate by word "shall" provided under section 67(6) of the GST Act. The word "shall" ordinarily indicates that the provision is mandatory in nature and therefore, reliance placed by the petitioner in case of Raghubir Dayal (supra), reported in (2011Delhi Airtech Services (P) Ltd. (supra) and in case of ALD Automotive (P) Ltd.(supra) would be applicable in facts of the case.

37. In view of the foregoing reasons, the respondents authorities are required to release the goods on provisional basis in exercise of powers under section 67(6) of the Act once the show cause notice under section 130 of the GST Act for confiscation of the goods and conveyance is issued irrespective of whether goods are seized at the place of the taxable person or during the course of transit as the same would not make any difference for exercise of powers for confiscation of goods under section 130 of the GST Act.

38. It is also required to be noted that as per the scheme of the GST Act, against the order passed under section 130, appeal is provided

under section 107 of the GST Act and therefore, the provisional release of the goods by executing bond and or recovery of the tax, penalty and interest payable by tax payer or person interested in release of such goods would be subjected to further proceedings as provided under the provisions of the GST Act. The intention of the legislature cannot be to keep the goods and conveyance unused till the adjudication and further appeal is decided by the competent authority under the provisions of the GST Act. The respondents authorities are accordingly directed to provisionally release the goods and conveyance in question in all these petitions on execution of bond of value of goods and on payment of tax, interest and penalty and fine in lieu of confiscation of the conveyance by the petitioners

> within a period of three weeks from the date of receipt of a copy of this order."

14. As rightly held by the High Court of Gujarat, the intention of the legislature cannot be to keep the goods and conveyance unused till the final adjudication exhausting the hierarchy of remedies. Further, as per Section 130(2) of the GST Act, whenever confiscation of any goods or conveyance is authorised by the 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. Section 130(7) provides that the proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under the 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. Section 130(7), therefore, provides an option to pay fine in lieu of confiscation even after the adjudication. The intention of the legislature is that the interest of the revenue is protected. The adjudication can be proceeded even if the goods are released pending adjudication. Even if confiscation is ordered, there is an option to the owner of the goods to pay fine in lieu of confiscation. Further, after the owner of the goods avails the option but refuse to make payment in lieu of confiscation, Section 130(6) permits the proper officer to withdraw the order of release and hold possession of the goods confiscated.

The provisional release does not in fact result in loss of absolute custody by the Department over the goods seized, as the Department will still have constructive custody. The object of the provision is only to secure the value of the goods that are liable for confiscation and not to confiscate the goods as such. Therefore, even if goods are ordered to be released pending adjudication, no prejudice is caused to the Department, as the revenue is protected by the owner making payment in lieu of confiscation.

15. I find that the reason stated in Ext.P8 that there is no provision under Section 130 of the GST Act to order provisional release of goods pending adjudication of notice under Section 130 cannot be sustained. Accordingly, Ext.P8 is set aside. There will

be a direction to the 1st respondent to release the goods seized to the petitioner pending adjudication of Ext.P5 show cause notice on the petitioner depositing a sum of Rs.2,93,71,666/- (Rupees two cores ninety three lakhs seventy one thousand six hundred and sixty six only), being the penalty and fine quantified in Ext.P5 in lieu of confiscation of goods and on execution of bond for the value of goods. The goods shall be released within two weeks from the date of such deposit.

Since Ext.P5 is only a show cause notice issued under Section 130 of the GST Act, this Court is not inclined to interfere with the same at this stage in exercise of the powers under Article 226 of the Constitution of India. However, the contentions of the petitioner including the legality of Ext.P4 seizure order are left open. It will be open to the 1st respondent to complete the adjudication proceedings pursuant to Ext.P5 in accordance with law.

The writ petitions are disposed of accordingly.

Sd/-

MURALI PURUSHOTHAMAN
JUDGE

SB

APPENDIX OF WP(C) 40450/2023

PETITIONER EXHIBITS

Exhibit P1	**THE REGISTRATION CERTIFICATE ISSUED TO THE PETITIONER FROM SURAT THROUGH THE GST PORTAL DATED 29.3.2022**
Exhibit P2	**TRUE COPY OF THE DELIVERY CHALLAN DATED 25.5.2023**
Exhibit P2(a)	**TRUE COPY OF THE DELIVERY CHALLAN DATED 25.5.2023**
Exhibit P3	**THE COPY OF THE AUTHORIZATION DATED 08.07.2022 GIVEN TO SRI. ANSON ANDACHAN**
Exhibit P4	**TRUE COPY OF SEIZURE ORDER DATED 26.05.2023 ISSUED BY THE 4TH RESPONDENT TO SEIZE GOODS OF THE 2ND RESPONDENT AND THE PETITIONER**
Exhibit P5	**TRUE COPY OF THE SHOW CAUSE NOTICE DATED 20.06.2023**
Exhibit P6	**TRUE COPY OF THE LETTER OF REQUEST DATED 03.07.2023 SENT BY THE PETITIONER TO THE 1ST RESPONDENT**
Exhibit P7	**TRUE COPY OF THE LETTER OF REQUEST DATED 05.07.2023 SENT BY THE PETITIONER TO THE 1ST RESPONDENT**
Exhibit P8	**TRUE COPY OF THE REJECTION LETTER DATED 13.07.2023 SENT BY THE 1ST RESPONDENT**

APPENDIX OF WP(C) 18326/2023

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED TO THE PETITIONER DATED 29.03.2022**
Exhibit P2	**TRUE COPY OF THE DELIVERY CHALLAN NO. DN-037/2023-24 DATED 25-05-2023**
Exhibit P2(a)	**TRUE COPY OF THE DELIVERY CHALLAN NO. DN-038/2023-24 DATED 25-05-2023**
Exhibit P3	**TRUE COPY OF THE AUTHORIZATION DATED 08-07-2022 GIVEN TO SRI. ANSON ANDACHAN BY THE COMPANY**
Exhibit P4	**TRUE COPY OF ORDER INS 02 DATED 26-05-2023 ISSUED BY THE FIRST RESPONDENT**
Exhibit P5	**TRUE COPY OF THE SUMMONS DATED 26-05-2023 ISSUED TO SRI.ANSON ANDACHAN**