

(SHOW CAUSE NOTICE BEFORE ADMISSION)**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI****(Special Original Jurisdiction)****WEDNESDAY, THE FOURTH DAY OF MAY
TWO THOUSAND AND TWENTY TWO****:PRESENT:****THE HONOURABLE SRI JUSTICE A V SSHA SAI
AND
THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI****WRIT PETITION NO: 12843 OF 2022****Between:**

M/s. Matrix Traders, 8/A, Iyvellagram Street, Tiruvallur, Tiruvallur, Tamil Nadu, 602001
 Represented by its Proprietor - Jaresh resident of Vadakkayil, Naduvannur, Kozhikod,
 Kavil, Kerala.

Petitioner**AND**

1. The Deputy Assistant Commissioner, Circle - III, Anantpuram.
2. The State of Andhra Pradesh, Rep. by Principal Secretary, Revenue (ST),
 Secretariat, Velagapudi, Amaravati, ANANTAPUR District.

Respondents

WHEREAS the Petitioner above named through its Advocate SRI.VIVEK CHANDRA SEKHAR S presented this Petition under Article 226 of the Constitution of India is filed praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, direction or order more particularly in the nature of a writ of certiorari quashing the show cause notice dated 16.04.2022 issued under Section 130 of the SGST Act read with Section 20 of the IGST Act issued by the 1st Respondent seeking to confiscate the good and conveyance, as being void, illegal, without jurisdiction, discriminatory and violative of Articles 14 & 19(1)(g) of the Constitution of India and violative of Article 265 and consequently Article 286 of the Constitution of India, further, this Hon'ble Court may be pleased to issued a writ, direction or order in the nature of mandamus directing the 1st Respondent to release the goods and conveyance without demanding any security;

AND WHEREAS the High Court upon perusing the petition and affidavit filed herein and upon hearing the arguments of Sri.S.Sameer Gupta, learned counsel appearing for Sri.Vivek Chandra Sekhar S., Advocate for the Petitioner and of SriY.N.Vivekananda, learned GP for Commercial Taxes for Respondents, directed issue of notice to the Respondents herein to show cause as to why this WRIT PETITION should not be admitted.

You viz:

1. The Deputy Assistant Commissioner, Circle - III, Anantpuram.
2. The Principal Secretary, Revenue (ST), State of Andhra Pradesh,
 Secretariat, Velagapudi, Amaravati, Guntur District.

are be and hereby directed to show cause either appearing in person or through an Advocate, as to why in the circumstances set out in the petition and the affidavit filed therewith (copy enclosed) this WRIT PETITION should not be admitted.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings and consequential actions pursuant to show cause notice dated 16.04.2022 issued under Section 130 of the SGST Act read with Section 20 of the IGST Act and release the goods and conveyance in favour of the Petitioner on payment of the tax amount, pending disposal of the Writ Petition No.12843 of 2022, on the file of the High Court.

THE COURT MADE THE FOLLOWING ORDER:

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-Obstente 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 Fertichem 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 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 M/s.Shanti Metal Industries vs. State of Gujarat, 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.

//TRUE COPY//

Sd/-M.Suryanadha Reddy
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The Deputy Assistant Commissioner, Circle - III, Anantpuram.
2. The Principal Secretary, Revenue (ST), State of Andhra Pradesh, Secretariat, Velagapudi. Amaravati, Guntur District. (1 & 2 by RPAD- along with a copy of petition and affidavit)
3. One CC to SRI. VIVEK CHANDRA SEKHAR S Advocate [OPUC]
4. Two CCs to GP for the COMMERCIAL TAX, High Court Of Andhra Pradesh. [OUT]
5. Two spare copies

SRL

HIGH COURT

AVSSJ & RNTJ

DATED:04/05/2022

NOTICE BEFORE ADMISSION

WP.No.12843 of 2022

DIRECTION

