

Andhra Pradesh High Court - Amravati

M/S Sun Traders vs The Deputy Assistant ... on 4 November, 2022

HIGH COURT OF ANDHRA PRADESH : AT AMARAVATI

MAIN CASE No: W.P.No.15445 of 2022

PROCEEDING SHEET

Sl.OFFICE

DATE

ORDER

No.NOTE

13. 04.11.2022 Dr.KMR,J + TRR,J

I.A.No.3 of 2022

This application is filed to modify the order passed by this Court dated 26.05.2022 in W.P.No.15445 of 2022.

Learned counsel for the petitioner would contend that by invoking the provisions of Section 130 of the Central Goods and Services Tax Act, 2017, (for short "the Act"), 1st respondent acted without jurisdiction. Further

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.

Further it is contended that Section 129 of the Act clearly stated that the same is specific provision which deals with the goods in transit. 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. 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. Further learned counsel for the petitioner draws the attention of this Court with regard to case law of the Gujarat High Court in the case of Synergy Fertilchem Private Limited Vs. State of Gujarat (2020(33) GSTL 513 (Guj) and also placed on record the interim order passed by Gujarat High Court dated 30.03.2022 in "M/s Shanti Metal Industries Vs. State of Gujarat".

Learned counsel for the petitioner would contend that this Court stayed all the proceedings and consequential actions pursuant to confiscation order dated 27.04.2022, subject to condition that the petitioner shall deposit 50% of the fine amount within a period of four weeks by its order, dated 26.05.2022. In view of the said order, the petitioner is suffering huge financial loss and also the goods along with vehicle, which are under the custody of the respondents.

Further contended that this Court stayed the operation of confiscation order in Form GST MOV-11 subject to deposit of 50% which is much higher than the statutory amount to obtain stay against the confiscation order. As per terms of Section 107(11) of the CGST Act, 2017, while filing an appeal against the confiscation order, there shall be a deemed stay against the said order subject to

payment of 10 percent disputed tax amount.

It is further contended that if this Court releases the goods and vehicle on payment of 25% of the value proposed in confiscation order and a personal bond for the remaining amount, there shall be no loss to the Government exchequer and requested to modify the earlier order of this Court.

Mr. Y.N.Vivekananda, learned
Government Pleader for the respondents

vehemently opposed to allow the application.

On hearing, this Court observed that both the counsels did not notice the earlier order passed by the Division Bench of this Court in W.P.No.12843 of 2022, dated 04.05.2022 though it was annexed in the application. The said order is squarely applicable to the issue involved in this writ petition and that learned counsel for the petitioner requested to modify the order of this Court dated 26.05.2022 in terms of order passed by the Division Bench in W.P.No.12843 of 2022, dated 04.05.2022.

However, taking into consideration of the facts and circumstances of this case and following the order passed by the Division Bench of this Court W.P.No.12843 of 2022, dated 04.05.2022 in similar set of facts, this court is inclined to modify the order passed by this Division Bench dated 26.05.2022 in the above Writ Petition as under:

There shall be stay of further proceedings pursuant to the impugned confiscation order dated 27.04.2022 and the subject goods and conveyance shall be released subject to condition that the petitioner shall pay 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.

Accordingly the application is allowed.

_____ Dr. KMR,J _____ TRR,J W.P.No.15445 of 2022 Further, Registry is directed to list this matter before appropriate bench, having roster.

_____ Dr. KMR,J _____ TRR,J KK