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Practical issues in EWB implementation

- ☞ Transporters - less literate
- ☞ Distance / Language barrier
- ☞ Bank Guarantee / Bond / Surety
- ☞ Lack of effective representation at Notice stage
- ☞ Trade Compulsion
- ☞ Pay first and then litigate

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Section 129 – Section 130 - Basics

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When Section 129 / 130 can be invoked?

Confiscation (Section 130)	Detention (Section 129)
<p>Proceedings for confiscation could be initiated only if</p> <ul style="list-style-type: none"> i. there is contravention with the provisions of the Act/Rules in the supply or receipt of goods with the intention to evade tax ii. does not account for any goods on which he is liable to pay tax under this Act; iii. goods liable to tax under the Act are supplied without having applied for registration iv. conveyance is used as a means of transport for carriage of goods in contravention of the provisions of the Act v. contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; vi. Tax+ Penalty determined u/s 129(1) is not paid within 14 days from the date of order 	<p>Where any person transports any goods or stores any goods while <u>they</u> are in transit in contravention of the provisions of this Act or the rules made thereunder,</p> <p>(Intention not relevant)</p>

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Intersection between Section 129 and 130

Section 129(6)
 If person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure

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Tax, Interest and Other charges payable

Detention – Section 129	Confiscation - Section 130
<p>(a) Where Owner of the Goods comes forward</p> <p>a.1 Taxable Goods Tax + Penalty (100% of tax) – Budget 2021</p> <p>a.2 Exempted Goods Lower of</p> <ul style="list-style-type: none"> • 2% of value of goods OR • Rs 25000 <p>(b) Where Owner of the Goods does not come forward</p> <p>b.1 Taxable Goods Tax + Penalty (50% of value of goods- Tax)</p> <p>b.2 Exempted Goods Lower of</p> <ul style="list-style-type: none"> • 5% of Value of Goods OR • Rs. 25000 	<p>To the owner of Goods</p> <ul style="list-style-type: none"> • Fine in lieu of Confiscation >= 129(1) penalty <= Value of goods less applicable taxes • Tax payable on goods • Any other penalty – Section 122 • Any other charges <p>To the owner of Conveyance Option to pay Fine in lieu of Confiscation = Tax amount</p>

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Provisional Release of Goods/Conveyance	
Detention (Section 129)	Confiscation (Section 130)
Upon furnishing a security or payment of tax equivalent to the amount payable (Tax + Interest + Penalty)	No Such provision. Only on payment of Fine + Tax + Other Penalty + Other charges

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Consequences of non-payment	
Detention (Section 129)	Confiscation (Section 130)
Fails to pay Tax + Penalty with 14 days, further proceedings shall be initiated in accordance with the provisions of section 130 [Section 129(6)]	<p>On payment of Fine + Tax + Other charges etc.</p> <ul style="list-style-type: none"> Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government 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. 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 [130(7)]

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Food for thought

☞ Whether section 129 of the Act applies only to cases where it is established that there is any possibility of evasion of tax in respect of goods transported; even if some documents such as e.way bill is missing at the time of verification, it would at the most only create a **rebuttable presumption** that there was intention to evade payment of tax; and if the taxpayer is able to establish that there was no such possibility, then section 129 of the Act would not be attracted?

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GST department intends to pass detention order u/s 129(3) of the CGST/ respective SGST Act in the following cases. Whereas the taxpayer is of the view that the department has no jurisdiction to invoke Section 129 in those cases. Considering facts and circumstances of each case you are requested to opine to clients about the legal validity of the detention order likely to be passed in the following cases. Please note all cases are independent of each other. Only relevant facts are mentioned.

Section 129 – Detention

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1 : Facts

- Mr X has bought second-hand Mercedes from the first owner Mr Y of Gujrat. Mr Y has used Mercedes only for 15 days and due to disliking of colour has sold Mercedes to Mr X. Mr X went to Gujarat to take delivery of Mercedes and thereafter drove this car himself to Mumbai without Eway bill (**EWB**). The intercepting officer was of the view that EWB is required in this case.
- Applicable IGST has been charged/paid.
- If Mercedes car is a personal asset of Mr. X?
- If Mercedes car is a business asset of Mr. X?
- If instead of Mercedes costly laptop was involved?

[Assistant State Tax Officer (Intelligence), Alappuzha v. VST AND Sons (P.) Ltd. [2021] 130 taxmann.com 486 (Kerala)]

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1 : Held/Observed by Hon'ble Court

- ***KUN Motor Co. (P.) Ltd. v. Asstt. STO [2018] 100 taxmann.com 271 (Ker.)***
- Used vehicles, even if it has run only negligible distances are to be categorized as '**used personal effects**'.
- Goods that are classifiable as used personal and household effect falls under rule 138(14)(a) of the CGST Rules and are exempted from the requirement of e-way bill
- Black's Law Dictionary : Personal effects - Articles associated with person, as property having more or less intimate relation to person of possessor;

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2 : Facts

8 hours before or after

- The consignor has despatched goods along with the Invoice and EWB. Due to political rallies and other disturbances delivery could not be done before the expiry of EWB. Transporter erroneously could not apply for an extension of EWB and goods were intercepted when goods were moving with expired EWB
- Intra state supply was made to General Store. Delivery started on Saturday afternoon. Driver waited till 8.30 pm of that day but could not move forward due to political rally. Since recipient shop would have closed by 8.30 pm driver took goods to his residence. Next day was Sunday, store was closed.
- EWB expired on mid night of Sunday. By oversight EWB validity was not extended. Driver made an attempt to deliver goods on Monday and was intercepted in between

Respondent Argument :

Dealer can extend the validity of an e-way bill in Part-B and the same can be sent even to the driver's mobile phone, but the dealer willfully did not do so, and expiry of the e-way bill cannot be treated as a technical mistake.

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2 : Held/Observed by Hon'ble Court

- There was **no material before the respondent** to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the E-way bill because even the respondent does not say that there was any evidence of attempt to sell the goods to somebody else on Monday.
- On account of non-extension of the validity of the E-way bill by petitioner or the auto trolley driver, **no presumption can be drawn that there was an intention to evade tax**.
- **Satyam Shivam Papers (P.) Ltd - [2021] 127 taxmann.com 646 (Telangana)**

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3 : Facts of the Case

Vehicle was carrying goods, EWB and invoices. There was no mismatch between goods and relevant documents ie Invoices and EWB. The taxpayer has classified goods as **Fruit drinks** whereas Intercepting Officer was of the view that such goods are actually classifiable as **Aerated soft drinks** attracting a different HSN classification and GST rate. Due to this rate mismatch/misclassification/ misdescription, the Proper officer was of the view that EWB and Invoices are invalid.

Podaran Foods India (P.) Ltd. [2021] 123 taxmann.com 282 (Kerala)

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3 : Precedents/Held by Hon'ble Court

Detention of goods cannot be resorted to in cases where there is a **bona fide dispute** regarding the very existence of a sale and exigibility to tax. In cases where an inspecting authority entertains a suspicion as regards attempt to evade tax, but the records he seizes truly reflects a transaction, and the assessee's explanation accords with his past conduct, then **detention cannot be the answer** and the inspecting authority can only **alert the assessing authority** concerned for examining the issue in assessment proceedings. N.V.K. Mohammed Sulthan Rawther & Sons & Willson v. Union of India [2019] 101 taxmann.com 24 (Ker.)

Synergy Fertichem (P.) Ltd. v. State of Gujarat [2019] 112 taxmann.com 370 where the court opined that in cases of suspected mis-classification, the inspecting authority can detain the goods only for the purpose of preparing the relevant papers for effective transmission to the jurisdictional assessing officer.

Held/Observed by Hon'ble Court

No doubt, it may be open to an inspecting authority to **detain goods if there is a patent mis-description of the goods** in the transportation documents, to such an extent that it can only be seen as referring to an entirely different commodity. Such instances, however, must necessarily be confined to glaring mis-descriptions such as 'Apples' being described as 'Oranges' or 'Coconuts' being described as 'Betel Nuts', where the two goods can never be perceived as the same by ordinary persons endowed with reasonable skills of cognition and comprehension.

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4 : Facts

- HR plates were sent for Job work by the Principal to Job worker. Value of such goods as shown in Job work Delivery Challan prepared by Principal was **Rs. 8,27,708.87/-** While goods were being returned after the job work the consignment was accompanied by a job work invoice issued by the job worker, EWB and delivery challan that originally accompanied the goods on its transportation. However, EWB was prepared only for **Rs. 3469.76/-** ie only for the value of job work charges. In EWB as well as job work-invoice, the quantity of the goods is correctly shown as 15,490 Kgs and the description of goods is also correctly shown as HR plates.
- Goods were intercepted and the officer disputed the value shown in the EWB which was much lesser than the value of the consignment of MS plates that were sent for job work (mismatch in value of goods being transported after job work and as shown in EWB, Job work invoice)
- **P.H. Muhammad Kunju and Brothers v. Assistant State Tax Officer, Palakkad [2021] 124 taxmann.com 299 (Kerala)**

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#4 : Held/Observed by Hon'ble Court

- It is not in dispute that the consignment was covered by the job-work invoice, an e-way bill as also the delivery challan that originally accompanied the goods
- Objection of the respondents is only with regard to the value shown in the e-way bill that accompanied the goods on its return journey
- Value shown EWB and jobwork invoice was the actual consideration paid to the job worker for the job work done on the goods sent to him by the petitioner.
- **In EWB and Invoice quantity of the goods is correctly shown as 15,490 Kgs and the description of goods is also shown as 'HR plates'**
- **There is no doubt with regard to the identity of the goods that were being transported**
- Difference in the value shown in the e-way bill (from that shown in the original delivery chalan) was only on account of the requirement of maintaining uniformity in the value shown in the tax invoice raised by the job worker and the e-way bill generated by him
- Detention in this case was wholly unjustified

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5 : Facts

- Vehicle carrying Cargo has reached its destination on 1st Oct 2021 (before expiry). EWB was to expire on midnight of 1st Oct 2021). However, cargo could not be unloaded on the same day ie 1st Oct 2021 . The very next day (2nd October 2021) department officers visited taxpayer premises and passed detention orders on the ground that the EWB should also remain valid at the time of unloading of cargo.
- **Hemanth Motors v. State of Karnataka, Bengaluru [2021] 124 taxmann.com 550 (Karnataka)**

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#5 : Held / Observed by Hon'ble Court

- There is no dispute that the conveyance **had reached the place of destination** well within the expiry of e-way bills,
- Conveyance was being unloaded **without any further transit**
- Appellate authority should have considered the merits of the proceedings against the petitioners in the light of the provisions of rule **138(10) which prescribes the validity of an e-way bill with the extension of further period by eight hours after the expiry**
- The failure to consider the petitioner's case in the light of the provisions of rule 138(10) of the Central Goods and Services Tax Rules, 2017 has resulted in an improper and untenable order.
- Section 129 (1) : Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods **while they are in transit** in contravention of the provisions of this Act or the rules made thereunder,

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6 : Facts

Readymade garments were transported from one state to another with all mandatory documents. Department has not levelled any allegation on the validity/sufficiency of documents. Garments were carrying an MRP of Rs. 950 whereas it was invoiced at Rs. 250 per PCS to the buyer. Department proposed to detain goods and vehicles on the ground of undervaluation of goods in the invoice – sale of goods at a price lower than the MRP

Contention of Petitioner

Discrepancies in the valuation of the goods is not a valid ground for detaining and seizure of the vehicle and goods

Intercepting officer has to verify whether the person Incharge of the conveyance has the invoice and e-way bill and whether prima facie goods transported are of matching description

Contention of the respondent

Price at which product was sold to the customer was not matching the MRP of the product, which reflected in the packet transported

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6 : Held /Observed by Hon'ble Court

Details in the invoice bill as well as in the e-way bill matched with **products** found in the vehicle at the time of inspection except for the price of sale.

Merely because the taxpayer sells his products to its customer at a price **lower than the MRP**, as such cannot be a ground on which the product or the vehicle could be seized or detained

The Inspecting Authorities for the alleged discrepancy could have only **intimated the Assessing Authority** for initiating appropriate proceedings

K.P. Sugandh Ltd. v. State of Chhattisgarh [2020] 122 taxmann.com 291 (Chhattisgarh)

Other cases referred

Alfa Group v. Asstt. STO [2020] 113 taxmann.com 222 (Ker.)

Sakul Naza Mohmd v. State of Gujarat [2020] 113 taxmann.com 394 (Guj.)

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7 : Facts

Truck moving from Surat to Mumbai. Two sets of goods were loaded on the truck. Lightweight goods were to be delivered at Palghar-Maharashtra (longer distance) and heavy goods were to be delivered at Vapi-Gujarat (shorter distance). Two separate EWBs were generated (for the respective movements). Transporter has loaded goods lighter in weight on the top. Vehicle with both the type of goods (lighter and heavier) was intercepted at Dahanu-Maharashtra. Department intends to detain goods meant for unloading at Vapi on the ground transaction in respect of the EWB meant for Vapi was already concluded at Vapi, but they were further transported to Dahanu without invoice and EWB.

Surat

Vapi
(heavy)

Dahanu

Palghar
(light)

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7 Arguments advanced

Contention of the Petitioner

- Transporter has loaded lighter goods on the top of heavy goods for his **operational convenience**
- Vehicle was carrying valid documents like invoices and e-waybills and as the vehicle was carrying the **same quantity of goods** as mentioned in the invoice and e-waybill
- There was also no material or **evidence to show that the petitioner was unloading the material at some other place** not mentioned in the invoice or the e-waybill and was trying to evade tax.

Contention of the Respondent

- Since Vapi comes first, transporter has to **first deliver goods meant for Vapi** and then only the balance material would be unloaded at Palghar
- Cargo meant for Vapi (Gujarat) was not offloaded and therefore said goods were meant for another destination, that this is **malpractice** and violation of e-waybill rules.

Vijay Metal v. Deputy Commercial Tax Officer [2021] 127 taxmann.com 397 (Telangana)

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7 : Held /Observed by Hon'ble Court

- For offloading Cargo meant for Vapi, Transporter would have to offload cargo meant for Palghar and then again reload – **Cumbersome process.**
- Detention order was passed ignoring the **operational convenience** of the transporter.
- No Discrepancy found in EWB, Invoice, Physical verification
- There is **no rule** that consignments intended for a party at a shorter distance should be offloaded first.
- Intercepting officer had acted **mechanically without application of mind** to the operational convenience of the transporter.
- Writ Petition is allowed

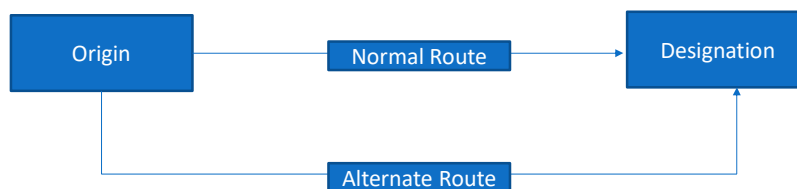
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8 : Facts

Goods were accompanied with all required documents like EWB and invoice. Driver of the Truck (wrongly) used **alternative route** to reach destination mentioned in EWB/Invoice. Vehicle was intercepted by GST department in between.

Kannangayathu Metals v/s Assistant State Tax Officer [2020] 113 taxmann.com 176 (Ker.)



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8 : Held /Observed by Hon'ble Court

- There **cannot be a mechanical detention** of a consignment solely because the driver of the vehicle had opted for a different route, other than what is normally taken by other transporters of goods covered by similar e-Way bills
- No doubt, if the vehicle is detained at a place that is located on **an entirely different stretch of road** and plying in a **direction other than towards the destination shown in the e-Way bill**, then a presumption could be drawn that there was an attempt at transportation contrary to the e-Way Bill
- Writ Petition is allowed

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9 : Facts

The consignment was coming from Vidyanagar, Karnataka with all requisite documents through a vehicle driven by a driver from Karnataka. Goods were to be delivered at Bhiwandi but the driver lose his way on account of being unfamiliar with the roads of Bhiwandi/Thane and his truck was intercepted at **Andheri-Mumbai**.

Arguments of Respondent

- Vehicle cannot be at Andheri since Bhiwandi comes first and Andheri later, and **no reasonable person** would cross over Andheri and then turn over to go back to Bhiwandi
- Under the guise of inter-State sale or supply, the petitioner tried to sell the goods in the local market evading levies both under the **CGST and SGST**.
- No objection was raised regarding the notice to pay tax and penalty, and the amount was also **paid without any protest**.
- Reason for detention is '**wrong destination**'.

Arguments of Petitioner

- Reason 'is not a good and sufficient reason
- The invoice in the custody of the driver of the vehicle indicated that **IGST @ 18%** was already collected and the goods were coming from Karnataka. When the IGST was already paid, the goods cannot be treated as having escaped tax and fresh tax and penalty cannot be imposed on petitioner.
- Petitioner could not contest it on account of there being a **marriage** in his house

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9 : Held /Observed by Hon'ble Court

- Reason for such detention is 'wrong destination' which is **not a valid ground** to detain the vehicle carrying the goods or levy tax or penalty.
- Tax and penalty were levied and collected on the **presumption** that at Andheri, there was possibility of a local sale, a mere possibility cannot clothe the department to take the impugned action.. There is **no material placed on record by the department** to show that any attempt was made by the petitioner to deliver the goods at a different place and sell in the local market evading CGST and SGST.
- It is perfectly **possible for the driver to lose his way** on account of being unfamiliar with the roads in the city of Thane/Bhiwandi and going to Andheri.
- Petitioner could not contest it owing to the wedding ceremony in his family at that point of time in order to be able to secure the release of the vehicle carrying the goods at the instance of the driver of the vehicle, **such payment has to be presumed as one made due to economic duress** and the petitioner cannot be blamed for paying the same without protest, when he had no choice but to pay it.
- There were no good and sufficient reasons for detention or levying of Penalty

MERIPO ADIYYA Vs THE STATE OF ANDHRA PRADESH [2020-TIOL-899-HC-AP-GST]

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GST department intends to pass detention order u/s 130 of the CGST/respective SGST Act in the following cases. Whereas the taxpayer is of the view that the department has no jurisdiction to invoke Section 130 in those cases. Considering facts and circumstances of each case you are requested to opine to clients about the legal validity of the confiscation order likely to be passed in the following cases. Please note all cases are independent of each other. Only relevant facts are mentioned.

Section 130 – Confiscation

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10 : Facts

- Taxpayer was the owner of the goods consigned from Kanyakumari in Tamil Nadu to Kalyan in Maharashtra. On the interception, it was found movement is supported by an invoice as well as an EWB that showed the payment of IGST for the inter-state movement covering the journey from Kanyakumari to Kalyan. Goods were detained for the reason that the vehicle was apprehended at a place that **was not on the normal route between Kanyakumari and Maharashtra**. On further enquiry, it was revealed that the consignment was actually loaded **from Nellikuzhi in Kerala and not from Kanyakumari in Tamilnadu**. Proper officer, therefore, intends to invoke Section 130 in this case.
- Commodity involved was plywood – **a risky commodity**. Department has further alleged instance of **Bill trading** in this case. **New Registration** was taken as a Trader and very next day invoice was issued and EWB was generated.

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10 Contentions of Respondent

- Invoice was raised from the State of Tamil Nadu, however goods were never loaded from Tamil Nadu, and therefore no tax is payable to the State of Tamil Nadu
- The petitioner being a trader could also not produce the **purchase bills of Plywood in the present case**. Circumstances therefore points to sham transactions.
- In many cases of **bill trading** registration is cancelled and recovery is difficult
- Identification proof of poor people used for the purpose of registration and actual **owner is not aware about specifics of transactions**.
- Goods have **escaped payment of tax in the State of Kerala**, from where they were actually loaded.
- Violation of Section 24(1) of the CGST Act Interstate Supply from Kerala without registration in Kerala.

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10 : Held/Observed by Hon'ble Court

- Sections 129 and 130 are **independent provisions**
- Detention of goods and vehicle under section 129 could entail proceedings under section 130, in situations where the detained goods/vehicle are not cleared by the owners thereof within a period of **14 days** from the date of passing of the order under section 129
- **However, it does not follow that in all cases where section 130 of the GST Act is invoked, they have to be preceded by a detention of the goods/vehicle while in transit.**
- Proceedings under section 130 can be invoked independent of any detention, and under the circumstances enumerated in the said section, with the only rider that a precondition for the invocation of the provision is that there has to be material to suggest that the actions/omissions of the person **were with an intention to evade payment of tax.**
- Transportation did not originate from Tamil Nadu, as was declared in the invoice/e-way bill that accompanied the transportation of the goods, and therefore, the said documents are invalid documents. **Detention of goods and vehicle therefore is justified in present case.**

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10 : Held/Observed by Hon'ble Court

- In proceedings under section 129 of the GST Act, there is no requirement for establishing ***mens rea***, and hence, merely on detecting an irregularity in the documents that are to accompany the transportation of goods, the respondents would be justified in detaining the goods and passing the necessary order under section 129(3) of the GST Act
- **The necessary ingredient of *mens rea* not having been established** in present case
- Respondents have **failed to establish an intention to evade tax** which is a necessary pre-condition for invoking the provisions of Section 130 of the GST Act
- Tax liability would have to be under the IGST Act, and the said tax liability was **already declared by the petitioners in the tax invoice** that was raised by them
- Petitioners were not confronted with any material in the possession of the respondents that suggested an intention to evade payment of tax
- **Confiscation order was quashed** and department was permitted to pass order u/s 129(3)
- **Gokul P.G. v. State of Kerala [2021] 125 taxmann.com 289 (Kerala)**

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11 : Facts

Intercepting officer was of the mere suspicion that the taxpayer has generated EWB but has transported the goods twice on the very same EWB and therefore propose to invoke Section 130 of the Act.

Goods in question is Pan Masala, a risky commodity. EWB was generated and valid for between 8-9-2020 and 13-9-2020. Vehicle was intercepted on 12-09-2020.

Anant Jignesh Shah v. Union of India [2021] 123 taxmann.com 317 (Gujarat)

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11 : Held/Observed by Hon'ble Court

- Ground on which the authority proposes to confiscate the goods and the vehicle is not tenable in law. The show cause notice appears to have been issued on an assumption that the driver of the vehicle might have indulged in the past in contravention of the provisions of the Act and the Rules made thereunder. **It appears the entire basis for the issue of the show cause notice is conjectures and surmises.**
- The show cause notice under section 130 of the Act cannot be issued on a mere suspicion. **There has to be some prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated under section 130 of the Act.**
- Impugned notice quashed

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12 : Facts

- Department has issued a detention notice under section 129(3) for the **difference in weight of goods transported and weight mentioned in the Tax Invoice**. Further before passing any detention order on reply submitted by taxpayer department has issued a subsequent notice under section 130 asking to show cause why goods and conveyance should not be confiscated.
- Taxpayer is of the opinion that both Sections viz. 129 and 130 starts with a non-obstante clause and unless he fails to pay the applicable tax and penalty determined u/s 129 within a period of fourteen days of detention or seizure, further proceedings cannot be initiated u/s 130 of the Act. Whereas department is of the view invocation of Section 130 is justified in this case.
- Vehicle was intercepted on 10-8-2020
- Detention order was passed for confirmation of the existence of the consignor and the consignee on 10-08-2020

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12 : Facts

- **Detention Show Cause Notice** issued on **25-08-2020** - why there should not be a levy of tax and penalty as contemplated under section 129(1)(b) of the Act.
- Petitioner has replied to SCN on 01-09-2020
- Pending adjudication of Detention SCN, **Confiscation SCN dated 7-9-2020** was issued calling upon the petitioner to show cause why the Goods and the Conveyance should not be confiscated under section 130
- In new SCN it was recorded that the show cause notice under section 129(3) 'stands abated', on ground that there was connivance between the petitioner and the consignor/consignee and that the goods were brought with ulterior motive and mala fide intent to evade taxes.
- **M.S. Meghdoot Logistics [2021] 123 taxmann.com 23 (Karnataka)**

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12 : Arguments of Petitioner

- The chief contention is that there cannot be **independent or simultaneous confiscation** proceedings under **section 130** of the Act with the detention and seizure proceedings underway in accordance with the provisions of **section 129** of the Act in the case of contravention of the provisions of the Act/Rules when the goods are being transported, or goods are stored in transit.
- Department has not passed any order u/s 129 of the Act, in spite reply by the petitioner therefore confiscation SCN is without jurisdiction.
- In the case of interception of goods in transit, there cannot be two separate proceedings: one under section 129 and another under section 130 of the Act.

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12 : Held by Hon'ble Court

- On harmonious reading of Section 129 and 130, **it is not open to the proper officer to treat the notice under section 129(3) of Act as having abated or truncate such proceedings** and initiate proceedings under 130 of the Act for confiscation with the issuance of notice thereunder
- **Proper officer who has detained the conveyance and seized the goods, when he is able to form the opinion that there is an attempt to evade payment of tax, will have to determine the applicable tax and penalty under section 129 of the Act while simultaneously initiating proceedings for adjudging confiscation under section 130 of the Act.**
- If during the pendency of these proceedings, **a request for provisional release** as contemplated under sub-clause (3) of section 129 of the Act, is submitted, the same will have to be considered in the light of the provisions of section 129 read with sub-clause (6) of Section 67 of the Act.
- Direction issued to the department to decide amount payable u/s 129(1) with a **liberty to the petitioner to seek provisional release of goods/conveyance** as provided for under sub-clause (2) of section 129 of the Act. The respondent is also directed to **contemporaneously decide on the new Show Cause Notice dated 7-9-2020** in accordance with the provisions of section 130 of the Act.

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13 : Facts

Vehicle was carrying goods without Invoice and EWB and was intercepted. Intercepting officer intends to straight away invoke the provision of Section 130 without issuing any notice u/s 129. Taxpayer is of the opinion that provisions of Section 130 could be invoked only if there is a failure to pay the amount of tax and penalty as provided under Section 129(6).

Gujarat High Court in *Synergy Fertichem (P.) Ltd Gujarat [2020] 116 taxmann.com 221*

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Finer points : Gujarat High Court in Synergy Fertichem (P.) Ltd.

- That at the time of detention and seizure of goods or conveyance, the first thing the authorities need to **look into closely is the nature of the contravention** of the provisions of the Act or the Rule;
- The second step in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules **was with an intent to evade the payment of tax?**
- A holistic reading of the statutory provisions and the Circular noted above, indicates that the Department does not paint all violations/transgressions with the same brush and makes a **distinction between serious and substantive violations and those that are minor/procedural in nature**; and in a given case, the contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was not with the necessary intent to evade payment of tax
- That in all cases, without any application of mind and without any justifiable grounds or reasons to believe, the authorities may not be justified to straightway issue a notice of confiscation under section 130 of the Act. **For the purpose of issuing a notice of confiscation under section 130 of the Act at the threshold, i.e., at the stage of Section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction, the authority concerned is convinced that the contravention was with a definite intent to evade payment of tax.**

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Finer points : Gujarat High Court in Synergy Fertichem (P.) Ltd.

- We may give one simple example. The driver of the vehicle is in a position to produce all the relevant documents to the satisfaction of the authority concerned as regards payment of tax etc., but unfortunately, **he is not able to produce the e-way bill**, which is also one of the important documents so far as the Act, 2017 is concerned. The authenticity of the delivery challan is also not doubted. In such a situation, it would be too much for the authorities to straightway jump to the conclusion that the case is one of confiscation, i.e., the case is of intent to evade payment of tax.“
- It cannot be held that the provisions of section 130 could be invoked in cases of conveyance/goods detained/seized while in transit only if there is a failure to pay the amount of tax and penalty as provided under section 129(6)
- Section 129 and 130 are independent of each other. Both the sections are mutually exclusive.
- Section 130 of the Act is not dependent on clause (6) of section 129 of the Act.
- **Even if the goods or the conveyance is released upon payment of the tax and penalty under section 129 of the Act, later, if the authorities find something incriminating against the owner of the goods in the course of the inquiry, if any, then it would be permissible to them to initiate the confiscation proceedings under section 130 of the Act.**

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E-Invoicing

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14 : Facts

Taxpayer has procured input/input services from the supplier mandated to generate E-Invoice. However, the supplier has inadvertently issued manual Invoices. Subsequently, notice was served on the taxpayer(recipient) proposing to deny ITC in terms of Rule 48(5) of the CGST Rules. Kindly advise the taxpayer about the eligibility of ITC claim in respect of aforesaid invoices

Rule 48 (4) & (5):

(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

(5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said **sub-rule shall not be treated as an invoice.**

Section 16(2)

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) **he is in possession of a tax invoice** or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

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15: Facts

Rule 48(4) specifically refers to the phrase 'Invoice', On this backdrop whether E-invoicing is required for Debit/Credit notes?

Section 2(66)

(66) "invoice" or "tax invoice" means the tax invoice referred to in section 31;

(37) "credit note" means a document issued by a registered person under subsection (1) of section 34

(38) "debit note" means a document issued by a registered person under subsection (3) of section 34

Act Vs FAQs

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Thanks

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