IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4730 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6125 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6118 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 9105 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 10018 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA Sd/-

and
HONOURABLE MR.JUSTICE A.C. RAO Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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SYNERGY FERTICHEM PVT.LTD
Versus
STATE OF GUJARAT

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Appearance:

SCA NO.4730 OF 2019

MR. UCHIT N SHETH, LD. ADV. for the Petitioner(s) No. 1,2

SCA NO.6125 OF 2019

MR. D.K. PUJ, LD. ADV. for the Petitioner (s) No.1

SCA NO.6118 OF 2019

MR. UCHIT SHEHT, LD .ADV. for the Petitioner(s) No.1

SCA NO.9105 OF 2019

MR. PARESH M. DAVE, LD.ADV. For the Petitioner(s) No. 1,2

SCA NO.10018 OF 2019

MR. TUSHAR HEMANI, LD ADV. with MS. VAIBHAVI K. PARIKH, LD ADV. for the Petitioner(s) No.1

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MR. KAMAL B. TRIVEDI, LD. ADV. GENERAL with MS. MAITHILI MEHTA, LD. AGP with MR. SOHAM JOSHI, LD. AGP for the Respondent(s) No. 1,2 in all the petitions.

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR.JUSTICE A.C. RAO

Date : 23/12/2019

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. Since the issues raised in all the captioned writ applications are the same, those were heard analogously and are being disposed of by this common judgment and order.

2. We have been called upon to look into and interpret the provisions of Sections 129 and 130 respectively of the Central Goods & Services Tax Act, 2017 (for short "the CGST Act") amidst lot of hue and cry at the instance of the

writ applicants (dealers) redressing the grievance that the authorities concerned are invoking the power to confiscate the goods and the conveyance under Section 130 of the GST Act arbitrarily and without any application of mind. In such circumstances, we need to look into the two provisions and try to ascertain whether the two provisions overlap or are independent of each other. We take notice of the fact that both the provisions, i.e., Sections 129 and 130 of the GST Act start with a non-ostante clause.

3. For the sake of convenience, we treat the Special Civil Application No.4730 of 2019 as the lead matter.

4. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs;

> *"(A) This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ, order or direction quashing and setting aside notice dated 1.3.2009 (annexed at Annexure A) issued by the learned Respondent No.2;*
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> *(B) This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ or order directing the learned Respondent authorities to forthwith release goods with truck no.GJ-07-UU-7250 by quashing and setting aside the detention notices/orders issue for such purpose (annexed at Annexure F);*
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> *(C) Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct the learned Respondent authorities to forthwith release goops with truck no. GJ-07-UU-7250 detained/seized in*

purported exercise of powers under Section 129 and 130 of the GST Acts;

(D) Ex parte ad interim relief in terms of prayer C may kindly be granted;

(E) Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioners shall forever pray."

5. The facts, giving rise to this writ application in the words of the writ applicants, as pleaded in the writ application, are as under;

"1. By way of this petition under Article 226 of the Constitution of India the Petitioners pray for writ of mandamus quashing and setting aside notice dated 1.3.2019 issued under the Central/Gujarat Goods and Services Tax Act, 2017 (herein after referred to as "the GST Acts"). The Petitioners also pray for writ of mandamus directing the learned Respondents to forthwith release truck number GJ-07-UU-7250 along with goods contained therein seized by the learned Respondent authorities. Copy of the impugned notice dated 1.3.2019 is annexed herewith and marked as Annexure A.

2. The relevant facts giving rise to the present petition are briefly stated herein below:

The 1st Petitioner is a Private Limited Company having place of business at Synergy House-2, Subhanpura, Gorawa, Vadodara. The 2nd Petitioner is Director and Authorized Signatory of the 1st Petitioner and his rights and interest are directly affected by the impugned communication of the learned Officer. The 1st Respondent is the State of Gujarat. The 2nd Respondent is an officer of the State of Gujarat entrusted with the task of collecting tax under the GST Acts and is amenable to the writ jurisdiction of this Hon. Court.

3. The Petitioners are inter-alia engaged in import and sale of ceramic pigment ink which is used as colouring substance in the tiles manufacturing industry. The Petitioners are authorized agents/distributors of Esmalglass – Itaca group which has its head office at Partida Rambleta, S/N 12191, Pobla Tornesa, Castellon, Spain. The Petitioners are one of the two distributors that the said company has for India.

4. The Petitioners have been importing goods since many years and the imported goods are sold to major tile manufacturing units across the country. The goods are imported through Mundra Port in Kandla and the Ahmedabad Airport. The Petitioners had approximate annual turnover of Rs. 50 crores in the previous financial year and it discharges crores of rupees by way of tax under the GST Acts.

5. In so far as import transactions are concerned, importers such as the Petitioners are required to pay customs duty as well as the IGST payable on such imports before clearance for home consumption. In other words for imports the IGST is paid prior to commencement of movement of goods from the port/airport.

6. The Petitioners had ordered for a consignment of ceramic pigment ink from its principal in Spain. The import took place through the Ahmedabad Airport. The Petitioners duly filed bill of entry for home consumption on 13.2.2019 and paid the applicable customs duty as well as IGST which is payable on imports by importers. Copy of the bill of entry for home consumption filed by the Petitioners along with the export invoice, packing list and airway bill are collectively annexed herewith and marked as Annexure B.

7. The assessed value of goods is Rs. 39,43,272 on which the Petitioners paid customs duty amounting to Rs. 3,00,526 and IGST at the rate of 18% totaling to Rs. 7,09,789. Copy of e-receipt showing payment of such duty and tax on 13.2.2019 is annexed herewith and marked as Annexure C.

8. Ceramic pigment ink has a limited shelf life and it

has to be preserved at temperatures which are preferably not to exceed 25 degrees centigrade. Long exposures to high temperatures and humidity are required to be avoided. Copy of the information note with regard to the product in question as published by the foreign manufacturer is annexed herewith and marked as Annexure D.

9. General instructions had been given by the Petitioners to their clearing and forwarding agents explaining to them urgency of transporting ceramic pigment ink immediately on import. Considering such general instructions, since a transport vehicle was immediately available, the clearing and forwarding agent of the Petitioners initiated transport of the ceramic ink to the warehouse of the Petitioners in Vadodara without even waiting for the e-way bill in respect of the goods. This was particularly considering the fact that the proof of payment of GST on the transaction itself was accompanying the goods in the form of bill of entry for home consumption.

10. The transporter had duly prepared transport receipt in respect of the vehicle for transport of goods from Ahmedabad Airport to the warehouse of the Petitioners in Vadodara. Copy of transport receipt in relation to the goods is annexed herewith and marked as Annexure E.

11. `The truck with the goods were stopped for verification on the Ahmedabad-Vadodara expressway by the learned Respondent No. 2. The transporter duly produced all documents relating to goods including bill of entry for home consumption evidencing payment of IGST on the transaction. The truck with the goods were however detained by the learned officer on the ground of absence of e-way bill in respect of the goods. Notices in Form GST MOV-1 and GST MOV-6 were served to the transporter of the goods. Copies of such notices served to the transporter are annexed herewith and marked as Annexure F.

12. On being informed about such detention the Petitioners promptly generated the e-way bill in respect

of the transaction. Copy of the e-way bill generated by the Petitioners is annexed herewith and marked as Annexure G.

13. The Petitioners thereafter immediately approached the learned Respondent authorities and gave explanation. It was submitted that the goods being perishable and due to urgency of transporting goods the clearing and forwarding agent had initiated transportation of goods immediately on clearance from customs authorities without waiting for e-way bill from the Petitioners. However the fact is that IGST had been paid on the transaction even before commencement of movement of goods. Bill of entry for home consumption had been duly filed in respect of goods which was admittedly possessed by the transporter. Thus there was no question of the goods being unaccounted or there being any intention of evading payment of tax. In fact tax under the GST Acts had already been paid by the Petitioners.

14. The learned Respondent authorities however refused to release the goods on the ground of absence of e-way bill. The learned Respondent authorities in fact insisted for payment of not only tax and 100% penalty under Section 129 of the GST Acts but also fine in lieu of confiscation equal to the value of goods under Section 130 of the GST Acts.

15. The Petitioners made written representation before the learned Deputy Commissioner as well as the learned Joint Commissioner of Commercial Tax for intervention in the matter as huge payment was being demanded for a genuine transaction on the basis of technical breach of provisions of law. Copy of written letters dated 26.2.2019 submitted before the learned departmental authorities are collectively annexed herewith and marked as Annexure H.

16. The Petitioners made similar representation even before the learned Chief Commissioner of State Tax. The goods with the vehicle are however not being released by the learned Respondent authorities. The learned Respondent authorities are insisting for payment of tax

and 100% penalty under Section 129 of the GST Acts as well as redemption fine in lieu of confiscation equal to the value of goods under Section 130 of the GST Acts for securing release of goods.

17. In other words for goods which are admittedly worth Rs. 39,43,272 on which customs duty of Rs. 3,00,526 and IGST of Rs. 7,09,789 have already been paid, the learned Respondent authorities are demanding an amount of Rs. 60,72,639 for release of goods.

18. The Petitioners inquired from the learned Respondent authorities the basis for such huge demand since they had only received detention notices in Forms GST MOV-01 and GST MOV-06. Upon such inquiry the learned 2nd Respondent authority has issued the impugned show cause notice dated 1.3.2019 (annexed at Annexure A) requiring payment of Rs. 60,72,639 for release of goods failing which it is informed that the goods with the vehicle will be confiscated and auctioned.

19. In the respectful submission of the Petitioners the impugned notice demanding payment of Rs. 60,72,639 for securing release of goods which are admittedly worth Rs. 39,43,272 on which customs duty of Rs. 3,00,526 and IGST of Rs. 7,09,789 have already been paid is manifestly arbitrary, without application of mind, illegal and violating Article 14 of the Constitution of India.

20. At the outset the provisions of Section 130 of the GST Acts are ex-facie not applicable to the facts of the present case. Section 130 of the GST Acts can be invoked in the 5 circumstances as envisaged under the said provision which are all pertaining to evasion of tax. Hence for invoking the said provision it has to be primarily alleged and proved that there was intention to evade payment of tax in respect of the goods in question. In the present case admittedly the goods were being accompanied by the bill of entry for home consumption which evidenced payment of IGST on the transaction even before commencement of movement of

the goods. Thus there was no question of they being unaccounted goods or there being intention to evade payment of tax. Invoking the provisions of Section 130 of the GST Acts in the facts and circumstances of the case without there being any allegation of evasion of tax and demanding maximum redemption fine equal to the value of goods is wholly without jurisdiction, arbitrary and illegal.

21. Even in so far as Section 129 of the GST Acts is concerned the said provision allows detention of goods and subsequent release thereof on payment of applicable tax and penalty equal to 100% of tax payable on such goods if there is contravention of the provisions of the GST Acts and the rules made thereunder. Thus the provision is also as such applicable when tax is payable on the transaction. However in the facts of the present case when tax under the GST Acts is already paid in advance at the time of clearance of the goods for home consumption, the said provision is inapplicable the facts of the Petitioners.

22. Even otherwise it is respectfully submitted that the contravention of provisions of the GST Acts as contemplated under Section 129 of the GST Acts is a substantial contravention which would have the result of leakage of tax revenue. Hence it is provided that in case of such contravention the goods can be released only on payment of tax and 100% penalty. The said provision cannot be applied to technical contraventions where the taxable person is in a position to establish that the breach is technical in nature with no possibility of tax evasion.

23. Purposive interpretation of Section 129 of the GST Acts requires its application only to cases where it is established that there was intention or in any case possibility of evasion of tax in respect of the goods being transported. Even if some document such as e-way bill is missing at the time of verification, this would at the most only create a rebuttable presumption that there was intention to evade payment of tax. If the taxable person is able to establish that there was no intention of evading payment of tax then the provisions of Section

129 of the GST Acts is not permissible.

24. The Petitioners point out that the Government itself has clarified by Circular No. 64/38/2018-GST dated 14.9.2018 that in case of technical errors in the documents accompanying the goods, provisions of Section 129 of the GST Acts may not be resorted to but instead goods may be released on payment of nominal penalty under Section 125 of the GST Acts. Copy of circular dated 14.9.2018 issued by the Government of India is annexed herewith and marked as Annexure I.

25. It is respectfully submitted that Section 129 and Section 130 of the GST Acts are provisions enacted to curb evasion of tax under the GST Acts. They are drastic measures whereby goods can be seized en-route and they would be released only on payment of tax, huge penalty and huge redemption fine. Application of such provisions to technical breaches of statutory provisions would render them vulnerable of violating Article 14 of the Constitution of India as well as Article 301 of the Constitution of India which requires there to be free flow of trade and commerce across the country."

6. Thus, it appears that the writ applicant No.1 is a Private Limited Company and the writ applicant No.2 is its Director and Authorized Signatory. The Company is engaged in the business of import and sale of Ceramic Pigment Ink which is used as a colouring substance in the manufacturing of the ceramic tiles. The writ applicants had placed an order for a consignment of Ceramic Pigment Ink from its principal operating in Spain. The import took place through the Ahmedabad Airport. The writ applicants duly filed the bill of entry for home consumption and also paid the applicable customs duty as well as the IGST payable on the imports by the importers. It appears that while the goods were being transported from the Ahmedabad Airport

to the warehouse of the writ applicants situated in Vadodara, the vehicle was detained by the GST Authorities, more particularly, the respondent No.2. In fact, the truck with the goods was intercepted at the Ahmedabad-Vadodara Express Way. It is the case of the writ applicants that the transporter produced all the documents relating to the goods including the bill of entry for home consumption evidencing payment of the IGST on the transaction. The truck, however, came to be detained by the officer concerned on the ground of absence of the e-way bill in respect of the goods.

7. The aforesaid led to issue of notices to the transporter of the goods in Form GST MOV-1 and GST MOV-6.

8. It is the case of the writ applicants that having come to know about the detention of the truck, they promptly generated the e-way bill in respect of the transaction. The authorities, however, declined to release the goods on the ground that while the goods were being transported, the driver of the vehicle was not carrying the e-way bill.

9. The authorities not only imposed 100% penalty under Section 129 of the Act but also imposed fine in lieu of confiscation equal to the value of the goods under Section 130 of the Act.

10. As the authorities insisted for payment of tax and 100% penalty under Section 129 of the Act as well as

redemption fine in lieu of the confiscation equal to the value of goods under Section 130 of the Act, the writ applicants had to come before this Court with the present writ application.

11. On 6th March, 2019, a Coordinate Bench of this Court passed the following order;

> *"1. Mr. Uchit Sheth, learned advocate for the petitioners invited the attention of the court to the provisions of sections 129 and 130 of the Central Goods and Services Tax Act, 2017, to point out the procedure which is required to be followed by the respondent authorities in case where any goods are in transit in contravention of the provision of the Act or the rules made thereunder. It was pointed out that firstly, under section 129 of the Act, the officer is required to issue a notice as contemplated under sub-section (3) thereof and thereafter, after affording an opportunity of hearing to the person concerned, pass an order thereunder. It was submitted that it is only if there is no compliance of the order passed under section 129 of the Act, that the provisions of section 130 of the IGST Act can be resorted to. The attention of the court was invited to the impugned show cause notice dated 1.3.2019, to submit that the same seeks to impose penalty, redemption fine and confiscation under section 130 of the Act without initiating any proceedings under section 129 of the Act, which is not permissible in law. It was further submitted that the integrated goods and services tax has already been paid on the goods in question at the time of import thereof and that the goods in question are perishable goods with a limited shelf-life.*
>
> *2.Having regard to the submissions advanced by the learned counsel for the petitioners, Issue Notice returnable on 8th March, 2019.*
>
> *Direct Service is permitted today. "*

12. Thereafter, on 8th March, 2019, this Court passed the following order;

> *"1. On 06.03.2019 this Court had passed an order in the following terms;*
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> > *"1. Mr. Uchit Sheth, learned advocate for the petitioners invited the attention of the court to the provisions of sections 129 and 130 of the Central Goods and Services Tax Act, 2017, to point out the procedure which is required to be followed by the respondent authorities in case where any goods are in transit in contravention of the provision of the Act or the rules made thereunder. It was pointed out that firstly, under section 129 of the Act, the officer is required to issue a notice as contemplated under subsection (3) thereof and thereafter, after affording an opportunity of hearing to the person concerned, pass an order thereunder. It was submitted that it is only if there is no compliance of the order passed under section 129 of the Act, that the provisions of section 130 of the IGST Act can be resorted to. The attention of the court was invited to the impugned show cause notice dated 1.3.2019, to submit that the same seeks to impose penalty, redemption fine and confiscation under section 130 of the Act without initiating any proceedings under section 129 of the Act, which is not permissible in law. It was further submitted that the integrated goods and services tax has already been paid on the goods in question at the time of import thereof and that the goods in question are perishable goods with a limited shelf-life.*
> >
> > *2. Having regard to the submissions advanced by the learned counsel for the petitioners, Issue*

Notice returnable on 8th March, 2019. Direct Service is permitted today."

2. In response to the notice, Mr. Soham Joshi, learned Assistant Government Pleader, has appeared on behalf of the respondents.

3. The learned Assistant Government Pleader has invited the attention of the Court to the detention order dated 14.02.2019 issued by the proper officer under subsection (1) of section 129 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") and other relevant statutes. It was submitted that the goods in question were not accompanied by an Eway bill during the course of transit and therefore, the respondents are fully justified in passing the detention order under section 129(1) of the CGST Act.

4. Subsection (3) of section 129 of the CGST Act provides that the proper officer detaining or seizing the goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c). Subsection (4) provides that no tax, interest or penalty shall be determined under subsection (3) without giving the person concerned an opportunity of being heard.

5. In the present case, the show-cause notice dated 01.03.2019 has been issued under section 130 of the CGST Act calling upon the petitioner to show cause as to why the goods in question as well as the vehicle should not be confiscated for nonpayment of an amount of Rs.60,72,639/-, as detailed therein. On a query by the Court, the learned Assistant Government Pleader is not in a position to point out that the procedure, as contemplated under subsections (3) and (4) of section 129 of the CGST Act, has been followed. Thus, prima facie, it appears that the showcause notice under section 130 of the CGST Act has been issued without complying with

the requirements of section 129 of the CGST Act. It is also an admitted position that the goods in question are perishable in nature.

6. In the aforesaid premises, in the opinion of this Court, the petitioner has made out a strong prima facie case for the grant of interim relief. By way of interim relief, the respondents are hereby directed to forthwith release the goods in question and the Truck bearing registration no. GJ07UU7250 detained / seized under purported exercise of powers under sections 129 and 130 of the CGST Act. However, the petitioner shall file an undertaking before this Court within a week from today to the effect that in case the petitioner, ultimately, does not succeed in the petition, he shall duly cooperate in the further proceedings.

7. Stand over to 27.03.2019, so as to enable the respondents to file affidavitinreply, if any, in the matter.

Direct service is permitted today. ”

13. The grounds of challenge to the impugned notice dated 1st March, 2019, Annexure-A to this writ application is substantially on the following grounds as raised in the memo of the writ application.

“A. The impugned notice demanding payment of Rs. 60,72,639 for securing release of goods which are admittedly worth Rs. 39,43,272 on which customs duty of Rs. 3,00,526 and IGST of Rs. 7,09,789 have already been paid is manifestly arbitrary, without application of mind, illegal and violating Article 14 of the Constitution of India.

B. The provisions of Section 130 of the GST Acts are ex-facie not applicable to the facts of the present case. Section 130 of the GST Acts can be invoked in the 5

circumstances as envisaged under the said provision which are all pertaining to evasion of tax. Hence for invoking the said provision it has to be primarily alleged and proved that there was intention to evade payment of tax in respect of the goods in question. In the present case admittedly the goods were being accompanied by the bill of entry for home consumption which evidenced payment of IGST on the transaction even before commencement of movement of the goods. Thus there was no question of they being unaccounted goods or there being intention to evade payment of tax. Invoking the provisions of Section 130 of the GST Acts in the facts and circumstances of the case without there being any allegation of evasion of tax and demanding maximum redemption fine equal to the value of goods is wholly without jurisdiction, arbitrary and illegal.

C. Even in so far as Section 129 of the GST Acts is concerned the said provision allows detention of goods and subsequent release thereof on payment of applicable tax and penalty equal to 100% of tax payable on such goods if there is contravention of the provisions of the GST Acts and the rules made thereunder. Thus the provision is also as such applicable when tax is payable on the transaction. However in the facts of the present case when tax under the GST Acts is already paid in advance at the time of clearance of the goods for home consumption, the said provision is inapplicable the facts of the Petitioners. Purposive interpretation of Section 129 of the GST Acts requires its application only to cases where it is established that there was intention or in any case possibility of evasion of tax in respect of the goods being transported. Even if some document such as e-way bill is missing at the time of verification, this would at the most only create a rebuttable presumption that there was intention to evade payment of tax. If the taxable person is able to establish that there was no intention of evading payment of tax then the provisions of Section 129 of the GST Acts is not permissible.

D. The contravention of provisions of the GST Acts as

contemplated under Section 129 of the GST Acts is a substantial contravention which would have the result of leakage of tax revenue. Hence it is provided that in case of such contravention the goods can be released only on payment of tax and 100% penalty. The said provision cannot be applied to technical contraventions where the taxable person is in a position to establish that the breach is technical in nature with no possibility of tax evasion.

E. Section 129 and Section 130 of the GST Acts are provisions enacted to curb evasion of tax under the GST Acts. They are drastic measures whereby goods can be seized en-route and they would be released only on payment of tax, huge penalty and huge redemption fine. Application of such provisions to technical breaches of statutory provisions would render them vulnerable of violating Article 14 of the Constitution of India as well as Article 301 of the Constitution of India which requires there to be free flow of trade and commerce across the country.

F. The Petitioners crave leave to add, to alter, amend and/or delete any of the grounds aforesaid at the time of hearing."

14. The facts of all other connected writ applications may not be the same but, ultimately, in the other connected writ applications also, the issue raised is with regard to the power of the authorities to invoke Section 130 of the Act at its inception.

Submissions on behalf of the writ applicants;

15. Mr. Uchit Sheth, the learned counsel appearing for the writ applicants has tendered his submissions in writing. The submissions are as under;

"(1) ***Section 129 of the GST Acts is a special provision providing for detention of goods in transit. Once goods are detained under this provision, mandate of the entire provision to be followed***

Section 129 of the Central/Gujarat Goods and Services Tax Act, 2017 (herein after referred to as "the GST Acts") is a special provision providing for detention and seizure of goods in transit. While Section 129(1) of the GST Acts provides for detention of goods being transported in contravention of the provisions of the GST Acts, the later portion of the very same provision requires release of the goods if the owner of the goods comes forward and makes payment of tax and penalty equal to 100% of the tax payable on such goods if the goods are taxable and in case of exempted gods on payment of an amount equal to 2% of the value of goods or Rs. 25,000 whichever is less. Even if the owner of the goods does not come forward to make payment of tax and penalty then Section 129(1)(b) of the GST Acts provides for release of the goods on payment of tax and penalty equal to 50% of the value of the goods reduced by the tax amount paid thereon in case of taxable goods and in case of exempted goods on payment of an amount equal to 5% of the value of goods or Rs. 25,000 whichever is less. Section 129(5) of the GST Acts specifically provides that on payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded. It is further provided in Section 129(6) of the GST Acts that where the person transporting the goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within 14 days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of Section 130. Considering such provisions, it is incumbent upon the learned authorities who have detained the goods under Section 129 of the GST Acts to give notice for payment of tax and penalty under Section 129(1) of the GST Acts and it is only if the owner or transporter fails to pay such tax and penalty within 14 days of the detention or seizure that the learned authorities can be permitted to initiate confiscation proceedings under Section 130 of the GST Acts. Detention of goods under Section 129 of the GST

Acts and thereafter not following further procedure as stipulated under the said provision and directly issuing notice for confiscation under Section 130 of the GST Acts is wholly without jurisdiction, bad and illegal.

(2) Section 129 and Section 130 of the GST Acts are both provisions meant for checking evasion of tax and therefore need to be harmoniously construed

It is respectfully submitted that Section 129 as well as Section 130 of the GST Acts are both provisions which are meant for checking evasion of tax. Section 9 of the GST Acts provides for levy of tax on a completed supply transaction. Further, tax on a supply transaction is payable along with the monthly return in Form GSTR-3B to be filed on or before the 20th of the next month. However, in order to ensure that the suppliers do not evade payment of tax, Section 68 of the GST Acts empowers the Government to prescribe documents to be carried along with the goods. Rule 138A of the Central/Gujarat Goods and Services Tax Rules (herein after referred to as "the GST Rules") stipulates invoice/bill of entry/delivery challan along with e-way bill as documents to accompany the goods. If it is found that either of such documents is missing while goods are inspected in transit or if it is found that there is any major discrepancy in the documents, then even though the taxable event i.e. supply is yet to be completed, Section 129 of the GST Acts allows detention of goods since the transportation is in contravention of the provisions of the GST Acts. Further Section 129(1) of the GST Acts mandates release of goods on payment of tax and penalty equal to 100% of tax where owner comes forward to make payment of such tax and penalty. Thus even though supply is yet to be completed and even though time limit for payment of tax is yet to lapse payment of tax as well as penalty is provided in section 129 of the GST Acts. It is further germane to note that the rate of penalty of 100% of tax is the rate which is stipulated under Section 74 of the GST Acts for instances of fraud or evasion vis-à-vis 10% penalty provided for routine cases not involving penalty or evasion under Section 73(9) of the GST Acts. Moreover as per Section 17(5)(i) of the GST Acts no input tax credit is admissible in respect of any tax paid in accordance

with the provisions of Section 74, 129 and 130 of the GST Acts. Thus Section 129 of the GST Acts is grouped together with Section 74 and Section 130 of the GST Acts which are admittedly invocable in cases of evasion. Collective reading of all such provisions shows that Section 129 of the GST Acts is enacted for curbing evasion of tax. Thus the contention of the Respondents that Section 130 of the GST Acts is a special provision enacted for checking evasion of tax is contrary to the scheme of the provisions of the GST Acts. It is only if the tax and penalty under Section 129 of the GST Acts are not paid within the stipulated period that resort can be made by the learned authorities to Section 130 of the GST Acts.

3. Any other interpretation will render Section 129 of the GST Acts unconstitutional

An interpretation of Section 129 of the GST Acts that it is meant for purpose other than checking evasion will render it unconstitutional. Provisions similar to Section 129 of the GST Acts existed under the sales tax statutes which were challenged before Courts on the ground that they violated the freedom of trade, commerce and inter-course as guaranteed under Article 301 of the Constitution. Legislative competence of enacting such provisions was also challenged. On all such occasions the constitutional validity of the provisions regarding detention of goods in transit have been upheld by Hon. Supreme Court on the ground that they were provisions meant for checking evasion and therefore intra-vires. Reference may be made in this regard to the following judgements of Hon. Supreme Court:

(a). Sodhi Transport Co. and Another v/s State of Uttar Pradesh (1986) 62 STC 381 (SC) [1st Compilation – Page 5, Relevant observations on page 11,12]

(b). State of Rajasthan and Another v/s D.P. Metals (2001) 124 STC 611 (SC) -1st Compilation – Page 49, Relevant observations on Page 72, para 29]

(4) Circular of the Government shows that Section 129 of the GST Acts not meant for minor discrepancies

In fact Circular No. 64/38/2018-GST dated 14.9.2018 (2nd Compilation – Page 1) issued by the Central Board of Indirect Taxes and Customs clearly shows that Section 129 of the GST Acts is meant for major discrepancies such as absence of e-way bill and not minor errors in the documents accompanying the goods. In case of such minor errors the authorities have been directed to levy general penalty under Section 125 of the GST Acts for which maximum statutory cap is Rs. 25,000.

5. Section 129 of the GST Acts provides a simple method of determination of tax and penalty and ensuring quick recovery

Thus while the purpose of Section 129 of the GST Acts is clearly to check evasion of tax, it provides for simple calculation of amount to be paid in time-bound manner for securing release of goods detained under the said provision. The authorities need not establish intention to evade payment of tax. If the goods are intercepted during transit and if the documents accompanying the goods are found to be defective or absent then the authorities can straightaway detain the goods under Section 129 of the GST Acts and demand payment of tax and 100% penalty. If the owner of the goods comes forward and makes such payment within 14 days of detention then the provision mandates immediate release of the goods. If however the assessee fails to make such payment then confiscation proceedings can be initiated under Section 130 of the GST Acts which require the authorities to establish intention to evade payment of tax and thereafter also determine fine in lieu of confiscation depending on facts and circumstances of the case. Thus the scheme of both the provisions if read in entirety reveals that Section 129 of the GST Acts allows the assessee to get the goods released on immediate payment of tax and penalty failing which he is under threat of loosing the goods under Section 130 of the GST Acts. Per contra under section 129 of the GST Acts the authorities are also saved from establishing intention to evade payment of tax which is a pre-requisite for Section 130 of the GST Acts. Such view has already been taken by Hon. Kerala High Court in the case of ***Noushad***

Allakkat v/s State Tax officer (2019) 61 GSTR 297 (Ker.) *(1st Compilation – Page 113, Relevant observation on page 117).*

6. <u>If fraud, evasion, etc noticed then even adjudicating authority required to give option to immediately pay tax and concessional rate of penalty to secure closure of proceedings. Section 129 of the GST Acts to be read in light of such legislative policy</u>

The Petitioner may point out that in fact if fraud, evasion, etc is alleged during adjudication proceedings, Section 74 of the GST Acts provides for mechanism for adjudicating and demanding tax with penalty. Even under such provision the assessee is given an option by virtue of Section 74(5) of the GST Acts to make payment of tax, interest and 15% penalty before issuance of notice and if such payment is made then no further notice is to be given as per Section 74(6) of the GST Acts. It is further provided in Section 74(8) of the GST Acts that even if notice is issued alleging fraud, evasion, etc and the assessee pays tax, interest and 25% penalty then all proceedings in respect of the said notice shall be deemed to be concluded. Even if the assessee does not avail such option and the learned adjudicating authority proceeds to pass order even then Section 74(11) of the GST Acts provides for closure of proceedings if tax with interest and penalty at the rate of 50% are paid within 30 days of communication of the order. Thus it can be seen that the legislative policy is to give incentive to the assessee for making immediate payment even in cases of alleged fraud and evasion and the sooner he makes the payment the less amount of penalty he is liable to pay. Further on such payment being made all proceedings against the assessee are deemed to be closed. It is respectfully submitted that Section 129 of the GST Acts is also required to be read in light of such policy. It allows the assessee to secure closure of proceedings on payment of tax along with 100% penalty. It could never have been legislative intention to provide for opportunities of reduced payment of penalty in case of adjudication on prompt payment of tax and penalty while allowing direct confiscation proceedings if the goods are detained in transit. Such interpretation will be contrary to the legislative policy and scheme of the GST Acts.

The rational and contextual interpretation would therefore be that confiscation proceedings can be initiated under Section 130 of the GST Acts only if the assessee fails to pay tax and penalty as demanded under Section 129 of the GST Acts within the stipulated time period.

(7) <u>There cannot be confiscation with detention and seizure. Hence before proceeding under Section 130, Section 129 has to be invoked and followed in entirety</u>

There cannot be confiscation of goods without detention and seizure. Since Section 129 of the GST Acts is the only provision providing for detention and seizure of goods in transit, detention/seizure has to be made under Section 129(1) of the GST Acts. If that be so then the remaining part of the same sub-section as well as the remaining sub-sections of Section 129 need to be followed in entirety. Refusal on the part of the learned authorities to follow Section 129 of the GST Acts in entirety even though detention/seizure is made under such provision is wholly without jurisdiction and illegal.

8. <u>Section 129(2) of the GST Acts which adopts Section 67(6) also gives a clue regarding interpretation of the provision</u>

It is further pertinent to note that Section 129(2) of the GST Acts provides that the provisions of Section 67(6) of the GST Acts shall mutatis mutandis apply to Section 129 of the GST Acts. A perusal of Section 67(6) of the GST Acts shows that it provides for release of goods in case of seizure during search proceedings. It is respectfully submitted that Section 67(6) of the GST Acts operates in 2 parts viz. the goods can either be released on provisional basis on furnishing bond and providing security as may be prescribed or the goods can be finally released on payment of tax, interest and penalty. Adaptation of such provision for the purpose of interpreting Section 129 of the GST Acts leads to the conclusion that if tax, interest and penalty are paid then the goods are to be finally released while if only security along with bond is provided then the goods are to be released provisionally.

9. Section 67(6) of the GST Acts cannot be interpreted as providing for provisional release in entirety

It is respectfully submitted that Section 67(6) of the GST Acts cannot be interpreted as providing for provisional release in entirety. The phrase "on provisional basis" is applicable only in case of release of goods on furnishing security and providing bond. It is not applicable to the 2nd portion of the provision which provides for release of goods on payment of tax, interest and penalty. Such interpretation is supported by the following reasons:

(1) Application of the phrase "on provisional basis" even to the 2nd portion of Section 67(6) will render the phrase "as the case may be" appearing at the end of the provision redundant.

(2) "Provisional release" necessarily means that the assessee continues to be accountable for production of the goods if required. Thus a bond is prescribed in Form GST INS-04 the relevant extract of which reads as under:

"Whereas I undertake to produce the said goods released provisionally to me as and when required by the proper officer duly authorized under the Act."

Such bond is required to be produced only if goods are released on the basis of security. No such bond is required as per Section 67(6) if goods are released on payment of tax, interest and penalty which shows that in such case the release of goods is final.

(3) Rule 140 of the Central Goods and Services Tax Rules, 2017 (herein after referred to as "the GST Rules") which provides for provisional release of goods also refers to the eventuality of provisional release only in case of furnishing security along with bond of the value of goods.

(4) In case of perishable commodity since it would not be possible for the assessee to give undertaking that he will

produce the goods on demand, there is no concept of provisional release. Rule 141 of the GST Rules provides for final release of perishable goods on payment of tax, interest and penalty amount or market value of the goods whichever is lower. Thus in case of perishable commodity the final liability is restricted to the amount of tax, interest and penalty. This again shows that if tax, interest and penalty is paid forthwith then there is no question of any further liability of the assessee. It can never be the intention of the legislature that while for perishable commodities they are satisfied if tax, interest and penalty are paid, in so far as non-perishable commodities are concerned, even if tax, interest and penalty are paid there can be further proceedings of confiscation.

(Thus Section 67(6) of the GST Acts provides for final release of goods on payment of tax, interest and penalty and since this provision has been mutatis mutandis applied to Section 129, if tax, interest and penalty are paid in respect of goods detained in transit then the goods are required to be finally released and there can be no further proceedings of confiscation under Section 130 of the GST Acts.

(10) <u>It is well settled that purposive interpretation to be adopted even in taxing statutes</u>

It is respectfully submitted that it is now well settled that principle of purposive interpretation is applicable even to taxing statutes particularly when literal interpretation leads to incongruity or anomaly. Reference may be made in this regard to the judgement of Hon. Supreme Court in the case of ***State of Kerala & Ors. v. A.P Mammikutty AIR 2015 SC 3009*** *wherein it was reiterated as under:*

"16. In Keshavji Ravji and Co. v. CIT (1990) 2 SCC 231 it has been held by this Court that when in a taxation statute where literal interpretation leads to a result that does not sub-serve the object of the legislation another construction in consonance with the object can be adopted."

(11) <u>Since both Section 129 and 130 of the GST Acts</u>

contain non-obstante clauses, interpretation should be made by deciphering scheme and intention of legislature

It is respectfully submitted that since both Section 129 and 130 of the GST Acts contain non-obstante clauses, attempt should be made out to interpret them in accordance with the scheme of the GST Acts and cull out the legislative intention. Reference may be made in this regard to the judgement of Hon. Supreme Court in the case of ***J.K. Cotton Spinning and Weaving Mills Co. Ltd. v/s State of Uttar Pradesh and Others AIR 1961 SC 1170*** *(1st Compilation – page 93, relevant observations on page 7 to 10). In such circumstances the most reasonable interpretation of both the provisions will be their harmonious construction as suggested herein before. In fact Section 129 of the GST Acts can be said to be a special provision dealing with detention of goods in transit and thus even on such count it should prevail over Section 130 of the GST Acts.*

(12) General non-obstante clause has to be interpreted contextually

It is further respectfully submitted that a general non-obstante clause such as that appearing in Section 130 of the GST Acts needs to be interpreted contextually. There needs to be determination as to which provisions would stand overridden by such non-obstante clause and which would not. The provision cannot be interpreted as standing all by itself. Reliance is placed in this regard on the judgement of Hon. Supreme Court in the case of ***Indra Kumar Patodia and Another v/s Reliance Industries Ltd. AIR 2013 SC 426*** *(2nd Compilation – Page 41, Relevant Observations Page 45 para 12). Similar view has also been taken by this Hon. Court in the case of* ***Raajratna Metal Industries Ltd. v/s State of Gujarat Special Civil Application No. 15093 of 2018 decided on 20.6.2019****.*

(13) Direct invocation of Section 130 of the GST Acts will render Section 129(6) of the GST Acts redundant

It is further respectfully submitted that direct invocation of Section 130 of the GST Acts will render Section 129(6) of the GST Acts redundant. The legislature was aware that Section 130 of the GST Acts contains a non-obstante clause. Even then it was provided in Section 129(6) of the GST Acts that provisions of Section 130 of the GST Acts will be invoked only if the owner or transporter fails to make payment of tax and penalty within 14 days of detention ort seizure. It is well settled that an interpretation which will render any part of the statute otiose is to be avoided. Reliance is placed in this regard on the judgement of Hon. Supreme Court in the case of ***Union of India and Another v/s Hansoli Devi AIR 2002 SC 3240*** *(2nd Compilation – Page 4).*

(14) <u>Section 129(6) of the GST Acts cannot be interpreted as a recovery provision</u>

Section 129(6) of the GST Acts cannot be interpreted as a provision meant for recovery of unpaid tax and penalty. The Petitioner says that if at all the tax and penalty are not paid then the learned authorities can very well attach the goods under Section 79 of the GST Acts and thereafter sell them off to recover the amount due. In such case however the excess sale proceeds will have to be given to the assessee. Per contra in case of confiscation the title of the goods itself will vest with the Government. Thus for confiscation the learned authorities will necessarily have to establish intention to evade payment of tax. It is therefore respectfully submitted that the only possible effect of Section 129(6) of the GST Acts is to act as a threat to the assessee that if he fails to forthwith pay the tax, interest and penalty then he will risk loosing the goods in its entirety. Hence confiscation proceedings can be initiated only if tax and penalty are not paid within 14 days of detention and seizure. Any other interpretation will necessarily render Section 129(6) of the GST Acts redundant.

(15) <u>In the alternative in any case the vehicle and goods are required to be released even if independently Section 130 is invoked</u>

Without prejudice to the above submissions and in the alternative it is respectfully submitted that even if it is presumed for the sake of argument that payment of tax and penalty under Section 129 of the GST Acts does not preclude initiation of proceedings under Section 130 of the GST Acts, even then the goods and conveyances are required to be released at least on provisional basis on furnishing of security or on payment of amount as determined under Section 129 of the GST Acts. Hence even if the learned authorities are empowered to subsequently invoke Section 130 of the GST Acts under the belief that the goods are being supplied with the intention to evade payment of tax, even then the goods ought to be released on provisional basis on furnishing of security or payment of the amount as determined under Section 129 of the GST Acts. Confiscation proceedings under Section 130 of the GST Acts require full fledged adjudication after examination/cross-examination of evidences. The vehicle and the goods cannot be kept seized pending such long drawn adjudication process. This would be the position even if it is presumed for the sake of argument that Section 67(6) of the GST Acts refers to provisional release in its entirety. Refusal on the part of the learned Respondent authorities to even provisionally release the goods and conveyance even though tax and penalty are fully paid is without jurisdiction, arbitrary and illegal.

(16) From any angle impugned action of the learned Respondent authorities untenable

Thus, viewed from any angle, the impugned action of the learned Respondent authorities in straightaway resorting to the provisions of Section 130 of the GST Acts without completing procedure as stipulated under Section 129 of the GST Acts is wholly without jurisdiction, arbitrary and illegal. In any case refusal to release the goods and conveyance even though tax and penalty as determined under Section 129 of the GST Acts is fully paid is wholly without jurisdiction and illegal.

(17) Authority intercepting goods in transit cannot go into the issue of valuation of goods

In one of the case the learned Respondent authorities have disputed valuation of the goods and therefore also detained the goods under Section 129 of the GST Acts on the ground of under-valuation. It is respectfully submitted that the learned authority checking goods in transit has no jurisdiction to go into the valuation of the goods. All that he needs to ensure is that the goods are accompanied by requisite documents. This is the only jurisdiction he has by virtue of Section 68(3) of the GST Acts. Valuation is a matter of adjudication. Presuming that the learned authority suspects that the goods have been undervalued, even then he can at best forward such information to the concerned adjudicating authority of the supplier who can thereafter adjudicate the issue after following due process of law. Detention of goods on the ground of under-valuation is wholly without jurisdiction and illegal. Reliance is placed in this regard on the judgement of Hon. Gauhati High Court in the case of ***Shri Kamal Kumar Sharma v/s State of Assam (2006) 144 STC 458 (Gau.)*** *(2nd Compilation – Page 11, Relevant Observations – Page 16, Para 4). Reference may also be made to the judgement of Hon. Madras High Court in the case of* ***Jeyyam Global Foods (P) Ltd. v/s Union of India (2019) 64 GSTR 129 (Mad.)*** *(2nd Compilation – Page 19) wherein it was held that the authority did not have power to determine classification of goods in exercise of powers under Section 129 of the GST Acts. Similar decision was rendered by Hon. Kerala High Court in the case of* ***N.V.K. Mohammad Sulthan Rawther and Sons v/s Union of India (2019) 61 GSTR 307 (Ker.)****.*

(18) <u>GST leviable on actual transaction value and not market value</u>

This is particularly because tax under the GST Acts is leviable on actual transaction value and not on market value of the goods. Section 15 of the GST Acts provides for valuation of supplies and it is principally leviable on price actually paid or payable in respect of the goods or services. Thus as such it is not even open for the adjudicating authority to impose tax on market value. He would have to establish that the assessee has unrecorded receipts for the purpose of enhancing the valuation of supplies made by the

assessee. In the context of sales tax statutes Hon. Supreme Court has in fact held in the case of ***State of Rajasthan v/s Rajasthan Chemist Association (2006) 147 STC 542 (SC)*** *(2nd Compilation – Page 55) that imposition of tax on maximum retail price of the goods is beyond the legislative competence of the State legislature. Thus when even the adjudicating authority cannot impose tax on market value of goods without establishing that this was in fact the transaction value, the question of enhancement of value by the authority intercepting the goods in transit does not arise. In fact this would lead to granting extremely arbitrary powers to the authorities in as much as thousands of varieties of goods are moved across the country having different values which may in fact vary from commodity to commodity and transaction to transaction depending on the facts and circumstances. In fact for the same goods the value would be different depending on the stage of supply of such goods. In other words while the value of goods moving from manufacturer to wholeseller will be lower, the value of the same goods moving from retailer to end consumer will be much higher. Adhoc enhancement of value of the goods by the learned authority intercepting the goods is therefore wholly without jurisdiction, arbitrary and illegal.*

(19) In the alternative the learned Respondent authorities can at the most demand tax and penalty on the enhanced value

Without prejudice to the above and in the alternative at the most the learned authority intercepting the vehicle can demand tax and penalty under Section 129 of the GST Acts on the enhanced value which according to him is the correct value. In any case under-valuation cannot be used as pretext for direct invocation of Section 130 of the GST Acts.

(20) There is no question of invoking provisions of Section 130 of the GST Acts in case of imported goods. In fact in such case there is no requirement of payment of tax or penalty under Section 129 of the GST Acts as tax is paid in advance

In Special Civil Application No. 4730 of 2019 the goods in transportation are imported goods. The goods were being transported from airport to the premises of the Petitioner. Admittedly while e-way bill was not there the goods were accompanied by bill of entry for home consumption which showed that IGST had already been paid by the Petitioner before commencement of movement of goods. Thus there cannot be any question of intention to evade payment of tax since tax was already paid in advance on the imported goods at the time of clearance for home consumption at the airport. In fact since the applicable tax had already been paid prior to commencement of movement of goods, there is also no question of payment of tax again under Section 129 of the GST Acts which is applicable only in cases where tax is yet to be paid. Penalty is also payable under Section 129 of the GST Acts on tax "payable". Since in such case the tax was already paid no tax was "payable" and hence the question of penalty also does not arise. Demand of tax and penalty under Section 129 of the GST Acts and redemption fine equal to value of goods under Section 130 of the GST Acts in such facts and circumstances is in any case arbitrary, mechanical, bad and illegal.

(21) <u>Confiscation of goods on the ground of non-production of documents is in fact unconstitutional</u>

It is in fact respectfully submitted that if Section 130 of the GST Acts is allowed to be directly invoked on the ground of absence of necessary documents during transportation then such provision will be unconstitutional as held by Hon. Supreme Court while interpreting similar provision in the case of ***The Checkpost Officer, Coimbatore v/s K.P. Abdulla and Bros. (1971) 27 STC 1 (SC)*** *(1st Compilation – Page 1)*

(22) <u>Additional grounds raised in affidavit in reply not forming part of the detention orders/confiscation notices required to be outrightly rejected</u>

It is further respectfully submitted that some additional grounds raised in some of the affidavits in reply in support of

detention orders/confiscation notices which are not forming part of the notices are required to be out rightly rejected. It is well settled that the learned Respondents cannot be allowed to improve upon the impugned orders/notices by way of affidavits in reply. Reliance is placed in this regard on the judgement of Hon. Supreme Court in the case of ***Mohinder Singh Gill v/s Chief Election Commissioner AIR 1978 SC 851****."*

16. We also heard Mr. Tushar Hemani, the learned senior counsel appearing for the writ applicants of the Special Civil Application No.10018 of 2019. Broadly, the submissions of Mr. Hemani are as under;

> *"Sections 129 & 130 of The Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act' for the sake of brevity) are materially different and operate in different situations. They cannot be used interchangeably, at the discretion of the authorities.*
>
> *In order to understand the differences between S..129 & 130 of the Act, it is beneficial to understand the Scheme of the Act.*
>
> *S. 122 is penalty section for certain offences enumerated therein, violation whereof attracts penalty of Rs.10,000 or an amount equivalent to the tax evaded i.e. 100% of the tax evaded, Whichever is higher. All the offences enumerated in S.122 are the examples of contraventions of the provisions of this Act or the Rules made thereunder.*
>
> *S. 129 talks about detention, seizure and release of goods and conveyances in transit. As per the section which begins With non-obstante clause, 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, such goods and conveyance shall be liable to detention or seizure and shall be released upon payment of applicable tax and 100% penalty on such tax. The examples of*

contraventions of the provisions of this Act or the Rules made thereunder are enumerated in S. 122 of the Act.

S. 130 talks about confiscation of goods or conveyances and levy of tax, penalty and line thereon. The section also begins with non-obstante clause and states amongst other things that if any person "contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax", then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty, apart from tax and fine, u/s 122. Therefore, even S. 130 is also a sub-set of 8.122.

A Close comparison of these three provisions viz. S. 122, 129 & S. 130 of the Act leave no doubt that S.122 is a general penalty section which covers certain offences enumerated therein. S. 129 talks about the very same contraventions albeit, when committed in transit. Therefore it's a specific section operates only when goods are in transit as against general penalty as provided u/s 122. In other words, provisions of S.129 alone need to be invoked when contraventions of any of the provisions of the Act are caught when goods are in transit. Because these contraventions are caught when the goods are in transit, a fast track mechanism is provided under the Scheme of the Act so as to have faster adjudication of the same in terms of subsection (2) to (5) of S.129 of the Act. So if the person so caught, pays payment of applicable tax and 100% penalty on such tax, goods are released immediately and proceedings for such contravention come to an end.

The major distinction between S.129 and S.130 is that the provisions of S.129 can only be invoked when goods are in transit whereas S.130 can be invoked at any stage, much after the goods have reached their destination or even during assessment proceedings subject to of course, fulfilling its conditions.

For any violation of the provisions of the Act or rules made thereunder while goods are in transit, straightway, proceedings u/s 130 cannot be initiated as has been done by the Revenue. It is only after

exhausting this remedy of S.129 that recourse can be had to S.130. Provisions of S.129(6) leave little doubt about this legislative intent. As per S.129(6) if the amount demanded u/s 129(1) is not paid within 14 days, further proceedings shall be initiated in accordance with the provisions of S.130. Thus Proceedings are to be initiated as per law and in accordance with conditions of S.130.

Here, proceedings u/s 130 can only be initiated if conditions stated under the said section are satisfied. It cannot be interpreted in a manner so as to hold that once tax and penalty as demanded u/s 129 is not paid within a period of 14 days, S.130 automatically gets invoked without having to satisfy any of the preconditions as stated under the said section. These conditions are sine qua non for invoking the provisions of S.130 of the Act.

CBEC circular dated 13/04/2018 clauses (k) supports this interpretation inasmuch as the said clause contemplates issuance of Notice in Form GST MOV-10 which is a SCN to be issued upon the person for getting his response. If the proceedings are automatic and compulsory no such notice is required

CBEC circular dated 13/04/2018 clause (1) also supports this interpretation as the said clause talks about opinion of the proper officer about the movement of goods being effected to evade payment of tax. Such opinion has to be objective opinion based on hard evidences and not merely on conjecture, surmises and presumptions. If the proceedings are automatic and compulsory no such opinion is required.

S.130 applies to 5 kinds of offences enumerated in sub-section (1). The fundamental difference between language of S.129 and S.130 of the Act is the phrase with intent to evade payment of tax'. This phrase inherently carries with it the element of 'mens rea'. It is implicit in the phrase 'with intend to evade payment of tax' that there has been a willful, deliberate and calculated act on the part of the person to evade payment of tax. The action is planned and premeditated

purely with a clear intention to evade payment of tax.

Thus unless, such intention is proved beyond a reasonable doubt, provisions of S.130 cannot be invoked. Unlike S.135 which applies to prosecution alone, presumption of culpable mental state is not available to Revenue department when dealing with S. 130.

In the present case, even Form GST MOV -10 categorically states that "As the goods were transported without any valid documents, it is presumed that the goods were being transported for the purposes of evading the taxes." This clearly shows that the conclusion as to 'intent to evade tax' is purely based on presumption which is not permissible.

S. 129(5) states that on payment of amount referred to in sub-section (1) i.e. tax and 100% penalty on such tax, all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded. Therefore, for this default or contravention or cause of action, revenue cannot once again initiate proceedings u/s 130. This interpretation is supported by the Explanation 1 appended to S.74 of the Act which reads::

"Explanation 1- For the purpse of section 73 and this section,-

iI) the expression "all proceedings in respect of the said notice "shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded."

A bare perusal of the explanation reveals that once a person pays the tax and penalty as contemplated u/s 73 or 74, all proceedings except as prescribed u/s 132

come to an end. Even if main persons pays such tax and penalty, proceedings u/s 129 and 130 come to an end against other persons. Therefore, the intention behind these provisions is clear that so long as a person pays tax, interest and penalty of upto 50% of the tax involved, no actions are required u/s 129 or 130. In other words, legislature does not want to take multiple actions for the same contravention or default or cause of action.

Under the Scheme of the Act, there is a clear distinction between various contraventions of the provisions of this Act or the Rules made thereunder which are accidental, technical or inadvertent as against contraventions which are willful, fraudulent or with an intent to evade payment of tax. For the former, penalty is light whereas for the later penalty is heavy and in a given case may be followed by prosecution. Provisions of S. 73 and 74 are one such example. S. 129 and 130 are another example. However, Act does not contemplate consecutive proceedings under both the sections for the very same contravention. If a contravention is penalized under S.129, the same contravention cannot be once again penalized u/s 130. Without there being a different cause of action or something more to the contravention, proceedings u/s 129 cannot be succeeded by S.130.

As regards the argument that if a person does not pay the necessary tax and penalty as demanded u/s 129(1) r/w S. 129 (3) of the Act, revenue has no option but to initiate proceedings u/s 130 as prescribed u/s 129(6) of the Act because then revenue is left remedy less as no further proceedings are prescribed u/ s 129 of the Act, it is submitted that once goods in transit are subjected to S.129 of the Act, the person has to pay necessary tax and penalty. If he doesn't, all consequences as stated in S.79(1)(c)(iii) r/w. S.79(1)(b) shall follow. These provisions empower the revenue to sell goods seized without the same having to be confiscated. Confiscation u/s 130 brings with it the fine apart from tax, interest and penalty. Therefore, the same can only be invoked when conditions stated in the said section are fulfilled.

In fact goods seized u/s 67 of the Act also are treated and sold, if need be, as prescribed u/s 79 of the Act without the same having to be confiscated first."

17. We have also heard Mr. Paresh M. Dave, the learned counsel appearing for the writ applicants of the Special Civil Application No.9105 of 2019. According to Mr. Dave, the three broad issues involved in this litigation could be summarized as under;

"(I) Whether proceedings for confiscation of goods or conveyances (and also levy of penalty) under Section 130 of the CGST Act can be initiated without first following the procedure laid down under Section 129 of the CGST Act?

(II) Whether procedure and proceedings for confiscation of goods or conveyances (and also levy of penalty) under Section 130 of the CGST Act are permissible even after the procedure of Section 129 of the Act was followed i.e., amount referred in sub-section (1) was paid by the concerned person?

(III) Whether it is permissible in law to order confiscation of goods or conveyance once they are released under Section 129 of the Act on payment of the amount of tax and penalty?. In other words, once the goods and the conveyance is released, then the authority could not be said to be in physical possession of both, and in the absence of the goods or conveyance, there cannot be any confiscation of the same. To put it more simply, the physical availability of the goods and the conveyance will have significance for imposition of redemption fine under Section 130 of the Act."

18. Thus, the sum and substance of the submissions canvassed on behalf of the writ applicants is that the proceedings for confiscation of goods or conveyance cannot

be initiated under Section 130 of the Act without first complying with the procedure as prescribed under Section 129 of the Act and the second limb of the submission is that once the tax and the penalty is paid under Section 129 of the Act, then the authority has no power to proceed further under Section 130 of the Act for the purpose of confiscation of the goods and the conveyance. In other words, the confiscation proceedings under Section 130 would be permissible only if the dealer fails to pay the applicable tax and penalty imposed by an order under Section 129(3) of the Act. Confiscation is a coercive measure to ensure payment of tax and penalty levied on a dealer who, otherwise, is at a threat of loosing the goods itself. The vociferous argument is that the confiscation is not an automatic consequence ensuing from the detention and seizure. It is only when the applicable tax and penalty that may be levied under Section 129 is not paid, there could be proceedings initiated under Section 130 which would lead to confiscation of the goods itself. The argument is that the provisions of Section 130 are applicable only in the event of failure on the part of the dealer to pay the applicable tax and penalty. The principal argument of all the learned counsel appearing for the writ applicants is that the concerned authorities have not been able to understand the true purport and object of the two sections, i.e., Sections 129 and 130 of the Act respectively. The argument is that no sooner the goods are seized and the vehicle is detained, straightway the provisions of Section 130 of the Act are

being invoked. This, according to the learned counsel, is not permissible in law. The argument is that both the provisions are independent of each other. Confiscation proceedings can be initiated at the threshold only if the authority is convinced having regard to the materials on record that the party concerned had contravened the provisions of the Act and the rules with an intent to evade the payment of tax. It is argued that there is an element of *mens rea*, i.e., the culpable mental state in Section 130 of the Act. A mere technical irregularity or lapse on the part of the owner of the goods or the driver of the vehicle may not be sufficient to impute *mens rea* so as to come to the conclusion that the intention was to evade payment of tax. In such circumstances, referred to above, it is prayed that appropriate directions may be issued to the authorities concerned as regards Sections 129 and 130 respectively of the Act.

Submissions on behalf of the State;

19. All the writ applications have been vehemently opposed by Mr. Kamal Trivedi, the learned Advocate General appearing for the State.

20. Broadly, the submissions of the learned Advocate General may be summarized as under;

(I) The principles applicable in the matter of interpretation of the taxing provisions like Sections 129 and

130 of the Act are different than those which are applicable in the case of interpretation of any ordinary provisions where the stress is on the strict letter of law rather than the substance of philosophy of the law. In other words, according to Mr. Trivedi, in a taxing statute, it is the literal interpretation rather than the supposed intendment which is a key to the tool of interpretation.

(II) The non-obstante clause used in any legal provision seeks to provide the same, a sweeping overriding effect over any other legal provisions operating in the same or similar field. Since both the provisions, i.e., Sections 129 and 130 contain a non-obstante clause, they are required to be interpreted harmoniously while keeping in mind the object and purpose behind the enactment. It is argued that Section 129 of the Act deals with the detention/seizure of the goods/conveyance while in transit. Section 130 deals specifically with the confiscation of such goods/conveyance.

(III) According to Mr. Trivedi, for invocation of Section 129 of the Act all that is necessary is "contravention of the provisions of the Act or the Rules", whereas Section 130 of the Act prescribes specific circumstances for the purpose of invoking the provisions relating to confiscation. It is pointed out that Section 130 of the Act specifically talks about the intention, i.e., *mens rea*. Both the sections are independent of each other.

(IV) It is further submitted that it is preposterous on the

part of the writ applicants to contend that Section 130 of the Act can be made applicable only if Section 129(6) of the Act is not complied with. It is submitted that the provisions of Section 130 are independent of the provisions of Section 129 of the Act and that the same can be invoked by the department at any stage i.e. (i) after concluding the proceedings initiated under Section 129 of the Act, or (ii) after issuing notice under Section 129(3) of the Act, or (iii) directly after detaining the goods under Section 129(1) of the Act. Thus, there cannot be any straight jacket procedure to be adopted, as the same would entirely depend upon the facts and circumstances of each case.

(V) Mr. Trivedi further submitted that when a breach of the provisions of the Act and the Rules is found, resulting in detaining the goods and/or conveyance under Section 129(1) of the Act, by issuing the detention order (i.e. MOV-06) followed by the service of a show cause notice under Section 129(3) of the Act (i.e. MOV-O7), if owner of the goods comes forward and makes the payment of tax and penalty, such goods are required to be released in terms of Section 129(1) of the Act and that the proceedings with respect to Section129(3) of the Act will be deemed to be concluded. However, after such release, if it is found out that the contravention of the Act or the Rules was/is with an intention to evade payment of tax or falling under any of the eventualities mentioned in Section 130(1) of the Act. then in that case, once the goods/conveyance are released,

the exercise under Section 130 would be a futile exercise, because of non-availability of goods and conveyance.

(VI) It is submitted that the reliance placed by the writ applicants on Explanation 1 appended to the provisions of Section 74 of the Act, for contending that Section 130 of the Act cannot be invoked by the department for the transaction with respect to which, assessee has already paid the amount of tax and penalty in terms of Section 129 of the Act. is also not tenable in the eyes of law. This is in view of the fact that the said Explanation neither provides that the confiscation proceedings against the ‘main person' would be deemed to be concluded, nor that the confiscation proceedings against 'all other persons' would be deemed to be concluded. As against this, it merely stipulates that the proceedings related to ‘penalty' under the provisions of Sections 122, 125. 129 and 130 of the Act would be deemed to be concluded. Therefore, the said explanation would not be helpful to the writ applicants and thus. as aforesaid, the provisions of Section 130 of the Act can also be invoked in cases where the amount of tax and penalty is paid in terms of the provisions of Section 129 of the Act, in cases where the said case is falling in any of the five eventualities prescribed in Section 130(1) of the Act.

(VII) It is further submitted that it is not necessary on the part of the department to hold a full~fledged inquiry before invoking the provisions of Section 130 of the Act inasmuch

as, there can be a situation like supplying the goods without getting registered under the Act, which directly triggers Section 130(1)(iii) of the Act, for which, no inquiry is required. Thus, in such similar situations, there may not be any inquiry, and directly on that ground alone. the provisions of Section 130 of the Act proposing confiscation of goods/conveyance can be invoked by the department. This apart, in the above-referred situation, it may also happen that considering the same as contravention of the provisions of the Act, the concerned officer may inadvertently issue notice under Section 129(3) of the Act. However, thereafter it may be realised by the concerned officer that the said contravention directly triggers the provisions of Section 130(1)(iii) of the Act and that the said goods are liable for confiscation. Hence. under such circumstances, the authorities would like to proceed further by issuing a notice under Section 130(1) read with 130(4) of the Act for the proposed confiscation. Therefore. it is incorrect to contend that there has to be 'anything more' than that was prevailing at the time of invocation of Section 129 of the Act, for invoking the provisions of Section 130 of the Act.

(VIII) It is submitted that specific inclusion of sub-section (2) in Section 129 of the Act has a purpose which suggests that while framing the provisions of Sections 129 and 130 of the Act, the legislature was conscious of the fact that the detention/seizure of the goods/ conveyance under the

provisions of Section 129(1) of the Act continues, till an order of release is passed by the concerned authority under the provisions of Section 129 of the Act or an order of confiscation is passed under the provisions of Section 130 of the Act. However. in the meanwhile, i.e. during the continuation of detention/ seizure. till the same culminates into the final order of release or confiscation, the said goods/conveyance can be released on provisional basis upon execution of bond and furnishing of a security of such quantum, as may be prescribed. However, the exercise of such a discretion by the authority in the case of provisional release would once again depend upon the genuineness of the transaction and not in all cases like where the consignor or the consignee is not registered or the same is not traceable.

(IX)` It is submitted that considering the object and purpose of the Act, one has to read the word 'shall', as used in Sub-Section (3) of Section 129 of the Act, as 'directory' and not 'mandatory, as otherwise, the provisions relating to confiscation contained under Section 130 would be rendered otiose/meaningless.

(X) It is submitted that it is incorrect on the part of the writ applicants to contend that the provisions of Sections 129 and 130 of the Act are sub-sets of Section 122 of the Act. Rather. the said Sections 129 and 130 of the Act can be invoked for eventualities which are not mentioned in Section

122 of the Act and hence. the same cannot be said to be related to the provisions of Section 122 of the Act, except for quantification of the amount of penalty. In addition to this, it is also not correct on the part of the writ applicants to contend that the provisions of Section 122 of the Act are general in nature and the provisions of Sections 129 and 130 are specific in nature and hence, non-obstante clauses of the said sections would override the provisions of Section 122 of the Act. The said argument falls flat on the basic ground that the provisions of Sections 129 and 130 of the Act themselves refer to the provisions of Section 122 of the Act, so as to decide/compute the amount of penalty to be imposed upon the Assessees. Thus. once there is no conflict between the provisions of Section 122 of the Act on one hand and Sections 129 and 130 of the Act on the other, there arises no question of invocation of 'non-obstante' clause in such a situation.

(XI) It is submitted that the provisions of sections 73 and 74 of the Act deal with the 'demands and recovery' to be made by the assessing officer based upon the assessment, whereas the provisions of Section 129 of the Act deal with the 'detention/ seizure'. While assessing the returns, if the assessing officer finds that the amount of tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, either with mala fide intention or without the same, as the case may be, the provisions of Section 73/74 of the

Act would be invoked. However, the provisions of Section 129 of the Act deal with situation where the evasion of tax/contravention of the Act/Rules is detected during transit itself, requiring the adoption of summary like proceedings. Therefore, the said provisions are operating in different sphere.

(XII) It is submitted that the comparison of the provisions of Customs Act/ Excise Act on one hand and the provisions of the Act on the other, as sought to be drawn on behalf of the writ applicants, is not correct. Section 110(1) of the Customs Act is not comparable to Section 129(1) of the Act inasmuch as, the provisions of Section 110 of the Customs Act contemplates that the proper officer may seize the goods which are liable for confiscation, whereas the provisions of Section 129 contemplate that the proper officer may detain/ seize the goods/ conveyance in transit in contravention of the provisions of the Act or the Rules.

(XIII) It is further submitted that the provisions of Sections 110(2) and 124 of the Customs Act do not contemplate that the goods which are seized are to be released in a specific time limit, much less, within a period of six months. Apropos this, the said sections merely cast a duty on the department to issue a show cause notice within a period of six months from the date of seizure of goods, but the same does not contemplate as to in how much time, the same has to be adjudicated upon. Therefore, the contention

raised on behalf of the writ applicants that the goods which are seized are to be released within a short span of time and that the legislature has not contemplated to retain the goods pending the confiscation proceedings. is not tenable. In addition to the above, even otherwise, the provisions of Section 110A of the Customs Act, which deal with the 'provisional release' of the goods, do not contemplate the release of the goods only on payment of penalty and interest but the proposed amount of fine is also to be included for provisional release of the goods. In view of this, the amount of fine should be taken into account while directing the provisional release of the goods/ conveyance as per Section 129(2) read with Section 67(6) of the Act read with Rule 140 of the Rules.

(XIV) In the last, Mr. Trivedi submitted that as such there is no serious challenge to the constitutional validity of the provisions of Sections 129 and 130 of the Act is concerned. He submitted that it is a settled principle of law that the power to levy tax includes all the incidental powers to prevent the evasion of such tax. The power to seize and confiscate the goods in the event of evasion of tax and the power to levy penalty are meant to check tax evasion and is intended to operate as a deterrent against the tax-evaders and are, therefore, ancillary or incidental to the power to levy tax on the goods and thus, fall within the ambit and scope of the legislative powers. He submitted that it is not correct on the part of the writ applicants to contend that the imposition of penalty is arbitrary and unconstitutional

inasmuch as, the same is only levied in case where the owner of the goods is not coming forth and the goods are not being accounted for by any one and hence, with a view to safeguard the revenue's interest, such a measure/yardstick is incorporated in the provisions of Section 129(1)(b) of the Act. for which, the aforesaid two Sections 129 and 130 of the Act cannot be faulted.

(XV) Mr. Trivedi further, very elaborately, explained the different eventualities for the purpose of taking recourse of Sections 129 and 130 respectively of the CGST Act as under;

1st Eventuality	2nd Eventuality
1. Section 129(1)- Detention/Seizure Order in Form MOV-06 2 Section 129(3)-Issuance of Show Cause Notice in Form MOV-07 3. Section 129(3)- Rendition of order on the said Show Cause Notice in Form MOV-09 i.e. either confirming or dropping the said notice. 4. Section 129(5)- If confirmed, then upon payment of tax and penalty, and if dropped, then directly release of goods and conveyance in Form MOV-05.	1. Section 129(1)- Detention/Seizure Order in Form MOV-06 2 Section 129(3)-Issuance of Show Cause Notice in Form MOV-07 3. Section 129(3)- Rendition of order on the said Show Cause Notice in Form MOV-09 i.e. either confirming or dropping the said SCN. 4. Section 129(6)- If confirmed, then upon non/payment of tax and penalty. 5. Initiation of Section 130 proceedings.
3rd Eventuality	4th Eventuality
1. Section 129(1)- Detention /Seizure Order in Form MOV-06 2. Section 129(3)- Issuance of Show Cause Notice in Form MOV-07 3. Section 129(3)- Rendition of order on the said Show Cause Notice in Form	1. Section 129(1)- Detention /Seizure Order in Form MOV-06 2. Section 130(1) r/w Section 130(4)- Issuance of Show-Cause Notice regarding confiscation in Form MOV-10,

MOV-09 i.e. either confirming or dropping the said SCN. 4. Section 129(5)- If confirmed, then upon payment of tax and penalty, and if dropped, then directly release of goods and conveyance in Form MOV-05. 5. Section 130(1) r/w Section 130(4)- Issuance of Show-Cause Notice regarding confiscation in Form MOV-10, in respect of any of the circumstances narrated in sub-clauses (i) to (v) of Section 130(1)	

21. Mr. Trivedi, in support of his submissions, has placed reliance on the following decisions;

"(1) In ***Commissioner of Sales Tax, Delhi and Others v. Shri Krishna Engg. Company and Others***, *(2005) 2 SCC 692;*

(2) In ***Sanwarmal Kejriwal vs. Vishwa Cooperative Housing Society Ltd. & Ors,*** *1990 (2) SCC 288;*

(3) In ***Shri Swaran Singh & Anr. v. Shri Kasturi Lal***; *(1977) 1 SCC 750;*

(4) In ***State Of Bihar & Others vs Bihar Rajya***, *(2005) 9 SCC 129*;

(5) In ***Iolidaire India Ltd. v. Fairgrowth Financial Services Ltd. and Others***, (2001) 3 SCC 71;

(6) In Union of India & Ors. vs. A.K. Pandey, *(2009) 10 SCC 552;*

(7) In ***Sales Tax Officers & Ors. vs. Dutta Traders***, *(2007) 14 SCC 215.*;

22. In such circumstances, referred to above, Mr. Trivedi submits that this Court may interpret the two provisions bearing in mind the aforesaid submissions.

Submissions on behalf of the Union of India;

23. Mr. P.Y. Divyeshvar, the learned standing counsel appearing for the Union of India in one of the petitions has tendered his written submissions. The written submissions are as under;

> *"THE POWER OF CONFISCATION IS BEYOND THE POWER TO LEVY GST. THEREFORE SECTION 130 OF CGST ACT, 2017 IS ULTRA VIRES PROVISIONS OF THE CONSTITUTION is not correct as GST Act brought in the Constitution by way of The Constitution (One Hundred and First Amendment) Act, 2016. According to which the Parliament has power to make laws with respect to GST. Further, there is no physical control on such supply of goods and services. The control is effected through documents. For regulation of the activities of supply certain documents have been prescribed. The scheme of levy and collection of GST envisages compliance of applicable law inter alia through these documents. The entire mechanism is meant to ensure that there is no leakage of revenue by way of supply/movement of goods and are devised to thwart any unscrupulous move of using the same e-way bill twice. The system is devised in such a way to self-sufiiciently proceed on the basis of claimed information furnished in the documents. Any offence (in the present scheme of taxation) through detection during interception has to be dealt in accordance with the facts and circumstances of the individual case. Absence of physical control makes it incumbent upon the taxpayer to strictly follow the prescribed procedure. It is a settled legal position that the legislature can freely choose its objects of taxation, fix the rate and classify persons and properties and make machinery provisions for that purpose.*
>
> *Further, CGST Act, 2017 is a complete code in itself and a Special*

Act. Having envisaged the relevant situations a mechanism has been devised in law and wherein, depending upon the concomitant factors, penalties & confiscation commensurate with the role and responsibility have been prescribed. The provisions relating to mandatory requirement of movement of the goods under the cover of valid e-way bill are duly specified in the Rule 138 of the CGST Rules, 2107. Non compliance of the legal requirements of the law renders the goods/vehicle liable to confiscation as enumerated in the law. The requirement of proper documents is to be fulfilled before commencement of the act of transportations. Thus it appears that no unconstitutionality is involved in the mechanism of provisions relating to confiscation of goods as contained in section 130 of the CGST Act, 2017.

3.THE DEMAND OF TAX AND PENALTY UNDER SECTION 129 OF THE GST ACT AS A CONDITION TO RELEASE OF GOODS IS ILLEGAL, ARBITRARY AND UNWARRANTED; and (ii) SECTION 129(1)(B) OF GST ACT IS VIOLA'I'IVE OF ARTICLE 14 AND 19(1)(G) OF THE CONSTITUTION OF INDIA is not correct considering the fact that In terms of rule 129(1) of the CGST Act, 2017 where any goods are transported in contravention of the provision of the CGST Act, 2017 or the rules made there under all such goods and conveyance used as a means of transport for carrying the said goods and conveyance shall be liable to seizure and shall be released in terms of provisions contained in the rule. The averment of petitioner that it is only a minor interaction and does not warrant action in terms of section 129 of the CGST Act is not on the lines of the settled legal position. The requirement of transportation of goods under the cover of valid specified documents is to be mandatorily followed. Non compliance of the same is to be processed as per law. There is no physical control on such supply of goods and services. The control is effected through documents. For regulation of the activities of supply certain documents have been prescribed. The scheme of levy and collection of GST envisages compliance of applicable law inter alia through these documents. There may be major or minor violations relating to the documents. Board vide Circular No. 64/38/2018GST dated 14.09.2018 has clarified the situations of minor violations pertaining to invoice/e-way bills/any other documents accompanying the consignment where proceedings under section 129 of the CGST Act, 2017 may not be initiated. The

lapse/violation involved in the instant case does not appear minor in nature as elaborated in the Board circular No 64/38/2O18-GST dated 14.09.2018. The entire mechanism is meant to ensure that there is no leakage of revenue by way of supply/movement of goods. It appears that in the instant case there was an attempt to violate the provision of law, which if undetected, could have resulted in defrauding government revenue. 0n interception of the vehicle and ascertaining commitment of violations by the concerned persons, mandatory penal provisions were invoked.

Essentially, the procedure prescribed under law has not been complied with and the action taken thereafter has been challenged. It is to mention the Hon'ble Supreme Court in the matter of Indian Alluminium Company Limited Vs. Thane Municipal Corporation, (1991) ELT 454 (SC) has essentially ruled that non-observance of even a procedural condition not to be condoned if likely to facilitate commission of fraud and introduce administrative inconveniences. The line of distinction between the bonafide mistake and unscrupulous act has to be construed in the light of attending circumstances and evaluated on the basis of applicable law. Law in this regard is very clear and has specific provisions to deal with such as situation. The violations of this sort are not minor breaches as claimed by the petitioner. The rules are a mechanism in themselves and are devised to thwart any unscrupulous move of using the same e-way bill twice. The system is devised in such a way to self-sufficiently proceed on the basis of claimed information furnished in the documents. Any offence (in the present scheme of taxation) through detection during interception has to be dealt in accordance with the facts and circumstances of the individual case. Absence of physical control makes it incumbent upon the taxpayer to strictly follow the prescribed procedure. It is a settled legal position that the legislature can freely choose its objects of taxation, fix the rate and classify persons and properties and make machinery provisions for that purpose.

Thus the requirements of compliance of procedure are not a less important aspect but a condition sine qua non for the purpose involved. This ratio of the case cited above appears to be analogously applicable in the instant case. Further, CGST Act, 2017 is a complete code in itself and a Special Act. Having envisaged the relevant situations a mechanism has been devised in law and wherein, depending upon the concomitant factors,

penalties commensurate with the role and responsibility have been prescribed. The provisions relating to mandatory requirement of movement of the goods under the cover of valid e-way bill are duly specified in the Rule 138 of the CGST Rules, 2107. Non compliance of the legal requirements of the law renders the goods/vehicle liable to penal action as enumerated in the law. The requirement of proper documents is to be fulfilled before commencement of the act of transportations. Law does not provide any relaxation as may be claimed by the petitioner. It was incumbent upon the petitioner to ensure that all the requirements are duly met with. His claims appear after thought and the rationale put forth by him is not potent enough to alter the legal position. The provisions regarding quantum of mandatory penalty are legal and in accordance with the spirit and intent of the Act. Thus it appears that no unconstitutionality is involved in the mechanism of provisions relating to release of goods as contained in section 129 of the CGST.

In case of R.K. Gar: v. Union of India and Others reported in 1981 4 SCC 675 the Constitution Bench of the Hon'ble Supreme Court held that every legislation particularly in economic matters is essentially empiric and it is based on experimentation. It was further held and observed as under :-"7. Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the Legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation".

In case of Godrej & Boyce Mfg. Company Pvt. Limited vs.

Commissioner of Sales Tax & ors. reported in 1992 3 SCC 624, the Hon'ble Supreme Court had upheld a rule which restricted availment of Modvat Credit to six months from the date of the documents specified in the proviso. The contention that such amendment would take away an existing right was rejected. In case of State of Gujarat v. Reliance Industries Limited, reported in (2017) 16 SCC 28 it was held and observed that how much tax credit should be given and under what circumstances, is a domain of a Legislature.

Further in the case of RSPL LTD. Versus Union of India {2018) (19) GSTL 430 (Guj.) the Hon'ble High Court of Gujarat at Ahmedabad in the case of dispute to certain provisions of CGST Act has inter alia held in para 25 of the order that "under the circumstances we do not find that the statute in an manner violates Article 14 or 19 1(g) of the Constitution" (relevant part mentioned and emphasized).}

Furthermore, it is to mention that previously also certain provisions of GST laws have been challenged. In a recent case of Union of India Versus Mohit Mineral Pvt. Ltd. {2018 (17)GSTL(561)} Hon'ble Supreme Court while deciding the issue related to legislative competence of state to enact law relating to compensation to states has inter alia elaborately discussed the relevant provisions validating the enactment. In view of the above settled legal position, clear view emerges that Legislation has the right to levy taxes and penalties under CGST Act, 2017 which emanates from constitutional powers and no valid ground has been mentioned by the petitioner holding the enacted law as invalid. Mere ground of quantum of fine is no basis for holding it to be violative of the referred articles of the Constitution. Thus it appears that no unconstitutionality is involved in the mechanism of provisions relating to release of goods as contained in section 129 of the CGST Act, 2017.

From the above, it is clear that penalty is less where the owner of the goods comes forward and penalty is higher where the owner of the goods doesn't come forward. In the GST matrix the supplier is the fulcrum for any supply and therefore the penal provisions are less harsh for any violation of the provisions of the said Act committed by the supplier/owner of the goods. However, where the supplier of the goods is non-traceable or obscure, there

appears to be more stronger apprehension of intention of evasion and therefore the penal provisions are much more onerous. As stated above, CGST Act, 2017 is a complete code in itself and a Special Act. Having envisaged the relevant situations a mechanism has been devised in law and wherein, depending upon the concomitant factors, penalties & confiscation commensurate with the role and responsibility have been prescribed. The provisions relating to mandatory requirement of movement of the goods under the cover of valid e-way bill are duly specified in the Rule 138 of the CGST Rules, 2107. Non compliance of the legal requirements of the law renders the goods/vehicle liable to confiscation as enumerated in the law. The requirement of proper documents is to be fulfilled before commencement of the act of transportations. Law does not provide relaxation as may be claimed by the petitioner. It was incumbent upon the petitioner to ensure that all the requirements are duly met with. His claims appear after thought and the rationale put forth by him is not potent enough to alter the legal position. The provisions regarding quantum of mandatory penalty are legal and in accordance with the spirit and intent of the Act.

In fact GST Act brought in the Constitution by way of The Constitution (One Hundred and First Amendment) Act, 2016. According to which the Parliament has power to make laws with respect to GST. Section 164 of the CGST Act, 2017 empowers the Government to make rules. Further, vide Notification No. 03/2017-Central Tax dated 19.06.2017 (as amended) Central Government had notified Central Goods and Services Tax Rules, 2017. Furthermore, in Chapter XVI of the CGST Rules, 2017 E-Way Rules have been notified. In view of the above, the provisions, relating to mandatory requirement of movement of the goods under the cover of valid e-way bill as specified in the Rule 138 of the CGST Rules, 2107, are legal and in accordance with the spirit and intent of the Act. Thus the requirements of compliance of procedure is not a less important aspect but a condition sine qua non for the purpose involved. This ratio of the case cited above appears to be analogously applicable in the instant case. "

DISCUSSION

24. As we are looking into two important provisions of a new tax

regime, we must look into the salient features of the GST. The salient features of the GST have been very exhaustively looked into and discussed by the Kerala High Court in the case of ***Sheen Golden Jewels (India) Pvt. Ltd. vs. State Tax Officer***, reported in *(2019) 62 GSTR 207*.

GST – Introduction:

25. In a federal constitutional set up, coordination rather than subordination as the guiding spirit, the States and the Union as the constituents have demarcated spheres of legislation and governance. With Clearly delineated legislative fields, neither can trespass upon the other's legislative territory-the residuary powers lying with the Union, though. The division of powers is zealously guarded in no other sphere than fiscal. Taxation as the backbone of a welfare nation, which India is; the legislative fields are as distinct, yet interconnected, as the spinal segments do.

26. That said, 101st Constitutional Amendment is the epoch-making federal feat unparalleled in constitutional democracies-almost. It is, I may say, a constitutional *coup de grace*delivered against the fiscal confusion compounded by conflicting taxation regimes. This amendment, perhaps, marks the crest of cooperative federalism. It has created even a constitutional institution-GST Council.

27. As constitutional democracies have gained experience, Utopian vision of justice has given way to utilitarian view. Material comfort or upliftment has become the hallmark of good governance. So economic analysis of law substitutes the notion of

simple justice with that of economic efficiency and wealth maximisation. True, nations like France successfully embraced GST regimes in the 1950s. Even federal polities like Canada replaced MST (Manufacturer's Sales Tax) with GST (Goods and Services Tax) in the 1980s. India joined the fiscal reform bandwagon a little late. Tentative it was to begin with, but determined it is in this new federal fiscal path.

28. To put the concept in perspective, GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer. Credits of input taxes paid at each stage will be available in the later stage of value addition. This process makes GST a tax on value addition at each stage. The consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

29. In other words, the focus was shifted from taxable event to destination-based taxation. It avoids the evil of cascading taxation or tax on tax trouble. So goes the motto: One Nation-One Market-One Tax.

30. A nascent enactment in a nebulous field of taxation will have many teething troubles. GST is no exception. In its path to perfection, GST has much dust to settle-legislatively and judicially. These are the days of confusion and cacophony: many views, many interpretations, and many jurisprudential mumblings.

GST: The Origins:

31. Before its advent as a revolutionary indirect tax regime, Goods and Services Tax (GST) had been on the parliamentary anvil for more than a decade. Its need as a harmonised indirect tax, encompassing all goods and services was documented as early as in 2004. That year the Task Force on Implementation of the Fiscal Responsibility and Budget Management in its Report stressed the need. The first official announcement for a transition to GST, though, was made by the Government of India in 2006-07 (the Budget Speech). The Government's commitment stood reiterated in the Budget Speech of 2008-09, too. But the Government of India took the first step towards the transition to GST when it announced certain policy changes in the 2009-10 budget.

32. The next major landmark was the "First Discussion Paper on Goods and Services Tax in India" released by the Empowered Committee in November 2009. This was the first official document publicly delineating the contours of the proposed reform and nuances of the GST Model.

33. The First Discussion Paper, in fact, explained the rationale for a constitutional amendment to introduce GST. It noted that while the Centre is empowered to tax services and goods up to the production stage, the States have the power to tax sale of goods. The States do not have the powers to levy a tax on the supply of services while the Centre does not have the power to levy a tax on the sale. Thus, it suggested for a constitutional amendment that would contain a mechanism for a harmonious

structure of GST that would not affect the federal fabric.

34. Then, with the deliberations between the Centre and States, aided by the Empowered Committee, the constitutional amendment process to usher in GST began. It resulted in the "Constitution (One Hundred and Fifteenth Amendment) Bill, 2011" After that one got lapsed, came the 2014 Amendment Bill (as passed by Parliament). Passed on 8 September 2016, this Bill became "the Constitution (One Hundred and First Amendment) Act, 2016".

35. The GST Council, constituted in September 2016, is a constitutional institution comprising as its members the Finance Ministers of the Union and the SMteS3 including Union Territories with Legislatures. It has the authority "to recommend to the Union and the States on various facets of GST, including Model GST laws, principles to determine the place of supply, levy of the tax, design of GST, dispute settlement, special provisions for a special category of States, and so forth."

36. Adopting the recommendation of the GST Council, Parliament has enacted these pieces of legislation:

(1) The Central Goods and Services Tax Act, 2017: it levies a tax on intra-State supplies of goods and services in all supplies within a State

(2) the Integrated Goods and Goods and Services Tax Act, 2017: it levies a tax on inter-State supplies of goods and services;

(3) the Union Territory Goods and Services Tax Act, 2017: it levies a tax on intra-State supplies of goods and service.

37. Tarun Jain's Goods and Services Tax, already copiously quoted, observes that in the constitutional terms, the GST is unique because of these aspects of its design: (1) It provides for the concurrent exercise of taxing powers by the Centre and the States on the same subject-a unique and unprecedented measure. (2) Both the Centre and the States are to act in tandem based on the GST Council's recommendations.

Salient features of the GST:

38. The salient features of GST are these:

(i) GST applies on 'supply/ of goods or services as against the present concept on the manufacture of goods, or on the sale of goods, or on the provision of services.

(ii) GST is based on the principle of destination-based consumption taxation as against the present principle of origin-based taxation.

(iii) It is a dual GST with the Centre and the States simultaneously levying a tax on a common base. GST to be levied by the Centre is called Central GST(CGST) and that to be levied by the States called State GST (SGST).

(iv) An Integrated GST (IGST) is levied on inter-state supply (including stock transfers) of goods or services. This shall be levied and collected by the Government of India, and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by Law on the recommendation of the GST Council.

(v) Import of goods or services is treated as inter-state supplies and is subject to IGST, besides the applicable customs duties.

(vi) CGST, SGST & IGST are levied at rates to be mutually agreed upon by the Centre and the States. The rates would be notified on the recommendation of the GST Council. To begin with, the GST Council has decided that GST would be levied at four rates viz. 5%, 12%, 18% and 28%. The schedule or list of items that would fall under each slab has been worked out. Besides these rates, a cess would be imposed on "demerit" goods to raise resources for compensating States as States may lose revenue owing to implementing GST.

(vii) GST will apply to all goods and services except Alcohol for human consumption.

(viii) GST on five specified petroleum products (Crude, Petrol, Diesel, ATF & Natural Gas) be applicable from a date to be recommended by the GSTC.

(ix) Tobacco and tobacco products would be subject to GST. Besides, the Centre will have the power to levy Central Excise duty on these products.

(x) A common threshold exemption would apply to both CGST and SGST. Taxpayers with an annual turnover not exceeding Rs.20 lakh (Rs.10 Lakh for special category States) would be exempted from GST. For small taxpayers with an aggregate turnover in a financial year up to 50 lakhs, a composition scheme is available. Under the scheme, a taxpayer shall pay tax as a percentage of his turnover in a State during the year without the benefit of Input Tax Credit. This scheme will be optional.

(xi) The list of exempted goods and services would be kept to a minimum, and it would be harmonized for the Centre and the States and across States as far as possible.

(xii) Exports would be zero-rated supplies. Thus, goods or services that are exported would not suffer input taxes or taxes on finished products.

(xiii) The credit of CGST paid on inputs may be used only for paying CGST on the output, and the credit of SGST paid on inputs may be used only for paying SGST. Input Tax Credit (ITC) of CGST cannot be used for payment of SGST and vice versa. In other words, the two streams of Input Tax Credit (ITC) cannot be cross-utilised, except in specified circumstances of inter-state supplies for payment of IGST.

(xiv) Accounts would be settled periodically between the Centre and the States to ensure that the credit of SGST used for payment of IGST is transferred by the Exporting State to the Centre. Similarly, IGST used for payment of SGST would be transferred by the Centre to the Importing State. Further, the SGST portion of IGST collected on B2C supplies would also be transferred by the Centre to the destination State. The transfer of funds would be carried out based on information contained in the returns filed by the taxpayers.

(xv) The laws, regulations, and procedures for levy and collection of CGST and SGST would be harmonized to the extent possible.

39. GST replaces these taxes currently levied and collected by the Centre:

(a) Central Excise Duty,

(b) Duties of Excise (Medicinal and Toilet Preparations),

(c) Additional Duties of Excise (Goods of Special Importance),

(d) Additional Duties of Excise (Textiles and Textile Products),

(e) Additional Duties of Customs (commonly known as CVD),

(f) Special Additional Duty of Customs(SAD),

(g) Service Tax,

(h) Cesses and surcharges, in so far as they relate to the supply of goods and services.

40. State taxes that get subsumed within the GST are:

(a) State VAT,

(b) Central Sales Tax,

(c) Purchase Tax,

(d) Luxury Tax,

(e) Entry Tax (All forms),

(f) Entertainment Tax and Amusement Tax (except those levied by the local bodies),

(g) Tax on advertisements,

(h) Tax on lotteries, betting and gambling,

(i) State cesses and surcharges in so far as they relate to the supply of goods and services,

41. To have the whole GST system backed by a robust IT system, Parliament has set up the Goods and Services Tax Network (GSTN). It will provide front end services and will also develop back end IT modules for States who chose the same.

Constitutional Amendment Act, An Overview:

42. As we shall see, the CA Act inserts, repeals, and amends certain parts of the Constitution. Inserted are the Articles 246A, 269A, and 279A; repealed is the Article 268A; amended are Articles 248, 249, 250, 268, 269, 270, 271, 286, 366, and 279A. Besides that the Sixth and the Seventh Schedules, too, have been amended.

43. Article 246A, inserted through Section 2 of the Amendment Act, is a marvel of the federal fiscal mechanism. By this Article, the State Legislatures now have the power to make laws regarding GST tax imposed by the Union or by that State and to implement them in intra-state trade. The Centre, of course, continues to have exclusive power to make GST laws regarding inter-state trade. Both the Union and States in India now have simultaneous powers to make law on the goods and services.

44. Article 269A, inserted through Section 9 of the Act, deals with levy and collection of goods and services tax in the course of inter-State trade or commerce. That is, in case of inter-state trade, the amount collected by the Centre is to be apportioned between the Centre and the States as per the GST Council's recommendations. Under the GST, if the Centre collects the tax, it assigns State's share to the State concerned; on the other hand, if the State collects the tax, it assigns the Centre's share to the Centre. Those proceeds will not form a part of the Consolidated Fund of India, so it avoids having an Appropriation

Bill passed every time a deposit is made.

45. And Article 279A provides for the constitution of a GST Council, besides prescribing its powers and positions. Earlier, Article 268A dealt with the service tax levied by Union and collected and appropriated by the Union and States. Now, this Article stands repealed. As to the amended constitutional provisions, Article 248 confers residuary legislative powers on Parliament. Now this provision is subject to Article 246A of the Constitution. Article 249, amended through Section 4 of the Act, now stands changed so that if Rajya Sabha approves the resolution with 2/3rdmajority, Parliament will have powers to make necessary laws regarding GST, in the national interest. So has Article 250 been amended; Parliament will have powers to make laws on GST during the emergency period.

46. At a different plane are the other amendments. Article 268 has been amended so that excise duty on medicinal and toilet preparation are omitted from the State List and are subsumed in GST. And Article 269 would empower the Parliament to make GST related laws for inter-state trade or commerce. Article 270 now provides for collection and distribution of tax to be done according to Article 246A. Then, under Article 271, GST has been exempted from being part of the Consolidated Fund of India. The amended Article 286 includes the supply of goods and services under its ambit, rather than just sale or purchase of goods; Article 366 now includes the definitions of Goods and Service Tax, Services and State. And finally, Article 279A has also been brought under the ambit of Article 368.

47. As with the Schedules, the Sixth Schedule has been amended to give power to the District Councils to levy and collect taxes on entertainment and amusements. And the Seventh Schedule has also been amended. In the Union List, petroleum crude, high-speed diesel, motor spirit (petrol), natural gas, and aviation turbine fuel, tobacco and tobacco products have been removed from the ambit of GST and have been subjected to Union jurisdiction. Newspapers advertisements, and Service Tax have been brought under GST (entries 84, 92, 92C). Similarly, in the State List, petroleum crude, high-speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel, and alcoholic liquor for the human consumption have been included, unless the sale is in the course of inter-State or International trade and commerce. Entry tax and Advertisement taxes have been removed. Taxes on entertainment are only to be included to the extent of that imposed by local bodies. (entries 52, 54, 55, 62).

48. To be explicit, in Article 366 of the Constitution, after clause (12), clause (12A) Was inserted: “goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. After clause (26), clauses (26A) and (26B) were inserted: “Services” means anything other than goods; “Staten with reference to Articles 246A, 268, 269, 269A and Article 279A includes a Union territory with Legislature.

49. Section 18 of the Amendment Act provides for compensation

to States for loss of revenue because of the introduction of goods and services tax. Parliament shall, by law, on the recommendation of the GST Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for five years.

50. The overarching provision for our discussion is Section 19 of the Amendment Act. It reads thus;

"*Section 19 – Transitional provisions:*

Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier."

51. Until the Constitution Suffered its 101stAmendment-that is, The Constitution (One Hundred & First Amendment) Act, 2016-the Union and the State Governments have been collecting, as is relevant here, the indirect taxes under dearly demarcated legislative fields as shown in the Seventh Schedule. Then, there were 97 Entries in List-I, 66 in List-II, and 47 in List-III, not all those dealings with the Legislature's taxing power though. In List I, principal among the Entries concerning taxes are Articles 41, 42, 83, 84, 87 to 92, 92A, 92B, 92C, 97; and in List II are Entries 26, 45, 47 to 61 and 63.

52. The CA Act has brought drastic changes in the federal taxing powers of the State; it has introduced a couple of Articles,

amended a few, and done away with a few more. At a glance we can appreciate the changes:

Before Amendment		After Amendment	Impact
246A	Not existing	Introduced	Special provision on goods and services tax conferring simultaneous legislative powers on both the Union and the States.
248	Residuary power	Amended	The Union's residuary legislative power is subjected to Article 246A.
249	Power of Parliament to legislate regarding a matter in the State List in the national interest	Amended	It gives power to the Parliament to enact any law applicable to states on the matters mentioned even in states list. GST, no mentioned in States list, now explicitly mentioned.
250	Power of Parliament to legislate regarding any matter in the State List if a Proclamation of Emergency is in operation	Amended	It has a similar impact as does the amended Article 249.
268	Duties levied by the Union but collected and appropriated by the States	Amended	Additional Duties of Excise (Medicinal and toilet preparations) Stand subsumed into GST.

268A	Service tax levied by Union and Collected and appropriated by the Union and the States:	Omitted	Service tax has been subsumed into GST. So Entry No. 92C of List-I too stands omitted.
269	Taxes levied and collected by the Union but assigned to the States	Amended	The arrangement under Article 269 is subjected to Article 269A, a new provision.
269A	Not existing	Inserted	Levy and collection of goods and services tax during inter-State trade or commerce. The power to levy and collect GST during inter-State trade or commerce is vested with the Government of India. The taxes so collected will be apportioned between the Union & the States in manner prescribed.
270	Taxes levied and distributed between the Union and the States.	Amended	Now Article 268A an Entry No. 92C of List-I stand omitted; so service tax is subsumed under GST. So in Article 270, a reference to Article 268A has been omitted, and a new reference to Article 269A for levy of GST for Inter-state transactions has been

			introduced.
271	Surcharge on certain duties and taxes for purposes of the Union	Amended	Parliament's powers to levy an additional surcharge on Union taxes under Article 271 now stands amended: Parliament can levy no additional surcharge on GST.
279A	Not existing	Inserted	Provision for creating the GST Council, a constitutional body.
286	Restrictions on the imposition of tax on the sale or purchase of goods	Amended	First, the word "sales" is replaced with "supply" and the word "goods" is replaced with "goods or services or both". States cannot legislate on the supply of goods or services if such supply is outside their state or is in the course of import or export. Originally, States could not levy and collect tax on specific Inter-state transactions. With omitting Clause (3), now even inter-state transactions of that nature would attract GST.
366.	Definition	Inserted	The definitions have been added to the Constitution: (12A) Goods and Services

			Tax; (26A) Services; and (26B) State.
368	Power of Parliament to amend the Constitution and procedure therefore	Amended	As regards provisions and laws regarding GST Council, Parliament has been vested with the power to amend the Constitution.
Sixth Schedule	Provisions on the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura, and Mizoram 8. Powers to assess and collect land revenue and to impose taxes.	Amended	It concerns powers to assess and collect land revenue and to impose taxes in the Tribal Areas of a few States.
Seventh Schedule			
List I : Entry 84	Barring those excluded, the Union could levy excise duty on all other goods, including tobacco, manufactured or produced in India. The excluded ones are these: (a) alcoholic	Amended	Now excise duty is levied only on the enumerated items: (a) petroleum crude; (b) high-speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine

	liquors for human consumption; (b) opium, Indian hemp, and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance in sub-paragraph (b).		fuel; and f) tobacco and tobacco products”
Entry 92	Taxes on the sale or purchase of newspapers and on advertisements published.	Omitted	Now, taxes on the sale or purchase of newspapers and on advertisements published therein have been subsumed into GST.
Entry 92C	Taxes on services	Omitted	Service tax has also been subsumed into GST.
List II Entry 52	Taxes on the entry of goods into a local area for consumption, use or sale therein.	Omitted	Purchase tax, too, has been subsumed into GST.
Entry 54	Taxes on the sale or purchase of goods other than	Amended	Now the taxes are confined to the sale of petroleum crude, high speed diesel, motor spirit (petrol), natural

	newspapers, subject to the provisions of entry 92A of List I. (Entry 92A of List I concern inter-State trade or commerce.)		gas, aviation turbine fuel, and alcoholic liquor for human consumption. But excluded is the sale in the course of inter-State trade or commerce. (Now the sale or purchase of goods stands subsume by GST)
Entry 55	Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.	Omitted	Taxes on advertisements other than advertisements broadcast by radio or television has also been subsumed into GST.
Entry 62	Taxes on luxuries, including taxes on entertainments, amusements, betting, and gambling.	Amended	(a) Taxes on Luxury betting, and gambling have been subsumed into GST. (b) Right to levy Tax on entertainments and amusements has been restricted to Panchayats, municipalities, Regional Councils, and District Councils.

The State Enactments:

53. In the above background, the States have enacted the respective State Goods and Services Tax Acts. These laws, among Other things, (i) Carry out the transition to GST; (ii) provide for the levy of GST on intrastate within the State; and also (iii) modify/repeal the earlier State enactments which have to be modified/repealed because of transition to GST. Notable is the repeal of the VAT/Entry Tax/Luxury Tax, and so on, which earlier provided for levy of these taxes within the States.

Gujarat Enactment

54. The Gujarat Goods & Services Tax Act, 2017 (Act No.25 of 2017) received the Governor's assent on the 16th Day of September, 2017. It provides for, as the preamble suggests, levy and collection of tax on Intra-State supply of goods or services, or both by the State of Gujarat. As it is in pari materia with the Central Goods and Services Tax Act, it needs no much elaboration.

55. To sum it up, the GST is a discretion based tax on consumption of goods and services. The taxable event under the GST regime is the supply of goods or services or both. Section 2(107) of the CGST and SGST Acts, which are identical, defines “taxable person” as a person who is registered or liable to be registered under the said statutes. Section 2(108) of the CGST and SGST Acts, which are identical, defines “taxable supply” as a supply of goods or services, or both which is chargeable to goods and services tax under the said statutes.

Chapter XIX of the GST:-

56. Chapter XIX of the statutes containing Sections 122 to 138 deals with the offences and penalties. Among the said provisions, Sections 122 to 128 deal with the imposition of penalties. Section 129 deals with detention, seizure and release of goods and conveyances in transit. Sections 130 and 131 deal with confiscation of goods or conveyances and levy of penalty and Sections 132 to 138 deal with the various offences under the Act. Among the said provisions, Section 129 dealing with detention, seizure and release of goods and conveyances in transit, reads thus :

> *"129. Detention, seizure and release of goods and conveyances in transit.*
>
> *(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, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—*
>
> *(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;*
>
> *(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for*

payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the 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 seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer."

57. Section 130 of the statute, dealing with the confiscation of goods or conveyances, reads thus :

"130. (1) Notwithstanding anything contained in this Act, if 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 amount of penalty leviable under sub-section (1) of section 129:

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.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section

(1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(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. "

58. We take notice of the fact that both the sections, i.e., Sections 129 and 130 respectively of the Act start with a non-obstante clause. The first question we need to consider is whether both the sections are independent of each other or they can be used interchangeably at the discretion of the authorities. In other words, is Section 130 of the Act, which provides for confiscation of goods or conveyances and levy of penalty, subject to Section 129 of the Act. As noted above, the two provisions under the same enactment have a non-obstante clause "not withstanding anything contained in this Act."

59. As regard the non-obstante clause, this Court deems it fit to consider few decisions:

60. In ***State of West Bengal v. Union of India***, *AIR 1963 SC 1241*, it is observed as under;

> *"The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must*

compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

61. In ***Union of India v. Maj I.C. Lala***, *AIR 1973 SC 2204*, the Supreme Court held that the nonobstante clause does not mean that the whole of the said provision of law has to be made applicable or the whole of the other law has to be made inapplicable. It is the duty of the Court to avoid the conflict and construe the provisions to that they are harmonious.

62. In ***Union of India v. G.M. Kokil***, *AIR 1984 SC 1022*, the Supreme Court, at Paragraph 10, held as follows:

"It is well-known that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provision over some contrary provision that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

63. In ***Chandavarkar Sita Ratna Rao v. Ashalata S. Guram***, *[1986] 4 SCC 447*, at Paragraph 67, the Supreme Court held as follows:

"67. A clause beginning with the expression "notwithstanding any thing contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the nonobstante clause. It is equivalent to saying that in spite of the provision of the Act

or any other Act mentioned in the nonobstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the nonobstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in The South India Corporation (P.) Ltd., v. The Secretary, Board of Revenue, Trivandrum & Anr., AIR 1964 SC 207 at 215[1964] 4 SCR 280."

64. In ***Vishin N. Kanchandani v. Vidya Lachmandas Khanchandani***, *AIR 2000 SC 2747*, at Paragraph 11, the Supreme Court held that,

"There is no doubt that by nonobstante clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind."

65. In ***ICICI Bank Ltd. v. SIDCO Leathers Ltd.***, *[2006] 67 SCL 383 (SC)*, the Supreme Court, at Paragraphs 34, 36 and 37, held as follows:

"34. Section 529A of the Companies Act no doubt contains a non obstante clause but in construing the provisions thereof, it is necessary to determine the purport and object for which the same was enacted....

36. The nonobstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy....

37. A nonobstante clause must be given effect to, to the extent the Parliament intended and not beyond the same."

66. The Supreme Court, in the case of ***Central Bank of India v. State of Kerala***, *[2009] 4 SCC 94*, held as follows;

"103. A non-obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non-obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non- obstante clause is used. This rule of interpretation has been applied in several decisions. "

67. In ***State Bank of West Bengal v. Union of India***, *[(1964) 1 SCR 371*], it was observed that:

"68... the Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

68. In ***Madhav Rao Jivaji Rao Scindia v. Union of India and another*** *[(1971) 1 SCC 85]*, Hidayatullah, C.J. observed that –

"..the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. A search has, therefore, to be made with a view to determining which provision answers the description and which does not. "

69. In ***R.S. Raghunath v. State of Karnataka and another,*** *[(1992) 1 SCC 335]*, a threeJudge Bench referred to the earlier judgments in Aswini Kumar Ghose v. Arabinda Bose [AIR 1952 SC 369], Dominion of India v. Shrinbai A. Irani [AIR 1954 SC 596], Union of India v. G.M Kokil [1984 (Supp.) SCC 196], Chandravarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447] and observed:

> *"... The nonobstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the nonobstante clause need not necessarily and always be co extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the nonobstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the nonobstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules."*

70. In ***A.G. Varadarajulu v. State of Tamil Nadu*** *[(1998) 4 SCC 231]*, the Supreme Court relied on Aswini Kumar Ghose's case. The Court while interpreting the non-obstante clause contained in Section 21A of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 held :

> *"It is well settled that while dealing with a nonobstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision*

overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Ghose v. Arabinda Bose [AIR 1952 SC 369], Patanjali Sastri, J. observed:

"The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously;"

71. A non-obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the nonobstante clause. It is equivalent to saying that inspite of the provisions or Act mentioned in the nonobstante clause, the provision following it will have its full operation or the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment or the provision in which the nonobstante clause occurs. [See: 'Principles of Statutory Interpretation', 9th Edition by Justice G.P. Singh Chapter V, Synopsis IV at pages 318 & 319]

72. When two or more laws or provisions operate in the same field and each contains a non-obstante clause stating that its provision will override those of any other provisions or law, stimulating and intricate problems of interpretation arise. In resolving such problems of interpretation, no settled principles can be applied except to refer to the object and purpose of each of the two provisions, containing a non obstante clause. Two provisions in same Act each

containing a non obstante clause, requires a harmonious interpretation of the two seemingly conflicting provisions in the same Act. In this difficult exercise, there are involved proper consideration of giving effect to the object and purpose of two provisions and the language employed in each. [See: for relevant discussion in para 20 in ***Shri Swaran Singh & Anr. v. Shri Kasturi Lal***; *(1977) 1 SCC 750*]

73. Normally the use of the phrase by the Legislature in a statutory provision like 'notwithstanding anything to the contrary contained in this Act' is equivalent to saying that the Act shall be no impediment to the measure [See: Law Lexicon words 'notwithstanding anything in this Act to the contrary']. Use of such expression is another way of saying that the provision in which the nonobstante clause occurs usually would prevail over the other provisions in the Act. Thus, the nonobstante clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting provision to which the nonobstante clause is attached. [See: Bipathumma & Ors. v. Mariam Bibi; 1966(1) Mysore Law Journal page 162, at page 165]

Construction of the provisions of a taxing statute:

74. As we are looking into the provisions of a taxing statute, the

construction of the provisions must be strict and in favour of the enforcement of the provision. In the aforesaid context, we may refer to and rely upon a decision of the Supreme Court in the case of **Commissioner of Sales Tax, Delhi & Anr. vs. Shri Krishna Engg. Co. & Ors**., (2005) 2 SCC 692. We quote the relevant paras;

> *"21. The undisputed objective of the Act is to levy and collect tax on the sale of goods in the National Capital Territory of Delhi. Levy to tax is meaningless if the tax is not collected. It can never be the intention of the lawmakers to keep on levying tax without any effort to collect the tax so levied. This Court in Indo International Industries vs. Commissioner of Sales Tax, Uttar Pradesh [1981] 47 STC 359 held that*
>
> *"It is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary stipulated object is to raise revenue."*
>
> *Needless to stress that the object of every taxing statute is to raise revenue.*
>
> *22. In The State of Tamil Nadu vs. M.K. Kandaswami and Others, [1975] 36 STC 191, this Court held that where the object of a provision is to plug leakage and prevent evasion of tax. In interpreting such provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile.*
>
> *23. Further a Division Bench of the Karnataka High Court in N.V. Bagi vs. Commissioner of Commercial Taxes in Karnataka, [1991] 83 STC 449 has held*
>
> *"in matters which deal with provisions to prevent evasion of tax which is due to the State the construction of the provision must be strict and in favour of the enforcement of the provision".*
>
> *34. The scheme of the Act is that either ST-1 Form should be available or tax should be collected. If a dealer shows*

such indulgence as to delivery of ST-1 Forms for a particular period, he takes the risk. It would have been further the best advised to insist on their supply even for the transaction intended to be completed by them.

35. This Court in A.V. Fernandez vs. The State of Kerala, AIR 1957 SC 657 opined that, however great the hardship may appear to the judicial mind,

"In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substances of the law. If the revenue satisfies the Court that the case falls strictly within the law, the subject can be Taxed. "

A few years later another Constitution Bench in the case of Commissioner of Sales Tax, U.P. vs. Modi Sugar Mills Ltd., AIR 1961 SC 1047 observed thus

"In interpreting a taxing statute, equitable consideration are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of which is clearly expressed; it cannot imply anything which is not expressed it cannot import provisions in the statute so as to supply any assumed deficiency."

75. In ***RBI v. Peerless General Finance and Investment Co. Ltd.***, *[(1987) 1 SCC 424*], it was observed, "that interpretation is best which makes the textual interpretation match the contextual." Speaking for the Court, Chinappa Reddy, J. noted the importance of rule of contextual interpretation and held:-

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first

as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression `prize chit' in Srinivasa [(1980) 4 SCC 507] and we find no reason to depart from the Court's construction."

76. In ***R. V. National Asylum Support Services*** *[(2002) 4 All ER 654]*, LORD STEYN observed "the starting point is that language in all legal texts conveys meaning according to the circumstances in which it was used. It follows that context must always be identified and considered before the process of construction or during it. It is, therefore, wrong to say that the court may only resort to the evidence of contextual scene when an ambiguity has arisen."

77. In ***V.L.S.Finance Ltd., v. Union of India*****,** reported in *2013 (6) SCC 278*, at Paragraph 18, the Hon'ble Supreme Court, held as follows:

"As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resort to that only in exceptional circumstances to achieve the purpose of Act or give purposeful meaning. It is also a

cardinal rule of interpretation that words, phrases and sentences are to be given their natural, plain and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the administration of the Act because a large number of defaults are of technical nature and many defaults occurred because of the complex nature of the provision."

78. In ***Hardeep Singh v. State of Punjab***, reported in *2014 (3) SCC 92*, at Paragraphs 43 and 44, the Hon'ble Supreme Court held as follows:

"43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology etc., it is for others than the court to rectify that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot re-write, recast or reframe the legislation for the reason that it has no power to legislate.

44. No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction, a provision should not be reduced to a dead letter or useless lumber. An interpretation which renders a provision an otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in an exercise in futility and the product came as a purposeless piece of

legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was most unwarranted besides being uncharitable. (Vide: Patel Chunibhai Dajibha etc. v. Narayanrao Khanderao Jambekar & Anr., AIR 1965 SC 1457; The Martin Burn Ltd., v. The Corporation of Calcutta, AIR 1966 SC 529; M.V.Elisabeth & Ors., v. Harwan Investment & Trading Pvt. Ltd., Hanoekar House, Swatontapeth, VAsco-de-Gama, Goa, AIR 1993 SC 101; Sultana Begum v. Prem Chand Jain, AIR 1997 SC 1006; State of Bihar & Ors. etc. v. Bihar Distillery Ltd. etc. etc., AIR 1997 SC 1511; Institute of Chartered Accountants of India v. M/s.Price Waterhosue & Anr., AIR 1998 SC 74; and The South Central Railway Employees Co-operative Credit Society Employees Union, Secundrabad v. The Registrar of Co-operative Societies, AIR 1998 SC 703)."

79. At Paragraph 45, the Hon'ble Supreme Court considered the decision made in ***Rohitash Kumar v. Om Prakash Sharma*** reported in *2013 (11) SCC 451*, wherein, the Hon'ble Supreme Court, at Paragraphs 27 to 29, held as follows:

"27. The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word A section is to be interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act

28. The Statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The Courts have to administer the law as they find it, and it is not permissible

for the Court to twist the clear language of the enactment, in order to avoid any real, or imaginary hardship which such literal interpretation may cause.....

29. Under the garb of interpreting the provision, the Court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation. "

80. In the aforesaid context, we should also remind ourselves of the fine distinction explained by the Supreme Court in the case of ***Associated Cement Co. Ltd. vs. Commercial Tax Officer, Kota & Ors***., reported in *AIR 1981 SC 1887* as regards the charging provisions of a taxing statute and the machinery provisions which provide the machinery for the quantification of the tax and the levying and collection of the tax so imposed. We quote the relevant observations;

"It is settled law that a distinction has to be made by court while interpreting the provisions of a taxing statute between charging provisions which impose the charge to tax and machinery provisions which provide the machinery for the quantification of the tax and the levying and collection of the tax so imposed. While charging provisions are construed strictly, machinery sections are not generally subject to a rigorous construction. The courts are expected to cons true the machinery sections in such a manner that a charge to tax is not defeated. The above rule of construction of a taxing statute has been adopted by this Court in India United Mills Ltd. v. Commissioner of Excess Profits Tax, Bombay in which section 15 of the Excess Profits Tax Act came up for consideration. The Court observed in that case thus:

"That section is, it should be emphasised, not a charging section, but a machinery section. And a machinery section should be so construed as to effectuate the charging section."

The above principle was followed by this Court in Gursahai Saigal v. Commissioner of Income-tax, Punjab in which is

was observed thus:

"Now it is well recognised that the rule of construction on which the assessee relies applies only to a taxing provision and has no application to all provisions in a taxing statute. It does not, for example, apply to a provision not creating a charge for the tax but laying down the machinery for its calculation or procedure for its collection. The provisions in a taxing statute dealing with machinery for assessment have to be construed by the ordinary rules of construction, that is to say, in accordance with the clear intention of the legislature which is to make a charge levied effective."

In deciding Gursahai Saigal's case (supra) the Court followed the observations made by the Privy Council in Commissioner of Income-tax v. Mahaliram Ramjidas and by the House of Lords in Whitney v. Commissioners af Inland Revenue. In the case of Mahaliram Ramjidas (supra) the Privy Council observed:

"The section, although it is a part of a taxing Act, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind the rule is that construction should be preferred which makes the machinery workable utres valeatpotius quam Pereat."

In Whitney's case (supra), Lord Dunedin made the following observations:

"My Lords, I shall now permit myself a general observation. Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable. Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, exhypothesi, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay,"

Sections 129 and 130 of the Act:-

81. The plain reading of Section 129 of the Act would indicate that the same talks about detention, seizure and release of goods and conveyances in transit. On the other hand, Section 130 talks about confiscation of goods or conveyances and levy of tax, penalty and fine thereon. Both the sections, therefore, should be interpreted harmoniously keeping in mind the object and purpose behind the enactment thereof. For the purpose of invoking Section 129 of the Act, all that is required is "contravention of the provisions of the Act or the Rules", whereas specific circumstances are set out in sub-section (1) of Section 130 for invoking the provisions relating to confiscation which are basically related to "intent to evade payment of tax". Thus, we are clear about one thing in our mind that both these sections are independent of each other.

82. Section 130 of the Act provides for specific situations or causes leading to the confiscation of goods/conveyances. There are five precise causes for confiscation of goods and/ or conveyances specified in this section and they are:

Action	**Consequence**
Supply or receive goods in contravention of the Act or rules made thereunder	Resulting in actual evasion of tax
Not accounting for goods	Carrying a liability to payment of tax
Supply of goods liable to tax	Without applying registration
Contravention of the	With intent to evade payment

provisions of Act or rules made thereunder	of tax
Use of conveyance as a means of transport/for carriage of taxable goods	In contravention of the Act or rules made thereunder

83. In all the aforesaid eventualities, the goods or conveyance shall be liable for confiscation. However the conveyance shall not be confiscated where the owner of the conveyance proves that it is without the connivance of owner himself, his agent or person in charge of the conveyance. Further, the person shall be liable to pay penalty under section 122 of the Act.

84. If the goods or conveyance are liable to be confiscated under the provisions of this Act, the proper officer shall give the owner of the goods an option to pay fine in lieu of confiscation.

85. The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon. However, at the same time, the aggregate of fine and penalty leviable shall not be less than the amount of penalty as leviable under section 129(1) While section 129 is applicable on transporters, section 130 primarily covers the owner.

86. Where the conveyance is used for transportation of goods or passenger on hire, the owner of the conveyance shall be given an option to pay in lieu of confiscation of the conveyance a fine equal to amount of tax payable on the goods transported on his conveyance. It is worthwhile to note that the amount of fine

payable is in addition to any tax, penalty and other charges payable on confiscated goods or conveyance.

87. The order for confiscation cannot be issued without giving the person an opportunity of being heard.

88. The title of the confiscated goods or conveyance shall be vested upon the Government.

89. The proper officer adjudging confiscation shall take and hold possession of the things confiscated on behalf of the Government and every officer of police shall assist in taking such hold and possession.

90. If the proper officer is satisfied that the confiscated goods/conveyance are not required for any proceedings under the Act, then he shall after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose the goods and deposit the sale proceeds with the Government.

91. Our attention has also been drawn to the provisions of Section 122, that prescribes penalties for certain offences, Section 125, that provides for levy of general penalty and Section 126 of the Act, which sets out certain general disciplines relating to the imposition of penalties.

92. The provisions of Section 122 of the Act envisage various offences for which penalty is leviable and in terms of Section 122 (2) of the Act, the maximum penalty would be a sum of

Rs.10,000/- or 10% of the tax due from such person, whichever is higher. In the case of wilful mis-statement or suppression of facts to evade tax, such penalty would be equal to Rs.10,000/- or the tax due, whichever is higher. In terms of Section 125 of the Act, extracted below, the maximum penalty shall not exceed to Rs.25,000/-:-

> *'General penalty*
>
> *125. Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.'*

93. The general disciplines also provides for imposition of tax for minor breaches of regulations or procedural requirements, defined in the Explanation to the provision. Section 126 of the Act is extracted below:-

> *"General disciplines related to penalty.*
>
> *126. (1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.*
>
> *Explanation.—For the purpose of this sub-section,—*
>
> *(a) a breach shall be considered a 'minor breach' if the amount of http://www.judis.nic.in tax involved is less than five thousand rupees;*
>
> *(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.*
>
> *(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be*

commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.'"

94. The Central Board of Indirect Taxes and Customs, New Delhi, has issued a Circular in F.No.CBEC/20/16/03/2017-GST, dated 14.09.2018, in regard to the procedure to be followed in the 'Interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances'.

95. Our attention is drawn to paragraphs 3, 4, 5 and 6 of the said Circular, extracted below:-

> *".... 3. Section 68 of the CGST Act read with rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding http://www.judis.nic.in Rs 50,000/- should carry a*

copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part B of FORM GST EWB-01 amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto fifty kilometres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.

4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section 129 of the CGST Act may be initiated.

5. Further, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;

b) Error in the pin-code but the address of the consignor

and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

d) Error in one or two digits of the document number mentioned in the e-way bill;

e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

6. In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.....'he questions to be determined in these cases relate to the release of consignment and the quantum of penalty, if any, to be levied at this stage, and pending adjudication."

96. As far as the determination of penalty is concerned, it is the Assessing Officer / State Tax Officer who is the competent and proper person for such determination/quantification. However, a holistic reading of the statutory provisions and the Circular noted above, indicates to me 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.

97. The questions whether the movement of the consignments sans valid E-way bills constitutes a substantive error or a mere technical breach are to be considered by the Assessing Officer, having regard to the provisions of Sections 122, 125 and 126 of the Act as well all relevant Instructions and Circulars issued by the Board, including the Circular extracted above.

98. A Division Bench of the Kerala High Court in the case of ***Assistant State Tax Officer & Anr. vs. M/s. Indus Towers Limited***, *2018 (3) KLT SN 53*, had an occasion to consider a question of release of goods ordered as provided under sub-section (1) or order passed under sub-section (3) of Section 129 of the Act. It was held thus;

> *"The finding that the transaction would not fall within the scope of taxable supply under the statute, cannot be sustained for reason of there being no declaration made under R.138. The resultant finding that mere infraction of the procedural rules cannot result in detention of goods though they may result in imposition of penalty cannot also be sustained. If the conditions under the Act and Rules are not complied with, definitely S.129 operates and confiscation would be attracted."*

99. It is practically impossible to envisage various types of contravention of the provisions of the Act or the Rules for the purpose of detention and seizure of the goods and conveyances in

transit. The contravention could be trivial or it may be quite serious sufficient enough to justify the detention and seizure. This litigation is nothing but an outburst on the part of the dealers that practically in all cases of detention and seizure of goods and conveyance, the authorities would straightway invoke Section 130 of the Act and thereby would straightway issue notice calling upon the owner of the goods or the owner of the conveyance to show-cause as to why the goods or the conveyance, as the case may be, should not be confiscated. Once such a notice under Section 130 of the Act is issued right at the inception, i.e, right at the time of detention and seizure, then the provisions of Section 129 of the Act pale into insignificance. The reason why we are saying so is that for the purpose of release of the goods and conveyance detained while in transit for the contravention of the provisions of the Act or the rules, the section provides for release of such goods and conveyance on payment of the applicable tax and penalty or upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) to Clause (1) of Section 129. Section 129(2) also provides that the provisions of sub-section (6) of Section 67 shall mutatis mutandis apply for detention and seizure of goods and conveyances. We quote Section 67(6) as under;

> *"67(6) The goods so seized under sub-section(2) shall be released, on a 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."*

100. Section 129 further provides that the proper officer,

detaining or seizing the goods or conveyances, is obliged to issue a notice, specifying the tax and penalty payable and, thereafter, pass an order for payment of such tax and penalty. Clause (4) provides that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. Clause (5) provides that on payment of the amount, referred to in sub-section (1) of the proceedings in respect of the notice, specified in sub-section (3) are deemed to be concluded, and in the last, clause (6) provides that if the tax and penalty is not paid within 14 days of detention or seizure, then further proceedings would be initiated in accordance with the provisions of Section 130.

101. We are of the view 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 Rules. 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. Section 135 of the Act provides for presumption of culpable mental state but such presumption is available to the department only in the cases of prosecution and not for the purpose of Section 130 of the Act. What we are trying to convey is that 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 with the necessary intent to evade payment of tax.

102. In such circumstances, referred to above, we propose to take the view 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. 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.

103. We take notice of the fact that practically in all cases, after the detention and seizure of the goods and the conveyance, straightway notice is issued under Section 130, and in the said notice, one would find a parrot like chantation " as the goods were being transported without any valid documents, it is presumed that the goods were being transported for the purposes

of evading the tax". We have also come across notices of confiscation, wherein it has been stated that the the driver of the conveyance is presumed to have contravened the provisions of the Act or the Rules with an intent to evade payment of tax. This, in our opinion, is not justified. The resultant effect of such issue of confiscation notice at the very threshold, without any application of mind or without there being any foundation for the same, renders Section 129 of the Act practically otiose. We take cognizance of the fact that once the notice under Section 130 of the Act is issued, then the vehicle is not released even if the owner of the goods is ready and willing to pay the tax and the penalty that may be determined under Section 129 of the Act. Such approach leads to unnecessary detention of the goods and the conveyance for an indefinite period of time. Therefore, what we are trying to convey is that all cases of contravention of the provisions of the Act or the Rules, by itself, may not attract the consequences of such goods or the conveyance confiscated under Section 130 of the Act. Section 130 of the Act is altogether an independent provision which provides for confiscation in cases where it is found that the intention was to evade payment of tax. Confiscation of goods or vehicle is almost penal in character. In other words, it is an aggravated form of action, and the object of such aggravated form of action is to deter the dealers from evading tax.

104. In the aforesaid context, we would like to clarify that we do not propose to lay down, as a proposition of law, or we should not be understood to have taken the view that, in any circumstances,

the authorities concerned cannot invoke Section 130 of the Act at the threshold, i.e., at the stage of detention and seizure. What we are trying to convey is that for the purpose of invoking Section 130 of the Act at the very threshold, the authorities need to make out a very strong case. Merely on suspicion, the authorities may not be justified in invoking Section 130 of the Act straightway. If the authorities are of the view that the case is one of invoking Section 130 of the Act at the very threshold, then they need to record their reasons for such belief in writing, and such reasons recorded in writing should, thereafter, be looked into by the superior authority so that the superior authority can take an appropriate decision whether the case is one of straightway invoking Section 130 of the Act. Any opinion of the authority to be formed is not subject to objective test. The language of Section 130 of the Act leaves no room for the relevance of an official examination as to the sufficiency of the ground on which the authority may act or proceed for the purpose of confiscation at the very threshold. But, at the same time, there must be material based on which alone the authority could form its opinion in good faith that it has become necessary to call upon the owner of the goods as well as the owner of the conveyance to show-cause as to why the goods and the conveyance should not be confiscated under Section 130 of the Act. The notice for the purpose of confiscation must disclose the materials, upon which, the belief is formed. It could be argued that it is not necessary for the authority under the Act to state reasons for its belief. For the time being, we proceed on the basis of such argument. But, if it is challenged that the notice is bereft of the necessary details or

the satisfaction of the authority is imaginary or based on mere suspicion, then the authority must disclose the materials, upon which, his belief was formed as it has been held by the Supreme Court in **Sheonath Singh's case [AIR 1971 SC 2451]**. In Sheonath Singh (supra), the Supreme Court held that the Court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials although the sufficiency of the reasons for the belief cannot be investigated by the Court. The formation of the opinion by the authority that the goods and the conveyance are liable to be confiscated should reflect intense application of mind. We are saying so because it is not any or every contravention of the provisions of the Act or the Rules which may be sufficient to arrive at the conclusion that the case is one of an intention to evade payment of tax. In short, the action must be held in good faith and should not be a mere pretence.

105. We would like to remind the Revenue of the observations made by this Court in the case of ***Sitaram Roadways vs. State of Gujarat,*** *Special Civil Application No.15107 of 2019*, decided on 10th October, 2019. We quote the observations;

> *"8. Section 130 of the CGST Act provides for confiscation of goods or conveyances and levy of penalty. Sub-section (4) thereof provides that 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. In the present case, on a perusal of the documents annexed along with the petition it appears that pursuant to the notice dated 21.8.2019 issued by the respondent, the petitioner appeared before the respondent on 24.8.2019 and showed willingness to pay the amount of tax and penalty for the*

purpose of securing release of the vehicle in question. Thereafter, the second respondent, without affording any opportunity of hearing to the petitioner as contemplated under sub-section (4) of section 130 of the CGST Act, has proceeded to pass the impugned order on 24.8.2019. It appears that merely because the petitioner appeared before the respondent and showed willingness to pay the tax and penalty for the purpose of securing release of the vehicle in question, the second respondent has proceeded to pass the impugned order without hearing the petitioner on the question of confiscation of the goods and conveyance.

9. As can be seen from the impugned order, it is in the format provided therefor, viz. in FORM GST MOV-11. In paragraph 1 of the impugned order all the blanks have been filled up which indicate the registration number of the conveyance and the time, place and date and by whom the conveyance came to be intercepted. Paragraphs 3 and 4 thereof do not contain any details in the blank spaces meant to be filled in. One of the significant paragraphs in the statutory form is paragraph 5, which reads thus:

"The person in charge has not filed any objections/the objections filed were not acceptable for the reasons stated below:

a)…

b)….

Thus, in terms of the statutory format provided for passing an order under section 130 of the CGST Act, the officer adjudging is required to provide the reasons for confiscating the goods and conveyance. Reference may also be made to paragraph 6 of the statutory form, which reads thus:

"6. In view of the above, the following goods and conveyance are confiscated by the undersigned by exercising powers vested under section 130 of the Central Goods and Services Tax Act "

On a conjoint reading of paragraphs 5 and 6, it is clear that the officer adjudging the case passed the order confiscating the goods and conveyance described in paragraph 6, for the reasons set out in paragraph 5.

10. In this regard a perusal of the impugned order of

confiscation, shows that column 5 wherein the officer adjudging it is required to set out the reasons for concluding that the goods and conveyance are required to be confiscated, is totally blank. As a necessary corollary it follows that the goods and conveyance have been ordered to be confiscated without disclosing the reasons therefor. The impugned order is, therefore, a non-speaking order, which is totally bereft of any reasons whatsoever.

11. At this stage, it may be apposite to refer to the legislative scheme contained in section 130 of the CGST Act. Sub-section (1) of section 130 thereof, reads thus:

130. Confiscation of goods or conveyances and levy of penalty.— (1) Notwithstanding anything contained in this Act, if 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.

12. Thus, in terms of clauses (i) and (iv) of sub-section (1) section 130 of the CGST Act, the goods can be confiscated provided that the person supplies or receives goods in contravention of the provisions of the Act or the rules made thereunder with the intent to evade payment of tax; or contravenes any provisions of the Act and the rules made thereunder with the intent to evade payment of tax

respectively. Insofar as clauses (ii) and (iii) are concerned, the very fact that the person does not account for the goods on which he is liable to pay tax under the Act; or supplies any goods which are liable to tax under the Act without having applied for registration, would be sufficient for ordering confiscation of the goods. Therefore, while making an order of confiscation under section 130 of the CGST Act, the officer adjudging it will have to state as to which clause of sub-section (1) of section 130 of the CGST Act is attracted in the facts of the said case. If it is the case of the officer adjudging it that the case falls under clauses (i) or (iv) of sub-section (1) of section 130 of the CGST Act, then for the purpose of making an order of confiscation, he will have to come to the conclusion that the goods were supplied or received in contravention of the provisions of the Act or the rules made thereunder with the intent to evade payment of tax. In other words, the officer adjudging the case, while making an order of confiscation under clauses (i) or (iv) of sub-section (1) of section 130 of the CGST Act, has to record twin satisfaction: firstly that there is a contravention of the provisions of the Act or the rules made thereunder, with specific reference to the provision of the Act or the rules that has been contravened; and secondly, that such contravention is with the intent to evade payment of tax. Therefore, in a case falling under clauses (i) and (iv) of sub-section (1) of section 130 of the CGST Act, the proper officer is required to record a specific finding as to why he has come to the conclusion that the contravention is with the intent to evade payment of tax. In cases falling under clause (ii) of sub-section (1) of section 130 of the CGST Act, the proper officer will be required to record a finding that the person concerned has not accounted for the goods in respect of which is he liable to pay tax; and in cases falling under clause (iii) thereof, he would be required to record a finding that the person concerned has supplied goods which are liable to tax under the Act without having applied for registration.

13. In the present case, the impugned order is totally silent as regards which provision of the Act or the rules has been contravened; which clause of sub-section (1) of section 130 of the CGST Act is attracted in the present case; and as to why the officer adjudging it has come to the conclusion that there

is contravention of the provisions of the Act and the rules made thereunder with the intent to evade payment of

14. Moreover, a perusal of the impugned order reveals that fine determined in lieu of confiscation of goods is equal to the market value of the goods viz. Rs.6,81,556/-. Reference may therefore be made to sub-section (2) of section 130 of the CGST Act, which reads thus:

"(2) 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:

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 amount of penalty leviable under sub-section (1) of section 129.

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."

Thus, sub-section (2) of section 130 of the CGST Act provides that the fine leviable shall not exceed the market value of the goods, less the tax chargeable thereon. It is, therefore, clear that the fine provided under the first proviso to sub-section (2) of section 130 of the CGST Act is the maximum fine leviable. Consequently, the proper officer adjudging the case is required to examine the seriousness of the contravention and impose fine accordingly. It is not as if in every case the proper officer should levy the maximum fine. The order of confiscation should, therefore, reflect due application of mind on the part of the proper officer to the quantum of fine imposed by him.

15. A perusal of the impugned order reveals that the proper officer has levied more than the maximum fine leviable in terms of the first proviso to sub-section (2) of section 130 of the CGST Act, inasmuch as, he has levied fine equal to the market value of the goods without deducting the tax

chargeable thereon. Moreover, there is nothing in the order to reflect application of mind to the quantum of fine.

16. At this juncture reference may be made to the decision of the Supreme Court in Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496, wherein the court in the context of necessity to give reasons, has held thus:

"47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery

(j) Insistence on reason is a requirement for both judicial accountability and

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg See Ruiz Torija v. Spain, (1994) 19 EHRR 553 and Anya v. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."

17. In CCT v. Shukla & Bros.,(2010) 4 SCC 785, the Supreme Court held thus:

"14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order

itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders."

18. In ***Tata Engineering & Locomotive Co. Ltd. v.*** *Collector of Central Excise, Pune, 2006 (203) ELT 360 (SC), the Supreme Court was dealing with a case where by a cryptic and non-speaking order, the Tribunal had upheld the order passed by Commissioner by applying the ratio of the decision of the Larger Bench in TISCO Ltd., without recording any findings of fact. The court held that it is not sufficient in a judgment to give conclusions alone but it is necessary to give reasons in support of the conclusions arrived at. The court, set aside the order of the Tribunal as the findings recorded by the Tribunal were cryptic and non-speaking, and remitted the matter back to the Tribunal for taking a fresh decision by a speaking order in accordance with law after affording due opportunity to both the*

19. In ***State of Punjab v. Bhag Singh,*** *2004 (164) ELT 137 (SC), the Supreme Court was considering a case where the High Court had dismissed the appeal without giving any reasons. The court held that reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. The court further held that right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out.*

20. Thus, the Supreme Court has consistently held that a quasi-judicial authority must record reasons in support of its

conclusions and that reasons are an indispensable component of a decision making process. In CCT v. Shukla & Bros (supra) the Supreme Court has held that giving reasons in support of the conclusions arrived at is an ingredient of the principles of natural justice.

21. Viewed in the light of the principles enunciated in the decisions referred to hereinabove, the impugned order is in breach of the principles of natural justice on two counts: firstly, that though the matter was kept for hearing on 28.08.2019, the second respondent passed the impugned order on 24.08.2019 without affording any opportunity of hearing to the petitioner; and secondly, because the impugned order is a totally non-speaking order which does not reflect the reason as to why the proper officer has come to the conclusion that the goods and the conveyance are liable to be confiscated, which renders the order unsustainable. The impugned order, therefore, deserves to be set aside and the matter is required to be remitted to the proper officer to decide the matter afresh in accordance with law, keeping in mind the principles discussed herein above, after affording reasonable opportunity of hearing to the petitioner."

The phrase "with intent to evade payment of tax", the word "penalty" and the element of *mens rea* in Section 130 of the Act:-

106. When the statute talks about intent to evade payment of tax, the same could be co-related with the term "willful attempt". For the purpose of evading tax, and that too, with the necessary intention, there is always a willful attempt. In other words, the attempt to evade should be "willful". The term "willful" has not been defined under the Act. Under the common legal columns, the word "willful" suggests the guilty mind of the assessee. In other words, the assessee has consciously or knowingly attempted to thwart the chargeability or payment of tax. Further,

such willful attempt should be to "evade" the chargeability or imposition or payment of tax etc. The word "evade" has also not been defined in the Act. As per the Cambridge Dictionary, the word "evade" means "to avoid or escape from someone or something". Further, as per the K.J. Ayar's Judicial Dictionary, the word "evade" is capable of being used in two senses, one which suggest underhand dealing and another which means nothing more than the intentional avoidance of something disagreeable. We should be conscious of the fact that the legislature has used the words "with intent to evade payment of tax" in Section 130 of the Act. When the law requires an intention to evade payment of duty, then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word "evade" in the context means defeating the provisions of law of paying duty. It is made more stringent by use of the word "intent". In other words, the assessee must deliberately avoid the payment of duty which is payable in accordance with law.

107. The learned counsel appearing for the petitioners would argue that as Section 130 talks about an intent to evade payment of tax and also talks about penalty under Section 122 of the Act, the order for confiscation and penalty cannot be imposed without recording the finding of fact that the person concerned intended to avoid tax as *mens rea* was suggested to be an essential ingredient for imposing penalty. In other words, penalty being penal in nature, cannot be imposed unless *mens rea* is

established by adducing necessary evidence. On the other hand, the learned Advocate General would submit that *mens rea* cannot be read into Section 130 of the Act.

108. ***In the Divisional Personnel Officer, Southern Railway and Anr. v. T.R. Challappan***, *AIR 1975 SC 2216*, the Hon'ble Supreme Court considered the meaning of "penalty" in departmental proceedings against the employees. As the argument had been advanced that the expression "penalty" referred to in Rule 14 of the Railway Servants (Discipline and Appeal) Rules 1968, which provided for imposition of penalty of dismissal or removal in respect of a railway servant, stood confirmed by the Court holding as under:-

> *"The word 'penalty' imposed on a railway servant, in our opinion, does not refer to a sentence awarded by the Court to the accused on his conviction, but though not happily worded it merely indicates the nature of the penalty imposable by the disciplinary authority if the delinquent employee has been found guilty of conduct which has led to his conviction on a criminal charge ..... The words "where any penalty is imposed' in Rule 14 (i) should actually be read as 'where any penalty is imposable' because so far as the disciplinary authority is concerned it cannot impose a penalty on the basis of the conviction and sentence passed against the delinquent employee by a competent court. Furthermore, the rule empowering the disciplinary authority to consider circumstances of the case and make such orders as it deems fit clearly indicates that it is open to the disciplinary authority to impose any penalty as it likes. In this sense, therefore, the word 'penalty' used in Rule 14 (i) of the Rules of 1968 is relatable to the penalties to be imposed under the Rules rather than a penalty given by a criminal court."*

109. In ***N.K. Jain and Ors. v. C.K. Shaw and Ors***., *AIR 1991*

SC 1289, the Supreme Court considered the nature of expression "penalty" used in Section 14(2A) of the Provident Fund and Miscellaneous Provisions Act, 1952, wherein it considered the definition of the Word "penalty" in different dictionaries, as under:-

> *"In Butterworths "Words and Phrases, ... the meaning of word 'penalty' is large enough to mean, is intended to mean and does mean, is intended to mean, and does mean, any punishment whether by imprisonment or otherwise.... Penalty in a broad sense may be defined as any suffering in person or property by way of forfeiture, deprivation or disability, imposed as a punishment by law or judicial authority in respect of... an act prohibited by statute. The Oxford Dictionary echoes the same wide conception by referring to 'a loss, disability or disadvantage of some kind.... fixed by law for some offence.' The meaning of the word 'penalty' as given in the Collins English Dictionary such as a term of imprisonment, some other form of punishment, such as a fine or forfeit for not fulfilling a contract, loss, suffering, or other unfortunate result of one's own action, error etc., Sport, games etc. a handicap awarded against a player or term for illegal play, such as a free shot at goal by the opposing team, loss of point, etc.*
>
> .....A penalty may refer to both criminal and civil liability, being denied as penal retribution, punishment for crime of offence, the suffering in person, rights or property which is annexed by law of judicial decision to commission of a crime or public offence. The term 'penalty' embraces all consequences visited by law on heads of those who violate police regulations and extends to all penalties whether eligible by State in interest of community or by private persons in their won interest, even when statute is remedial as well as penal.
>
> The word 'penalty' is not confined to punishment or crime; it has a broader meaning in law of contracts; it is used as contradistinguished from liquidated damages. It is also used to indicate the sum to be forfeited on breach of a bond, and

in common parlance it expresses any disadvantage resulting from an act."

110. And held that in view of the definition it was not possible to hold that the said provisions were not applicable in case of exempted establishments for the reason that some more provisions, legal or penal, were also made applicable to exempted establishments with a view to make to penal provisions more stringent with a view to check the growth of arrears.

111. In ***Director of Enforcement v. MCTM Corporation Pvt. Ltd. and Ors.***, *AIR 1996 SC 1100*, the Hon'ble Supreme Court considered as issue as to whether ingredients of *mens rea* was necessary in case of a person who is found violating the provisions of the Foreign Exchange Regulations Act, 1947. The Court observed as under:-

> *"Mens rea' is a state of mind. Under the criminal law, mens rea is considered as the 'guilty intention' and unless it is found that the 'accused' had the guilty intention to commit the 'crime', he cannot be held 'guilty' of committing the crime. An 'offence' under Criminal Procedure Code and the General Clauses Act, 1897 is defined as 'any act or omission 'made punishable by any law for the time being in force.' The proceedings under Section 23(1) (a) FERA, 1947 are 'adjudicatory' in nature and character and are not 'criminal proceedings.' The officers of the Enforcement Directorate and other administrative authorities are expressly empowered by the Act to 'adjudicate' only. Indeed they have to act 'judicially' and follow the rules of natural justice to the extent applicable but, they are not 'Judges' of the 'Criminal Courts' trying an 'accused' for commission of a an offence, as understood in the general context. They perform quasi-judicial functions and do not act a 'Courts' but only as 'administrators' and 'adjudicators.' In the proceedings before them, they do not try*

'an accused' for commission of 'any crime' (not merely an offence) but determine the liability of the conlravenor for the breach of his 'obligations' imposed under the Act. They imposed 'penalty' for the breach of the 'Civil obligations' laid down under the Act and not impose any 'sentence' for the commission of an offence. The expression 'penalty' is a word of wide significance. Sometime, it means recovery of an amount as a penal measure even in civil proceedings. An exaction which is not compensator in character is also termed as 'penalty'. When penalty is imposed by an adjudicating officer, it is done so in 'adjudicatory proceedings;' and not by way of fine as a result of 'prosecution' of an 'accused' for commission of an 'accused' for commission of an 'offence' in a criminal Court. Therefore, merely because penalty clause exists in Section 23 (1) (a), the nature of the proceedings under the Section is not changed from 'adjudicator' to 'criminal' prosecution. An order made by an adjudicating authority under the Act is not that of conviction but of determination of the breach of the civil obligation by the offender. .....A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is for different from the penalty for a crime or a fine of forfeiture provided as punishment for the violation of criminal laws. We are in agreement with the aforesaid view and in our opinion, what applies to 'tax delinquency' equally holds good for the 'blameworthy' conduct for contravention of the provisions of FERA, 1947. We, therefore, hold that mens-rea (as understood in criminal law) is not an essential ingredient for holding a delinquent liable to pay penalty under Section 23(1) of FERA 1947 for contravention of the provisions of Section 10 of FERA, 1947 and that penalty is attracted under Section 23 (1)(a) as soon as contravention of the statutory obligation contemplated by Section 10(1) (a) is established. The High Court apparently fell in error in treating the 'blameworthy conduct' under the Act as equivalent to the commission of a 'criminal offence', overlooking the position that the 'blameworthy conduct' in the adjudicatory proceedings is established by proof only of the breach of a Civil obligation under the Act, for which the defaulter is obliged to make amends by payment of the penalty imposed under Section 23 (1)(a) of the Act irrespective of the fact whether he committed the breach with or without any guilty intention. Our answer

to the first question formulated by us above is, therefore in the negative."

112. In ***Commissioner of Sales Tax v. Rama and Sons, General Merchant, Ballia***, *1999 UPTC 25*, the Allahabad High Court observed as under:-

"The principle of mens rea comes from English Criminal Law from times when the law was not codified. It was said that actus non facit reum nisi mens sit rea (the intent and act must both concur to constitute the crime). But this principle has lost much of its significance owing to greater precision of modern statutes. The nature of intent or the ingredients of offences are now clearly stated in the statutes and nothing further is required to establish as offence then what the statute specified. We have words like 'voluntarily', 'intentionally', 'negligetly', 'knowingly', fraudulently', 'dishonestly', 'rashly', 'omits', 'without lawful authority' ect., 'omits', 'without lawful authority' ect., used in various sections of the Indian Penal Code defining various offence. Proof of the State of mind or of the conduct of the person as indicated by the aforesaid word establishes the offence and no further guilty intent or mens rea need be proved. In fact there are many acts which are offences and do not require proof any mens rea or guilty intention, for example possession of illicit fire arm."

113. A Full Bench of Andhra Pradesh High Court, in ***Additional, Commissioner, Income Tax v. Durga Pandari Nath Tulijayya & Co.***, *1977 Tax LR 258*, observed as under:-

"The doctrine of mens rea is of common law origin developed by Judge-made law. It has no place in the Legislator's law. It has no place in the Legislator's law where offences are defined with sufficient accuracy.... Mens rea is an essential ingredient of an offence. However, it is a rule of construction. If there is a conflict between the common law and the statutory law, it has always been held that it is a sound rule to construe a statute in conformity with the common law. But

it cannot be postulated that statute cannot alter the course of the common law. The parliament, in exercise of its constitutional powers makes statutes and in exercise of those powers it can affirm, alter or take away the common law altogether. Therefore, if it is plain from the statute that it intends to alter the course of the common law, then the plaint meaning should be accepted. The existence of mens rea as an essential ingredient of an offence has to be made out by the construction of the statute."

114. While deciding the said case, the Full Court placed reliance upon a judgment by Wright, J. in ***Sherras v. De Ruten***, *1985-1 QB 918*, wherein it was observed as under:-

"There is a presumption that mens rea, an evil intention or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence, but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject matter with which it deals, and both must be considered..... In order to find out whether mens rea i.e. a guilty mind is an ingredient or not, reference has to be made to the language of the enactment, the object and subject matter of the statute and the nature and character of the Act sought to sought to be punished."

115. The Hon'ble Supreme Court in ***Gujarat Travancore agency v. Commissioner of Income Tax***, *AIR 1989 SC 1971*, wherein the Court considered the provision of Section 271(1)(a) of the Income Tax Act and held that the element of *mens rea* is not involved because the penalty imposed in civil matters is always of a civil nature and it is misnomer to treat such proceedings as quasi-criminal merely because penalty is imposed, and observed as under:-

"In most cases of criminal liability, the intention of legislature is that penalty should serve as a deterrent. The creation of

an offence by the statute proceeds with a presumption that society suffers injury by the act or omission of defaulter and that a deterrent sentence must be imposed to discourage the repetition of the offence. In a case of proceedings under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasis the fact of loss of revenue and to provide a remedy for such loss, although, no doubt, an element of coercion is present in the penalty. In this connection, the term in which penalty falls to be measured, is significant. Unless there is something in the nature of statute indication the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provisions..... Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income Tax Officer under Section 271(1)(a) of the Income Tax Act against the assessee."

116. A Constitution Bench of the Hon'ble Supreme Court in ***Jain Bros. and Ors. v. The Union of India and Ors.***, *AIR 1970 SC 778*, while examining a case of imposing the penalty under the Income Tax Act, held that penalty was merely an additional tax being a civil liability under the Tax Statute, and observed as under:-

"Although penalty has been regarded as an additional lax in a certain sense and for certain purpose, it is not possible to hold that penalty proceedings are judicial and essentially a continuation of the proceedings relating to assessment where a return has been filed."

117. In ***Commissioner of Income Tax v. Kalyan Das Rastogi***, *1993 (Suppl) 1 SCC 663,* the Hon'ble Supreme Court placed reliance upon, approved and followed the judgment in Gujarat-Travancore Agency (supra) and reiterated the same view.

118. In ***Commissioner of Income Tax, Gujarat v. I.M. Patel & Co.***, *1993 (Suppl) (1) SCC 621*, the Hon'ble Supreme Court considered a large number of its earlier judgments, including Gujarat Travancore Agency (supra) and Kalyan Das Rastogi (supra) and categorically held that in a lax liability, the plea of *mens rea* cannot be taken.

119. In ***Income Tax Commissioner, Andhra Pradesh, Hyderabad v. Bhikaji Dadabhai & Co.***, *AIR 1961 SC 1265*, the Apex Court held that penalty is an additional tax imposed upon a person in view of his dishonesty or contumacious conduct.

120. In *Corpus Juris Secundum*, 85 580, it has been stated as under:-

> *"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime of a fine or forfeiture provided as punishment for the violation of criminal or penal laws."*

121. In ***M/s. Hindustan Steel Ltd. v. The State of Orissa***, *AIR 1970 SC 253*, the Hon'ble Supreme Court considered the provisions of the Orissa Sales Tax act, 1947, particularly the provisions relating to imposition of penalty imposed for default in registering as a dealer under Section 9(1) read with Section 25(1)(a) of the said Act, and held as under:-

> *"But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not*

ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

122. Following the aforesaid provisions, while interpreting the provisions of the Madhya Pradesh General Sales Tax Act, 1959, the Hon'ble Supreme Court, in the ***Cement Marketing Co. of India Ltd. v. The Asstt*. Commissioner of Sales Tax, Indora and Ors**., *AIR 1980 SC 346,* held that imposition of penalty is penal in character and unless the filing of an inaccurate return is accompanied by a guilty mind, the Section cannot be invoked for imposing penalty. If the contrary view is taken, the result would be that even if the assessee raises a bonafide contention that a particular item is not liable to be included in the taxable turnover, he would have to show it as forming part of the taxable turnover in his return and pay tax upon it on pain of being held liable for penalty in case his contention is ultimately found by the Court to be not acceptable.

123. In ***Om Prakash Sheo Prakash and Ors. etc. etc. v. Union of India Anr.***, *AIR 1984 SC 1194*, the Hon'ble Supreme Court considered the provisions of the Amending Sales Tax Act, made applicable retrospectively imposing the penalty also, and examined its validity on the touch-stone of provisions of Article 19(1)(f) & (g) and Article 21 of the Constitution of India, as Article 21 of the Constitution of India, as Article 20 of the Constitution guarantees the protection in respect of conviction for the offence under any law for the time-being in force unless the other conditions provided therein are complied with. The Hon'ble Apex Court considered a large number of its earlier judgments, including the meaning and definition of "penalty" and reached the conclusion that "a penalty imposed by the Sales Tax Authority is only a civil liability, though penal in nature, and it can be imposed provided the default committed by the dealer is established at an inquiry after giving the dealer concerned an opportunity of being heard. Moreso, the degree of remissness involved in the default is a relevant factor to be taken into account while levying penalty. As the Act provides both the minimum and the maximum amount of penalty leviable and it is corelated to the amount of tax which would have have been avoided if the turnover returned by such dealer had been accepted as correct. The order levying penalty is quasi-judicial in character and involves exercise of judicial discretion.

124. A Constitution Bench of the Hon'ble Supreme Court, in ***Khemka and Co. (Agencies) Pvt. Ltd. v. State of***

Maharashtra, *AIR 1975 SC 1549*, considered the provisions of the Central Sales Tax act, 1956 in a case of default in payment of tax in respect of Central Act within the prescribed time, and held as under:-

> "*Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act."*

125. The Constitution Bench of the Supreme Court in ***Maqbool Hussain v. State of Bombay***, *AIR 1953 SC 325*, considering the nature of proceedings under the Sea Customs Act and FERA, 1947, dealing with the principle and scope underlying in Article 20(2) of the its Constitution of India, held as under: -

> *"The Sea Custom Authorities were not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act did not constitute a judgment or order of a Court of judicial tribunal necessary for the purpose of supporting a plea of double jeopardy."*

126. A Seven Judges Bench of the Hon'ble Supreme Court, in ***R.S. Joshi etc. v. Ajit Mills Ltd. and Anr. etc.***, *AIR 1977 SC 2279*, considered the scope of mens-rea while interpreting the provisions of Bombay Sales Tax Act, 1959, and also considered various facets of the expression 'penalty'. The Court observed as under; -

> *"There was a contention that the expression 'forfeiture' did not denote a penalty. Thus, perhaps, may have to be decided in the specific setting of a statute. But speaking generally, and having in mind the object of Section 37 read with Section 46, we are inclined to the view that forfeiture has a punitive*

impact. Black's legal Dictionary states that 'to forfeit' is 'to lose, or lose the right to, by some error, fault, offence or crime, 'to incur a penalty.' 'Forfeiture', as judically annotted, is 'a punishment annexed by law to some illegal act or negligence....', something imposed as a punishment for an offence of delinquency. The word, in this sense, is frequently associated with the word "penalty." According to Black's Legal Dictionary, 'the terms 'fine', 'forfeiture' and 'penalty' are often used loosely, and even confusedly, but when a discrimination is made, the word 'penalty' is found to be generic in its character, including both fine and forfeiture. A 'fine' is a pecuniary penalty, and is commonly (perhaps always) to be collected by suit in some form. A 'forfeiture' is a penalty by which one loses his rights and interest in his property.

.....The word 'forfeiture' must bear the same meaning of a penalty for breach of a prohibitory direction. The fact that there is arithmetical identity, assuming it to be so, between the figures of the illegal collections made by the dealers and the amounts forfeited to the State cannot create a conceptual confusion that what is provided is not punishment but a transference of funds. If this view be correct, and we hold so the legislature, by inflicting the forfeiture, does not go outside the crease when it hits out against the dealer and deprives him, by the penalty of the law, of the amount illegally gathered from the customers. The Criminal Procedure Code, Customs and Excise Laws and several other penal statutes in India have used diction, which accepts forfeiture as a kind of penalty. When discussing the relings of this Court we will explore whether this true nature of 'forfeiture' is contradicted by anything we can find in Section 37(1), 46 or 63. Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no fault liability but must be proceeded by *mens rea*. The classical view that 'no *mens rea*, no crime' has long ago been eroded and several laws in India, and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude *mens rea*. Therefore, the contention that Section

37(1) fastens a heavy liability regardless of fault has no force in depriving the forfeiture of the character of penalty."

127. In ***State of Rajasthan v. D.P. Metals***, *AIR 2001 SC 3076*, the Hon'ble Supreme Court considered the validity of the provisions of Section 78 (5) of the Rajasthan Sales Tax Act, 1994, which provides for imposing the penalty if the goods being carried in a vehicle are being found without documents required under the Act and the Rules framed thereunder, or the documents are found to be false or forged. The Court held as under:-

> *"Person Incharge of the goods should have all the requisite documents relating to the title or sale of the goods, which are being transported. Penalty under Section 78 (5) is leviable under two circumstances: firstly, if there is non-compliance with Section 78(2)(a), i.e. not earring the documents mentioned in that clause; and secondly, if false or forged documents or declaration is submitted. This Sub-section cannot relate to personal belongings which are not meant for sale but would relate to those types of goods, in respect of which documents referred to in Section 78 (2)(a) exist or can exist. Such submission of false or forged documents or declaration at any check post or even thereafter can safely be presumed to have been motivated by desire to mislead the Authorities. Hiding the truth and tender falsehood would per se, so existence of mens-rea even if required.*
>
> Similarly, where despite opportunity having been granted under Section 78(5), if the requisite documents referred to in Clause (a) of Sub-section (2) are not produced, even though the same are existing, would clearly prove the guilty intent. It is not possible to agree with the learned counsel for respondents that the breach referred to in Section 78(5) can be regarded as technical or venial. Once the ingredients of Section 78(5) are established after giving a hearing and complying with the principles of natural justice, there is no discretion not to levy or levy lesser amount of penalty."

128. In ***Bengal Iron Merchant Association and Anr. v. Commissioner, Commercial Tax and Anr***., *1996(7) SCC 537*, the Hon'ble Supreme Court examined the provisions of Rule 89-A (2) of the Bengal Sales Tax Rules, 1941, and held that the said provisions of Rule 89-A (2) of the said Rules, 1941 required that any consignment of notified goods shall be accompanied by a declaration by the consignor or his authorised agent in relation to the consignment or to comply with them. The rule squarely placed an obligation upon the consignor/vendor to issue such a declaration and the consignee/purchasers to carry the declaration. The consignees were not entitled to complain that because iron and steel were taxable only at the first point of sale, the sellers (manufacturers) were not issuing the declaration as contemplated by Rule 89-A(2) and they were, therefore, not in a position to produce the declaration when demanded by the authorities, in case of failure to produce the said declaration form, they were liable to pay the penalty, as per the said Rules, 1941.

129. In ***Kishori Lal Rakesh Kumar Mandi v. Commissioner of Sales Tax***, *1985 UPTC 211*, a Division Bench of the Allahabad High Court, while deciding a reference on interpretation of Section 15-A(a)(g) of the Uttar Pradesh Sales Tax Act, 1948, which referred to renewal of registration and for default, whether penalty can be imposed without proving *mens rea*, expressed the view the *mens rea* is not necessary for imposing penalty for default covered by Clause (g), observing as under: -

> *"....though mens rea is a necessary ingredient of an offence but the Legislature can free any provision relating to an offence in a statute from this fetter. Clause(g) is free from the bonodage of mens rea."*

130. In ***Sai Electricals (P) Ltd. v. Commissioner of Sales Tax***, *1997 UPTC 721*, while dealing with the provisions of Section 4-B of the U.P. Trade Tax, 1948, the Allahabad High Court observed that *mens rea* is not intended by the legislature for imposing the penalty, and held as under:-

> *"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."*

131. In M/s. Rama and Sons, General Merchant, Ballia (supra), the Allahabad High Court, while dealing with the provisions of Section 10-A of Central Sales Tax Act, 1956, observed that penalty is leviable if a person being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration, and held as under: -

> *"The statements made by the dealers were, therefore, untrue but the penalty has been quashed on the ground that there was no mens rea in making the wrong averments in Form C."*

132. The Court further came to the conclusion that the word 'falsification' might have slightly different interpretation if the criminal prosecution was launched, but it was a case of penalty, which was levied to compensate the Revenue and to cause the delinquent to comply with the law; therefore, *mens rea* was not at

all attracted in the case.

133. The Division Bench of the Madras High Court in ***Vijaya Electricals v. State of Tamil Nadu***, *1991 82 STC 268*, while interpreting the analogous provisions of Section 10-A read with Section 10(b) of the Act, held that *mens rea* need not be established and if representation is found to be false, it is sufficient to levy the penalty.

134. Similar view was reiterated by the Division Bench of the Madhya Pradesh High Court in ***Central India Motors v. C.L. Sharma, Assistant Commissioner of Sales Tax, Indore Region, Indore and Anr***., *1980 46 STC.*

135. In ***State of Madhya Pradesh v. Narain Singh and Ors***., *1983 (3) SCC 596*, the Hon'ble Supreme Court considered as case where two trucks carrying fertilizers were intercepted by the Madhya Pradesh Authorities under the Essential Commodities Act and the accused did not deny the transport of fertilizer bags or interception of its lorries or seizure of fertilizer bags and the only defence taken therein was than they were not aware of the contents of the documents seized from them and they were not engaged in exporting the fertilizer bags from Madhya Pradesh to Maharashtra in conscious violation of provisions of the Fertilizer Movement Control Order, 1973 read with Sections 3 and 7 of the Essential Commodities Act, 1955. The Hon'ble Supreme Court, reversing the order of acquittal, held that *mens rea* was not at all attracted as the provisions of Section 7(1) of the Essential

Commodities act required to be interpreted in true perspective and it provided tat if any person contravenes, whether knowingly, intentionally or otherwise any order made under Section 3, he will be punished under the F.M.C.O. The Court held that the element of *mens rea* in export of fertilizer bags without a valid permit was, therefore, not a necessary ingredient for convicting person for contravention of the order made under Section 3 of the F.M.C.O. if the factum of export or attempt to export is proved by the evidence adduced. This judgment is an authority to show that *mens rea* may be an essential ingredient in a case of offence for punishing a person, but legislature is competent to provide for punishment including the imprisonment even in a criminal case, excluding the scope or attraction of *mens rea*.

136. In ***C.A. Abrahim v. Income Tax Officer***, *AIR 1961 SC 609*, the Apex Court laid down the guidelines in interpreting the provisions of Fiscal Statutes, observing as under:-

> *"In interpreting a fiscal statute, the Court cannot proceed to make good the deficiency, if there be any; the Court must interpret the Statute as it stands and in case of doubt, in a manner favourable to the tax-paper. But whereas in the present case, by use of the words 'capable of comprehensive import, provision is made for imposing liability for penalty upon tax- paper guilty of fraud, gross negligence orm contumacious conduct, a assumption that the words were used in a restricted sense so as to defeat the avade object of the legislature qua and certain clauses will not be lightly met."*

137. Similar view has been reiterated in M/s. Bhikaji Dadabhai & Co. (supra),.

138. Similarly, in ***Commissioner of Sales Tax v. Parson Tools & Plants***, *AIR 1975 SC 1039*, the Apex Court observed as under:-

> "*Where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute."*

Relevant provisions of Section 22-A of the Act reads as under:-

> *"(3) The owner or person in charge of a vehicle, boat or animal shall carry with him a goods vehicle record, trip sheet or a log book, as the case may be, and (such other documents) as may be prescribed in respect of the goods carried in or on the vehicle, boat or animal, as the case may be, and produce the same before any officer in charge of check-post or barrier or any other officer as may be empowered by the Government in that behalf. The owner or person in charge of a vehicle, boat or animal entering the State limits or leaving the State limits shall also give a declaration containing such particulars as may be prescribed of the goods carried in or on the vehicle, boat or animal, as the case may be, before the officer in charge of the check post r barrier or the officer empowered as aforesaid and give one copy of the declaration to such officer, and keep one copy with him.*
>
> *(7) (a) The officer incharge of the check post or barrier or any other officer not below the rank of an Assistant Commercial Taxes Officer, empowered in this behalf may, after giving the owner or person incharge of the goods reasonable opportunity of being heard and after holding such further enquiry as he may deem fit, impose on him for possession of goods not covered by goods vehicle record, any other documents prescribed under Sub-section (3) or for sub*

mission of false declaration or documents, a penalty equal to five times of the rate of tax notified under Section 5 of the Act, for such goods or 30% of the value of such goods, as may be determined by such officer which ever is less.

Provided that where the goods are being carried without proper documents as required by Sub-section (3) or with any false declaration or statements and the owner or the incharge or the driver of the vehicle, boat or animal carrying such goods is found in collusion for such carrying of goods, the vehicle boat or animal shall also be seized by the officer empowered under Sub-section (7) and such officer, after affording an opportunity of being heard to such owner, incharge or driver may impose a penalty not exceeding 30% of the value of the goods being carried and shall release the vehicle, boat or animal on the payment of the said penalty, or on furnishing such security in such form as prescribed under Clause (b) of Sub-section (7). ....."

139. In ***Mahaveer Conductors v. Assistant Commercial Taxes Officer***, *1997 (104) STC 65*, this Court has interpreted the provisions of Section 22-A(7) holding that *mens rea* was a necessary ingredient, observing as under: -

"....Any order imposing penalty for failure to carry out statutory obligation is quasi-criminal in nature. The Statute has not provided any presumption about the existence of mens rea against the defaulter, therefore, as a prosecutor, burden of proving is primarily on the Revenue. The Revenue has failed to discharge its burden inasmuch as it has merely reached a presumption of such deliberate breach....."]

140. Similar view has been reiterated in ***Assistant Commercial Tax Officer, Flying Squade v. Voltas Ltd.***, *2000 (120) STC 270*. While deciding the said case, reliance has been placed upon the earlier judgments in Mahaveer Conductors (supra) and Hindustan Steel Ltd. (supra).

141. A Division Bench of the Rajasthan High Court in ***Lalji Moolji Transport Company v. State of Rajasthan,*** *DBCWP No. 324/2002.*, decided on 10.4.2002, considering the judgments of the Hon'ble Supreme Court in R.S. Joshi and M/s. D.P. Metal (supra) and M/s. D.P. Metals (supra) etc., has taken a view that it would not be correct to protect a tax evader saying that there was absence of *mens rea*. The submission of false of forged document of declaration at the check post or even thereafter, can safely be presumed to have been motivated by desire to mislead the authorities. Thus, it is not always necessary that the doctrine of *mens rea* is attracted in every fiscal statute in all situations. The Court further held as under:-

> *"The requirement of law is meant to be strictly construed, particularly in areas of evasion of tax. We cannot lose sight of the fact that of the there are attempts to avoid statutory obligation or requirement of oblique reason. An undue indulgence and leniency in favour of the tax-evaders on technical or misplaced sympathetic grounds leads to serious consequence's affecting the revenue, and as such, development and security of the State. We are not oblivious of the fact that the penalty provisions cannot be used as a revenue-yielding provision. The object to the penalty provision is to ensure compliance in the larger public interest."*

142..Finally in the aforesaid context, we may refer to a decision of the Supreme Court in the case of **T*amil Nadu Housing Board vs. Collector of Central Excise***, reported in *1994 Supp. 4 SCR 62,* wherein the Supreme Court, while dealing with the scope of the proviso to Section 11A of the Central Excise & Salt Act, 1944, observed as under;

"When the law requires an intention to evade payment of duty then it is not mere failure to pay duty, It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law. In Padmini Products v. Collector of Central Excise , it was held that where there was scope for doubt whether case for duty was made out or not the proviso to Section 11A of the Act would not be attracted. The appellant is a statutory body. It had taken out licence for concrete as it was being sold to outsiders. No licence was taken out for wood products as according to it it was advised so by the Excise Department itself. It would have been better if the appellant would have examined the officer who was advised not to take licence. But mere non-examination of officer could not give rise to an inference that the appellant was intentionally evading payment of duty. When the appellant was found not to have been making any profit and it had taken out licence for concrete unit then in absence of any other material to prove any deliberate act of the appellant the presumption of reasonable doubt of the appellant cannot be said to have been successfully rebutted. The finding of the Tribunal that there was an intention on the part of the appellant to evade payment of duty, is not based on any material. It was an inference drawn for which there was no basis."

143. Confiscation proceeding is a quasi judicial proceeding and not a criminal proceeding. Ordinarily, proof beyond reasonable doubt and proof of *mens rea* are foreign to the scope of the confiscation proceeding. However, the language of the statute should be read closely. Sometimes, the language of the statute may indicate the need to establish the element of *mens rea*. It is true that *mens rea* is not an essential element for imposing

penalty for breach of civil obligations or liabilities. However, applying the dictum of the Supreme Court as laid in Tamil Nadu Housing Board (supra), the provisions of Section 130 of the Act is made more stringent by use of the word "intent". When the law requires intention to evade payment of duty, then it is not mere failure to pay duty. It must be something more. This something more should not be construed as obligatory on the part of the Revenue to establish or prove the necessary *mens rea* for the purpose of confiscation and penalty.

144. When it comes to confiscating the vehicle, the consideration would be altogether different. The idea is to confiscate the vehicle, irrespective of its ownership or participation of the owner in the actual transport of the goods in contravention of the provision of the Act or the Rules. It is what is called a provision of law "to condemn the vehicle". In other words, because the vehicle carried the goods in contravention of the provisions of the Act or the Rules with an intent to evade the payment of tax, it had become tainted and is, therefore, liable to be confiscated. Of course, Section 130 provides that the owner of the vehicle may pay redemption fine in lieu of confiscation. The owner of the conveyance can also prove that the vehicle was used without his knowledge or connivance or his agent or the person in charge of the conveyance.

145. In an appropriate case, even after determining the amount of tax and penalty under Section 129 of the Act and release of the goods and vehicle, the authorities may be justified in issuing

notice under Section 130 of the Act for the purpose of initiating confiscation proceedings. In other words, at the stage of Section 129 of the Act, there may not be sufficient evidence for the purpose of coming to the conclusion that the case is one where the owner of the goods or the driver of the vehicle had the intention to evade payment of tax. A further inquiry in this regard may reveal of such intention to evade tax. In such circumstances also, the authority may be justified in initiating the confiscation proceedings.

146. It was vociferously argued before us that Section 130 of the Act can be invoked only if the 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) of Section 129 within 14 days of detention or seizure. In other words, the argument is that the goods or the conveyance are liable to be confiscated only in the event of non-compliance of the provision of Section 129(6) of the Act. We are afraid, such argument is not sustainable in law. We have already taken the view that Sections 129 and 130 of the Act are mutually exclusive and independent of each other. In our opinion, Section 130 of the Act is not dependent on Section 129(6) of the Act. The reason why we are saying so is that if the amount of tax and penalty is determined by the authority concerned under Section 129 of the Act for the purpose of release of the goods and the conveyance, and such amount is, ultimately, not deposited, then the obvious consequence of the same would be forfeiture of the goods and the vehicle with the Government. The authorities are not expected to keep the goods or the vehicle

in their possession for an indefinite period of time. Clause (5) of Section 130 makes it clear that where the goods or conveyance are confiscated under the Act, the title of such goods or conveyance would vest in the Government.

147. However, even in case of failure to comply with clause (6) of Section 129 of the Act, the confiscation would not be automatic but a notice will have to be issued, calling upon the owner of the goods to show-cause as to why the goods should not be confiscated.

148. However, in the aforesaid context, we would like to clarify something. If a situation arises wherein after the determination of the tax and penalty in accordance with the provisions of Sections 129(2) and (3) respectively, if the person, transporting any goods, or the owner of the goods, fail to pay the amount of tax and penalty within 14 days of such detention or seizure, then further proceedings would be initiated in accordance with the provisions of Section 130, i.e, for the purpose of confiscation. However, in such an eventuality, it would not be necessary for the department to establish any intention to evade payment of tax. Sub-clause (6) of Section 129 provides an eventuality, by which, it would be open for the authority to put the goods and the conveyance to auction and deposit the sale proceed thereof with the Government.

149. It was also sought to be argued on behalf of the petitioners that once there is detention and seizure of goods and conveyance,

then it is mandatory for the proper officer, detaining or seizing goods or conveyance to issue a notice specifying the tax and penalty payable and, thereafter pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c). The emphasis is sought to be placed on the word "shall" in clause (3) of Section 129. The argument proceeds on the footing that without any notice, as contemplated under Section 129(3) of the Act, there is no scope for the authority to straightway proceed to Section 130 of the Act for the purpose of confiscation.

150. The aforesaid submission can be looked into and answered in two ways. First, the word "shall" should be read in conjunction with clause (4) of Section 129. Clause (4) provides that no tax, interest or penalty can be determined under sub-section (1) without giving the person concerned an opportunity of hearing. Thus, for the purpose of giving an opportunity of hearing, notice under sub-section (3) is a must. This does not necessarily imply that there cannot be proceedings for confiscation in the absence of any action under Section 129 of the Act first in point of time. The second way of looking at this submission is to construe the word "shall" as "may". In other words, the word "shall" should be read as directory and not mandatory. In this regard, Mr. Trivedi, the learned Advocate General invited the attention of this Court to a decision of the Supreme Court in the case of ***May George vs. Special Tahsildar & Ors***., reported in *(2010) 13 SCC 98*. Mr. Trivedi placed reliance on the observations made by the Supreme Court in paras-13 to 26. The case before the Supreme Court was one

under the Land Acquisition Act, 1894. Section 9(3) of the Act, 1894 was a subject matter of consideration before the Supreme Court. We quote the relevant paras;

> *"13. Section 9(3) of the Act reads as under :-*
>
> *"The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate"*
>
> *14. Section 9 of the Act provides for an opportunity to the "person interested" to file a claim petition with documentary evidence for determining the market value of the land and in case a person does not file a claim under Section 9 even after receiving the notice, he still has a right to make an application for making a reference under Section 18 of the Act. Therefore, scheme of the Act is such that it does not cause any prejudicial consequence in case the notice under Section 9(3) is not served upon the person interested.*
>
> *15. While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The provision is mandatory if it is passed for the purpose of enabling the doing of something and prescribes the formalities for doing certain things.*
>
> *16. In Dattatraya Moreshwar Vs. The State of Bombay & Ors., AIR 1952 SC 181, this Court observed that law which creates public duties is directory but if it confers private rights it is mandatory. Relevant passage from this judgment is quoted below:-*
>
> *"It is well settled that generally speaking the provisions of the statute creating public duties are directory and those*

conferring private rights are imperative. When the provision of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done."

17. A Constitution Bench of this Court in State of U.P. & Ors. Vs. Babu Ram Upadhya AIR 1961 SC 751, decided the issue observing :-

"For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

18. In Raza Buland Sugar Co. Ltd., Rampur Vs. Municipal Board, Rampur AIR 1965 SC 895; and State of Mysore Vs. V.K. Kangan, AIR 1975 SC 2190, this Court held that as to whether a provision is mandatory or directory, would, in the ultimate analysis, depend upon the intent of the law-maker and that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequence which would follow from construing it in one way or the other.

19. In Sharif-Ud-Din Vs. Abdul Gani Lone AIR 1980 SC 303, this Court held that the difference between a mandatory and directory rule is that the former requires strict observance while in the case of latter, substantial compliance of the rule may be enough and where the statute provides that failure to make observance of a particular rule would lead to a specific

consequence, the provision has to be construed as mandatory.

20. Similar view has been reiterated by this Court in Balwant Singh & Ors. Vs. Anand Kumar Sharma & Ors. (2003) 3 SCC 433; Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. & Ors. AIR 2003 SC 511; and Chandrika Prasad Yadav Vs. State of Bihar & Ors., AIR 2004 SC 2036.

21. In M/s. Rubber House Vs. M/s. Excellsior Needle Industries Pvt. Ltd. AIR 1989 SC 1160, this Court considered the provisions of the Haryana (Control of Rent & Eviction) Rules, 1976, which provided for mentioning the amount of arrears of rent in the application and held the provision to be directory though the word "shall" has been used in the statutory provision for the reason that non-compliance of the rule, i.e. non-mentioning of the quantum of arrears of rent did involve no invalidating consequence and also did not visit any penalty.

22. In B.S. Khurana & Ors. Vs. Municipal Corporation of Delhi & Ors. (2000) 7 SCC 679, this Court considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation. After considering the scheme of the Act for the purpose of transferring the property belonging to the Corporation, the Court held that the Commissioner could alienate the property only on obtaining the prior sanction of the Corporation and this condition was held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer though no specific power had been conferred upon the Corporation to transfer the property.

23. In State of Haryana & Anr. Vs. Raghubir Dayal (1995) 1 SCC 133, this Court has observed as under:-

"The use of the word `shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word `shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from

the construction to be placed thereon. The word `shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be described to the word `shall; as mandatory or as directory accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory."

24. In Gullipilli Sowria Raj Vs. Bandaru Pavani @ Gullipili Pavani (2009) 1 SCC 714, this Court while dealing with a similar issue held as under :

"...The expression "may" used in the opening words of Section 5 is not directory,as has been sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. Section 7 of the 1955 Act is to be read along with Section 5 in that a Hindu Marriage, as understood under Section 5, could be solemnised according to the ceremonies indicated therein"

25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of Legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject matter and object of the statutory provisions in question. The Court may find out as what would be the consequence which would flow from construing it in one way or the other and as to whether the Statute provides for a contingency of the non-compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in

breach thereof will be invalid.

26. The instant case is required to be examined in the light of the aforesaid settled legal provision. In fact, failure of issuance of notice under section 9(3) would not adversely affect the subsequent proceedings including the Award and title of the government in the acquired land. So far as the person interested is concerned, he is entitled only to receive the compensation and therefore, there may be a large number of disputes regarding the apportionment of the compensation. In such an eventuality, he may approach the Collector to make a reference to the Court under section 30 of the Act. "

151. However, to say that confiscation is permissible only in the event of failure to comply with Section 129(6) of the Act is not tenable in law. At this stage, we may refer to a decision of the Kerala High Court, upon which, strong reliance has been placed by the learned counsel appearing for the petitioners. We are referring to the decision in the case of ***Noushad Allakkat vs. State Tax Officer (WC)***, *(2019) 101 taxmann.com 75 (Kerala)*. Reliance is sought to be placed on the following observations;

"7. We notice from Section 129 that the confiscation proceedings under Section 130 would be possible only if the dealer fails to pay the applicable tax and penalty imposed by an order under Section 129(3). Confiscation is hence a coercive measure to ensure payment of the tax and penalty levied on a delinquent dealer; who otherwise is at threat of loosing the goods itself. Confiscation is not an automatic consequence ensuing from detention and an order passed under Section 129(3), of there being a contravention of the provisions of the Act or rules made thereunder. We would not look at other situations, wherein confiscation is mandated, which is not relevant for the purpose of detention simplicitor under Section 129. When such applicable tax and penalty is not paid, there could be proceedings initiated under Section 130, which would lead to confiscation of the goods itself. This

provision is applicable only, in the event of failure on the part of the dealer to pay the applicable tax and penalty. In the present case, the dealer was allowed release of the goods by furnishing bank guarantee for the tax and penalty. The dealer has also furnished a security equivalent to the value of the goods. There is, hence, no question of the applicable tax and penalty being not paid, since at any time the bank guarantee could be enforced."

152. A close reading of para-7 of the Kerala High Court decision, referred to above, would indicate that the same, on the contrary, supports the view we have taken. In para-7, the relevant observations are "we would not look at other situations wherein confiscation is mandated which is not relevant for the purpose of detention simplicitor under Section 129". The other situations which the Kerala High Court is talking about are the situations as envisaged in Section 130 of the Act. In our opinion, para-7 of the Kerala High Court judgment does not lay down a proposition of law that the proceedings under Section 130 of the Act can be initiated only in the event of the applicable tax and penalty not paid.

153. It has also been argued before us by the learned counsel appearing for the petitioners by placing reliance on the explanation (1) to the provisions of Section 74 of the Act that Section 130 of the Act cannot be invoked by the department for the transaction with respect to which the the assessee has already paid the amount of tax and penalty in terms of Section 129 of the Act.

154. We are not impressed by such submission. In our opinion, the explanation neither provides that the confiscation proceedings against the person concerned would be deemed to be concluded nor that the confiscation proceedings against "all other persons" would be deemed to be concluded. It merely stipulates that the proceedings related to the "penalty" under the provisions of Sections 122, 125, 129 and 130 of the Act would be deemed to be concluded. In our opinion, the explanation is not helpful to the petitioners in any manner. We are of the view that Section 130 of the Act can be invoked even in cases where the amount of tax and penalty is paid in terms of the provisions of Section 129 of the Act. This would be provided, the case is falling in any of the five eventualities prescribed in Section 130(1) of the Act. When it comes to confiscation over and above the tax and penalty, fine can be imposed. Such fine leviable shall not exceed the market value of the goods confiscated, and at the same time, the aggregate of such fine and penalty leviable will not be less than the amount of penalty leviable under sub-section (1) of Section 129.

155. We are at one with Mr. Trivedi, the learned Advocate General appearing for the State that it is incorrect on the part of the petitioners to contend that the provisions of Sections 129 and 130 of the Act are sub-sets of Section 122 of the Act. Rather, the said Sections 129 and 130 of the Act can be invoked for the eventualities which are not mentioned in Section 122 of the Act and hence, the same cannot be said to be related to the provisions of Section 122 of the Act, except for quantification of

the amount of penalty. In addition to this, it is also not correct on the part of the Petitioners to contend that the provisions of Section 122 of the Act are general in nature and the provisions of Sections 129 and 130 are specific in nature and hence, non-obstante clauses of the said sections would override the provisions of Section 122 of the Act. The said argument falls flat on the basic ground that the provisions of Sections 129 and 130 of the Act themselves refer to the provisions of Section 122 of the Act, so as to decide/compute the amount of penalty to be imposed upon the Assessees. Thus, once there is no conflict between the provisions of Section 122 of the Act on one hand and Sections 129 and 130 of the Act on the other, there arises no question of invocation of 'non-obstante' clause in such a situation.

156. We are also at one with Mr. Trivedi that reference to Sections 73 and 74 of the Act is not warranted for interpreting Sections 129 and 130 of the Act, more particularly, when they all are independent of each other. The provisions of Sections 73 and 74 of the Act are similar to the provisions of Section 11A of the Central Excise Act and Section 28 of the Customs Act, which deal with the adjudication proceedings. Despite this, Section 110 is present in the Customs Act, which speaks about seizure and similarly, Section 129 is present in the Act for detention/seizure. Therefore, Sections 129 and 130 of the Act have non-obstante clauses, whereby they can be operated upon in spite of Sections 73 and 74 of the Act.

157. In the aforesaid context, we may look into the decision of the Supreme Court in the case of ***Salex Tax Officer & Ors. vs. Dutta Traders***, *(2007) 14 SCC 215*, upon which strong reliance has been placed by Mr. Trivedi, more particularly, the observations made in paras-16 and 17. We quote paras-16 and 17 as under;

> *"16. It is well settled that the concepts of chargeability, assessment, quantification and recovery of tax are independent concepts under any taxing law. Section 12 of the Act refers to assessment whereas provisions after Section 15 of the said Act refers to recovery and collection of tax. The scheme of the Act, therefore, is based on the dichotomy between assessment on one hand and recovery of tax on the other hand. Under Section 12, the assessing officer has to examine the returns. He may accept the returns. If he finds that the returns are not in order, subject to giving notice to the assessee, he is entitled to pass appropriate assessment orders. However, in cases falling under Section 16-D where evasion is detected at the check-post by the Sales Tax Officer (Vigilance) and in order to get the goods released, which goods have been seized by the said officer, the person(s) named in the section offers to pay the tax, then, in such a case, the Sales Tax Officer is expressly given the authority to compute the tax and call upon such person(s) to make the payment. On such payment of tax together with penalty, the Sales Tax Officer (Vigilance) is required to release the goods which have been seized. Hence it is the case of computation of tax of and incidental to the recovery of tax on the spot.*
>
> *17. The main argument advanced on behalf of the respondent is that the Sales Tax Officer (Vigilance) has no power to assess the tax. It is contended that the power to assess tax exists only in Section 12 of the Act. It is contended that the Sales Tax Officer (Vigilance) who carries out search and who seizes the goods under Section 16-D has no power to assess the tax and, in the circumstances, the said officer can only carry out the search, seize the truck and goods and refer the matter to the assessing officer who is, thereafter,*

required to carry out the assessment proceedings against the defaulter. We find no merit in this argument. The word `assess' in Section 16-D has different connotation. In our view, the word `assess' in Section 16-D talks about computation. Computation is also assessment. Section 16-D is a Code by itself. It operates in a different sphere. Under Section 12 of the Act, the assessing officer analyzes the returns which are filed by the dealer whereas in cases falling under Section 16-D where the assessee offers to pay the tax on the spot for release of his goods/vehicle, the Sales Tax Officer (Vigilance) is required to calculate/compute the tax and, on payment of tax, he allows the goods/truck to be released. In our view, this computation undertaken by the Sales Tax Officer (Vigilance) on the spot is also an assessment. However, that assessment (computation) of the tax has nothing to do with the regular assessment under Section 12 of the Act. "

158. In many matters of the present type, we have noticed that the goods are detained on the ground that the tax paid on the product was less. In such matters, although the documents were found to be in order and the description of the product also accorded with the relevant declaration, still the consignment were detained on the ground that the tax paid was less.

159. In our opinion, the detention and seizure of goods on such ground cannot be justified. In such an eventuality, the correct procedure which the inspecting authority is expected to follow is to alert the Assessing Authority to initiate the proceedings "for assessment of any alleged sale at which the dealer will have his opportunities to put forward his pleas on law and on fact. What we want to convey is that the process of detention of the goods cannot be resorted to when the dispute is *bona fide* especially concerning the exigibility of tax and, more particularly, the rate of

that tax. In the aforesaid context, we may refer to and rely upon a decision of the Kerala High Court in the case of ***N.V.K. Mohammed Sulthan Rawtger & Sons Dindigul, Tamil Nadu, Represented by Managing Partner, Raja Mohammed & Ors., vs. Union of India & Ors***., reported in (2019) 61 GSTR 307, wherein a learned Single Judge of the Kerala High Court observed as under;

> *"24. Detention under the KSGST Act has an elaborate remedial mechanism. Now, we focus on the release of the product, and it lies in narrow confines. Suffice it for me to examine this singular issue: Can the State Tax Officer invoke Section 129 of the Act and detain goods on the ground the tax paid on the product is less? Here, the documents are in order and the product description accords with what the first petitioner has already declared, say, in his returns before the assessing authority. Then, can the ASTO still hold up the consignment because the declaration already made does not suit his notion of what the product is?*
>
> *25. True, a literal reading of Section 129 of the Act presents a different picture and, perhaps, lends support to the State's view. But purposive interpretation and the practical commercial considerations trump that view.*
>
> *26. Chapter XVI of the Combined Acts deals with inspection, search, and seizure. Section 129 under Chapter XIX provides the mechanism for detention, seizure, and release of goods and conveyances in transit. It begins with a non-obstante clause and goes on to lay down the procedure. If any person transports or stores any goods "contravening this Act" or its rules, all those goods and means of transport and documents relating to those goods and conveyance will be detained or seized. They will, however, be released to the owner of the goods (a) on its paying the applicable tax and penalty equal to one hundred percent of the tax payable on the goods. If the goods belong to an exempted category, a different rate applies, though.*
>
> *27. The Revenue asserts that there is "contravention", and*

that contravention concerns misbranding the product and paying less tax. Under the erstwhile Kerala Value Added Tax Act, the first petitioner and those trading in the same product--betel nut--have had many rounds of litigation. Eventually, as seen from the Exts.P1 to P5 proceedings, this Court and the Revenue accepted that the product is not supari and it attracts lesser tax. The Exts.P6, P6(a), P7, and P7(a) are the first petitioner's purchase and supply invoices.

28. The Exts.P8 and P8(a) are important; they are the first petitioner's recent GST returns for June and August, 2018. In those returns, the first petitioner has assigned the same HSN Code, as he did reflect in the Ext.P9 invoice. He paid tax only at 5%. Thus the documents before the assessing authority and those that accompanied the consignment accord with one another.

29. In this context, we may examine J.K. Synthetics Limited v. Commercial Taxes Officer, (1994) 4 SCC 276. On how to interpret Tax Statutes, the Supreme Court has held that charging provisions must be construed strictly, but not the machinery provisions, "which should be construed like any other statute". It has also held that "the power to levy and collect interest is substantive law though part of machinery provision".

30. In J.K. Synthetics Limited the issue was whether the appellant should pay interest on the additional sales tax. The Revenue, as it has done here, contended that when the law enjoins on the Assessee to files a 'return', it can only mean a true and correct return, that is, a return which reflects the tax due on final assessment. The Supreme Court in that context has held that the information to be furnished in the return "must be 'correct and complete', that is, true and complete to the best of knowledge and belief, without the dealer being guilty of willful omission." The dealer, according to J. K. Synthetics Limited, must deposit the full tax due, based on the information furnished. And that information must be correct and complete to the best of the dealer's knowledge and belief. If the dealer has furnished full particulars regarding his business, without willfully omitting or withholding any particular information affecting the assessment of tax, and if he honestly believes to be 'correct and complete', the dealer is said to have acted 'bona fide' in

depositing the tax due and filing the return. Of course, the tax so deposited is to be deemed to be provisional and subject to necessary adjustments under the final assessment.

31. To support its ratio, J.K. Synthetics Limited accepts the minority of view in Associated Cement Co. Ltd.. v. CTO, (1981) 4 SCC 578 And it has finally held that if the assessee pays the tax, which according to him is due based on the information supplied in his return, there would be no default on his part to meet his statutory obligation. Therefore, it would be difficult to hold that the 'tax payable' by him 'is not paid' and that he is liable for consequences.

32. The correctness of the Exts.P8 and P8(a) accepted, as held in J. K. Synthetics Limited, we will examine what amounts to statutory violation or contravention under Section 129 of the Act. Apt is the case decided by this Court: Rams v. Sales Tax Officer. The petitioner in Rams contracted with the Government of India to print and supply a large number of telephone directories. For this purpose, he procured paper from the Tamil Nadu government agency. When the paper was under transport, at Kochi a sales tax officer detained the lorry, under Section 29A(2) of the Kerala General Sales Tax Act, 1963.

33. The detention was because the petitioner, an unregistered dealer, had allegedly attempted to evade the sales tax. The petitioner's producing all the documents had no impact. Instead, the detaining officer insisted on the petitioner's furnishing bank guarantee for certain sum as a condition for release of the goods, pending enquiry.

34. The order in enquiry affirmed that the Enquiry Officer was "satisfied" that there was attempt at evasion of tax. So the penalty followed. In this context, a learned Single Judge of this Court has observed that when there is scope for a genuine dispute regarding any liability for tax, the question of detaining the goods at the check-post or imposing penalty under Section 29A does not arise. There is a ground for a genuine dispute whether there was any taxable sale at all. Rams, then, further observes:

"In such cases it is not for the check-post authority to act on mere suspicion and to find that there is any attempt at evasion of payment of tax, which alone vests him with the

jurisdiction to act under S. 29A. At best, he can only alert the assessing authority in Ernakulam to initiate proceedings for assessment of any alleged sale, at which the petitioner will have all his opportunities to put forward his picas on law and on fact. The process of detention of the goods at the check post, cannot be resorted to in such cases when there is a bona fide dispute regarding the very existence of a sale and exigibility for tax. S. 29A is not intended to subserve such an object.

35. I may examine the impugned Ext.P11 notice, or in other words the act of detention, in the light of the dicta in J.K. Synthetics Limited and Rams. In the former, the Supreme Court has emphatically held that if the dealer furnishes all particulars about his business, assesses the tax as he honestly believes to be correct, and pays it; his conduct cannot be faulted as mala fide or as an effort to evade tax. Here, the Exts.P8 and P8(a) are the returns for two recent months. The first petitioner declared the HSN Code he has felt his product would attract and paid the tax accordingly. The returns are very much on record before the assessing officer. Therefore, to that extent the first petitioner's conduct cannot be faulted, nor can he be accused of evading the tax.

36. Then, I may examine the dictum of Rams, a judgment rendered by this Court. In somewhat an analogous situation as we face here, Rams held that the inspecting authority may entertain a suspicion that there is an attempt to evade tax. But if the records he seizes truly reflect the transaction and the assessee's explanation accords with his past conduct, for example, the returns he has filed earlier, the detention is not the answer. In the words of Rams, at best the inspecting authority can alert the assessing authority to initiate the proceedings "for assessment of any alleged sale, at which the petitioner will have all his opportunities to put forward his pleas on law and on fact." Indeed, emphatic is the enunciation of law in Rams that the process of detention of the goods cannot be resorted to when the dispute is bona fide, especially, concerning the exigibility of tax and, more particularly, the rate of that tax."

160. We are in full agreement with the aforesaid enunciation of

law laid down by the Kerala High Court. Thus, in a case of a *bona fide* dispute with regard to the classification between the transporter of the goods and the Squad Officer, the Squad Officer may intercept the goods, detain them for the purpose of preparing the relevant papers for effective transmission to the jurisdictional Assessing Officer. It is not open to the Squad Officer to detain the goods beyond a reasonable period. The process can, at best, take a few hours. It goes without saying that the person, who is in charge of transportation, will have to necessarily cooperate with the Squad Officer for preparing the relevant papers. [See Jeyyam Global Foods (P.) Ltd. vs. Union of India & Ors., (2019) 64 GSTR 129 (Mad.)]

161. In the course of the hearing of these matters, an attempt was also made on behalf of the learned counsel appearing for the petitioners to compare the provisions of the Customs Act/Excise Act with the provisions of the Act, 2017, more particularly, Section 129 of the Act.

162. Section 110(1) of the Customs Act cannot be compared with Section 129(1) of the Act inasmuch as, the provisions of Section 110 of the Customs Act contemplates that the proper officer may seize the goods which are liable for confiscation, whereas the provisions of Section 129 contemplate that the proper officer may detain/seize the goods/ conveyance in transit in contravention of the provisions of the Act or the Rules.

163. The provisions of Sections 110(2) and 124 respectively of the

Customs Act do not contemplate that the goods which are seized are to be released in a specific time limit, much less, within a period of six months. Apropos this, the said sections merely cast a duty on the department to issue a show cause notice within a period of six months from the date of the seizure of the goods, but the same does not contemplate as to in how much time, the same has to be adjudicated upon. Therefore, the contention raised on behalf of the Petitioners that the goods which are seized are to be released within a short span of time and that the legislature has not contemplated to retain the goods pending the confiscation proceedings, is not tenable.

164. In addition to the above, even otherwise, the provisions of Section 110A of the Customs Act, which deal with the 'provisional release' of the goods, do not contemplate the release of the goods only on payment of penalty and interest but, the proposed amount of fine is also to be included for the provisional release of the goods. In view of this, the amount of fine should be taken into account while directing the provisional release of the goods/conveyance as per Section 129(2) read with Section 67(6) of the Act read with Rule-140 of the Rules.

165. We shall now proceed to deal with the last submission as regards the physical availability of the goods and the conveyance for the purpose of redemption of fine. This submission has been canvassed by Mr. P.M. Dave, the learned counsel appearing for the writ applicants of the Special Civil Application No.9105 of 2019. The argument of Mr. Dave is that the concept of

redemption fine is embodied in Section 130 of the Act. Even while ordering confiscation, the officer concerned has to give, the owner of the goods, an option to pay, in lieu of confiscation, such fine as the said officer may deem fit. This is called the concept of redemption of fine. It is submitted that the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Therefore, according to Mr. Dave, once the goods are released upon payment of tax and penalty under Section 129 of the Act, then the goods are not available with the authority for the purpose of redemption fine. Therefore, according to Mr. Dave, there is no question of proceeding further under Section 130 of the Act for the purpose of confiscation. Mr. Dave, in support of the aforesaid submission, has placed reliance on the following decisions;

> "(1) In the case of ***Commissioner of Customs (import), Mumbai vs. Finesse Creation Inc.***, reported in *2009 (248) ELT 122 (Bom.)*;
>
> (2) ***Commissioner of Customs, Amritsar vs. Raja Impex (P.) Ltd***., *2008 (235) ELT 623 (Tri.-LB)*

166. In Finesse Creation Inc. (supra), the Bombay High Court held as under;

> "4. CESTAT in its order relied on the judgment of the Punjab & Haryana High Court in the case of Commissioner of Customs, Amritsar Vs. Raja Impex (P) Ltd. 2008 (229) ELT 185 (P & H). The learned Division Bench amongst others, was considering the substantial question of law, namely

whether redemption fine under section 125 of the Customs Act, 1962 can be imposed even if the goods are neither available for confiscation nor cleared on undertaking/bond. After considering the various contentions and judgments relied upon, the learned Division Bench of the Punjab & Haryana High Court upheld the order of the tribunal that in the absence of the goods being available no fine can be imposed. Revenue had relied on the judgment of the Supreme Court in Weston Components Ltd. Vs. Commissioner of Customs, New Delhi 2000 (115) E.L.T. 278 (S.C.). The Supreme Court there noted that the goods were released on the application by the appellant and appellant executed a bond. The court then observed that in these circumstances, 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, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine. The contention therefore, of the appellants there that the redemption cannot be imposed because the goods were not available for custody of the respondent authorities was rejected.

5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being

available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed. "

167. In Raja Impex (supra), the Punjab & Haryana High Court held as under;

> *"**11.** The respondent in the present case took clearance of imported machinery under Bill of Entry No. 1546 dated 04.12.2004. The show cause notice was issued subsequently on 31.03.2005 and the Adjudicating Authority ordered confiscation of machinery under Section 111 of the Act and imposed redemption fine and penalty. Since the goods had been released unconditionally and were not available, those could not be confiscated. The Commissioner of Customs found that proceedings for the confiscation of goods were invalid as they had been initiated by issuing show cause notice after clearance of the goods and there is no averment in the show cause notice, which may show that the appellants were the owners of the goods at the time of issuing of the show cause notice. The Commissioner of Customs also found that the goods were not available and no undertaking had been obtained by the department at the time of release of goods and therefore, confiscation of the goods, cannot be maintained and no fine in lieu of confiscation can be imposed especially where the goods were neither seized nor cleared on undertaking. While passing the said order, the Commissioner of Customs has relied upon the observations of Hon'ble Apex Court in the case of **M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi (supra), Ram Khazana Electronic vs. CC (AIR Cargo) Jaipur reported as 2003 (156) ELT 122 (Indel) and Chinku Exports vs. CC, Calcutta reported as 1999(112) ELT 400 (Tri.)**. Before the Tribunal, the contention of the revenue was that even in cases where the goods are not available, order of confiscation can be passed. However, the Tribunal vide impugned order, relied upon the observation of the Hon'ble Apex Court in the case of **M/s Weston Components Ltd. Vs. Commissioner of Customs,***

New Delhi (supra) *and the judgment of the Tribunal in the case of* ***Ram Khazana Electronic v. CC (Air Cargo), Jaipur (supra)*** *and held that there is no error in the impugned orders, which are based upon the judgment of the Hon'ble Apex Court.*

12. *It may also be noticed here that in the case of* ***M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi (supra) ,*** *the goods were released to the assessee on an application made by it and on the execution of a bond by the assessee and in those circumstances, the Hon'ble Apex Court held that the mere fact that the goods were released on the bond being executed would not take away the power of custom authority to levy redemption fine. A reading of the judgment/order of the Hon'ble Apex Court in* ***M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi (supra),*** *would show that the Apex Court has taken the view that redemption fine can be imposed even in the absence of the goods as the goods were released to the appellant on an application made by it and on the appellant executing a bond. Since the goods were released on a bond the position is as if the goods were available. The ratio of the above decision cannot be understood that in all cases the goods were permitted to be cleared initially and later proceedings were taken for under-valuation or other irregularity, even then redemption fine could be imposed. We are, therefore, not inclined to accept the contention raised by the appellant on this issue and set aside the redemption fine.*

13. *The reliance of learned counsel for the revenue upon the provisions of Section 125 of the Act is also misconceived. Section 125 of the Act is applicable only in those cases which have been cleared by the concerned authorities subject to furnishing undertaking/bond etc. However, in the present case, admittedly, the goods were cleared by the respondent-authorities without execution of any bond/undertaking by the assessee. Thus, in view of the fact and circumstances of the case, we find no error in the impugned orders. No substantial question of law arises for our determination in the present appeal and the same is hereby dismissed..”*

168. The principle discernible from the aforesaid two decisions is that the redemption cannot be imposed if the goods are not available. Redemption can be imposed provided the goods were handed over to the owner upon execution of any bond/undertaking.

169. In the Supreme Court decision, the goods were released on execution of bond. However, later, when the said goods became liable for confiscation, and the goods were available, it has been held that the power of the Customs Authority to confiscate the goods, or in lieu thereof, to release the same on payment of redemption fine is not taken away merely because the goods were initially released on execution of bond/undertaking. In the two High Court decisions, the goods were not available for confiscation, and in such circumstances, there was neither a question of confiscation of goods nor redemption thereof. According to Mr. Trivedi, if the goods are under seizure, or they were cleared on understanding that the same would be made available in case of order of confiscation thereof, then in that case, the goods can either be confiscated or redeemed (released) on payment of fine in lieu of confiscation, provided they are available at that time. Inspite of having released the goods on execution of bond and undertaking,, if the same are not made available to the authorities at the time of confiscation proceedings, then in that case, though confiscation or redemption may not be physically possible, the terms of the bond and undertaking/bank guarantee can be enforced by seeking to

recover the full value of the goods. Hence, in nutshell, it could be said that if the goods are available for confiscation, then only the question of giving an option of redemption fine in lieu of confiscation arises and not in cases where the goods are not available for confiscation.

170. At this stage, we must look into the decision of the Supreme Court in the case of ***Weston Components Ltd. vs. Commissioner of Customs, New Delhi***, *2000 (115) ELT 278 (S.C.)*, wherein the Supreme Court, in a very short order, has observed as under;

> *"t is contended by the learned counsel for the appellant that redemption fine could not be imposed because the goods were no loger in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances 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, then the mere fact that the goods were released on the bond being executed would not take away the power of the customs authorities to levy redemption fine. "*

171. We are not impressed with the aforesaid submission as regards redemption of fine in the absence of the goods.

172. Section 130(2) has provided for an option to pay fine in lieu of confiscation. Section 130(2) along with the three provisos reads as under;

"130(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 amount of penalty leviable under sub-section (1) of section 129:

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."

173. The meaning of the noun "redemption" as found in the "Compact Oxford Dictionary, Thesaurus and Wordpower Guide", (Ninth impression - 2004) (Dictionary Editor: Catherine Soanes)", which means, "the action of redeeming or the state of being redeemed". Thus, any redemption is not necessarily confined to the goods in question, but the redemption is with regard to the conduct as well.

174. The per-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 130 of the Act rests is that the goods in question are liable to be confiscated under the Act. It, therefore, follows that what is

sought to be offered to be redeemed, are the goods, but not the improper conduct of the owner to transport the goods in contravention of the provisions of the Act or the Rules. We must also bare in mind that the owner of the goods is liable to pay penalty under Section 122 of the Act. The fine contemplated is for redeeming the goods, whereas the owner of the goods is penalized under Section 122 for doing or omitting to do any act which rendered such goods liable to be confiscated under Section 130 of the Act. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of ***M/s. Visteon Automotive Systems vs. The Customs, Excise & Service Tax Appellate Tribunal,*** *C.M.A No.2857 of 2011*, decided on 11th August, 2017, wherein the following has been observed in para-23;

> *"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much*

relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii). "

175. We would like to follow the dictum as laid down by the Madras High Court in para-23, referred to above.

176. We may also refer to and rely upon a Supreme Court decision in the case of ***M. G. Abrol vs M/S. Shantilal Chhotalal & Co***, *AIR 1965 SC 197*, wherein the Supreme Court dealt with the very same issue and held as under;

"Another contention raised for the respondent is that the Additional Collector could not confiscate the goods after they had left the country and that therefore his order of confiscation of the scrap which according to him was not steel skull scrap was bad in law. The affidavit filed by the Additional Collector, appellant No. 1, mentions the circumstances in which the scrap exported by respondent was allowed to leave the country. It was allowed to leave the country after the Collector had formally seized it and after the agents of the shipping company had undertaken not to release the documents in respect of the cargo to its consignees. This undertaking meant that the cargo would remain under the control of the customs authorities as seized cargo till further orders from the Additional Collector releasing the cargo and making it available to the consignees by the delivery of the necessary documents to them. The documents were allowed to be delivered to them on the application of the respondents praying for the passing on of the necessary documents to the purchasers of the goods in Japan and on the respondents giving a bank guarantee that the full f.o.b. value to be released from the said parch would be paid to the customs authorities towards penalty or fine in

lieu of confiscation that might be imposed upon the respondents by the adjudicating authority. The customs authorities had seized the goods when they were within their jurisdiction. It is immaterial where the seized goods be kept. In the circumstances of the case, the seized goods remained on the ship and were carried to Japan. The seizure was lifted by the Additional Collector only when the respondents requested and gave bank guarantee. 'The effect of the guarantee was that in case the Additional Collector adjudicated that part of the goods exported was not in accordance with the licence and had to be confiscated, the respondents, would, in lieu of confiscation of the goods, pay the fine equivalent to the of the bank guarantee. Section 183 of the Act provides that whenever confiscation is authorised by the Act the Officer adjudging it would give the owner of the goods option to pay in lieu of confiscation such fine as the officer thinks fit. This option was extended to the respondent at the stage before the goods were released from seizure. The formal order of confiscation had to be passed after the necessary enquiry and therefore when passed in the present case after the goods had actually left this country cannot be said to be an order which could not be passed by the Customs Authorities. I, therefore, do not agree with this contention."

Scope of interference by the High Court under Article 226 of the Constitution of India during the pendency of the confiscation proceedings.

177. Article 226 of the Constitution of India confers power upon the High Court to issue orders or writs to any person or authority including in appropriate cases, any Government writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part-III or for any other purpose. Similarly, Article 227 of the Constitution of India confers the power of superintendence over

all the Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. It is an acknowledged position of law that the powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance as the power flows from the Constitution itself. No statutory bar can effect the power of the High Court under Articles 226 and 227 of the Constitution of India.

178. Despite such wide and untrammeled powers, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond the justified inhibitions under any Statute except where there is a complete jettisoning of the rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non- exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only

to be exercised in the interest of justice.

179. Thus, an order of release of goods or conveyance may be passed under Article 226 of the Constitution of India, even pending the confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

180. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

181. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under extraordinary situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.

FINAL CONCLUSION:-

182. We would sum up our conclusion of the points raised in the writ applications as follows;

"(i) Section 129 of the Act talks about detention, seizure and release of goods and conveyances in transit. On the other hand, Section 130 talks about confiscation of goods or conveyance and

levy of tax, penalty and fine thereof. Although, both the sections start with a non-obstante clause, yet, the harmonious reading of the two sections, keeping in mind the object and purpose behind the enactment thereof, would indicate that they are independent of each other. Section 130 of the Act, which provides for confiscation of the goods or conveyance is not, in any manner, dependent or subject to Section 129 of the Act. Both the sections are mutually exclusive. .

(ii) The phrase "with an intent to evade the payment of tax" in Section 130 of the Act assumes importance. When the law requires an intention to evade payment of tax, then it is not mere failure to pay tax. It must be something more. The word "evade" in the context means defeating the provisions of law of paying tax. It is made more stringent by use of the word "intent". The assessee must deliberately avoid the payment of tax which is payable in accordance with law. However, the element of *mens rea* cannot be read into Section 130 of the Act.

(iii) For the purpose of issuing a notice of confiscation under Section 130 of the Act at the threshold, i.e., at the stage of detention and seizure of the goods and conveyance, the case has to be of such a nature that on the face of the entire transaction, the authority concerned should be convinced that the contravention was with a definite intent to evade payment of tax. The action, in such circumstances, should be in good faith and not be a mere pretence. In other words, the authorities need to make out a very strong case. Mere suspicion may not be

sufficient to invoke Section 130 of the Act straightway.

(iv) If the authorities are of the view that the case is one of invoking Section 130 of the Act at the very threshold, then they need to record their reasons for such belief in writing, and such reasons recorded in writing should, thereafter, be looked into by the superior authority so that the superior authority can take an appropriate decision whether the case is one of straightway invoking Section 130 of the Act.

(v) 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.

(vi) Section 130 of the Act is not dependent on clause (6) of Section 129 of the Act.

(vii) Sections 129 and 130 respectively of the Act are mutually exclusive and independent of each other. If the amount of tax and penalty, as determined under Section 129 of the Act for the purpose of release of the goods and the conveyance, is not deposited within the statutory time period, then the consequence of the same would be forfeiture of the goods and the vehicle with the Government. This does not necessarily imply that the confiscation proceedings can be initiated only in the event of the failure on the part of the owner of the goods or the conveyance in

depositing the amount towards the tax and liability determined under Section 129 of the Act.

(viii) For the purpose of Section 129(6) of the Act, it would not be necessary for the department to establish any intention to evade payment of tax. If the tax and penalty, as determined under Section 129, is not deposited within the statutory time period, then the goods and the conveyance shall be liable to be put to auction and the sale proceeds shall be deposited with the Government.

(ix) Similarly, the reference to Sections 73 and 74 respectively of the Act is not warranted for the purpose of interpreting Sections 129 and 130 of the Act, more particularly, when they all are independent of each other. The provisions of Sections 73 and 74 of the Act are similar to the provisions of Section 11A of the Central Excise Act and Section 28 of the Customs Act, which deal with the adjudication proceedings. Despite this, Section 110 is present in the Customs Act, which speaks about seizure and similarly, Section 129 is present in the Act for detention/seizure. Therefore, Sections 129 and 130 of the Act have non-obstante clauses, whereby they can be operated upon in spite of Sections 73 and 74 of the Act.

(x) The provisions of sections 73 and 74 respectively of the Act deal with the 'demands and recovery' to be made by the assessing officer based upon the assessment, whereas the provisions of Section 129 of the Act deal with the 'detention/ seizure'. While assessing the returns, if the assessing officer finds that the

amount of tax has not been paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized for any reason, either with mala fide intention or without the same, as the case may be, the provisions of Section 73/74 of the Act would be invoked. However, the provisions of Section 129 of the Act deal with situation where the evasion of tax/contravention of the Act/Rules is detected during transit itself, requiring the adoption of summary like proceedings. Therefore, the said provisions operate in different spheres.

(xi) The comparison of the provisions of Customs Act/ Excise Act on one hand and the provisions of the Act on the other, as sought to be drawn on behalf of the writ applicants, is not correct. Section 110(1) of the Customs Act is not comparable to Section 129(1) of the Act inasmuch as, the provisions of Section 110 of the Customs Act contemplates that the proper officer may seize the goods which are liable for confiscation, whereas the provisions of Section 129 contemplate that the proper officer may detain/ seize the goods/ conveyance in transit in contravention of the provisions of the Act or the Rules.

(xii) The provisions of Sections 110(2) and 124 of the Customs Act do not contemplate that the goods which are seized are to be released in a specific time limit, much less, within a period of six months. Apropos this, the said sections merely cast a duty on the department to issue a show cause notice within a period of six months from the date of seizure of goods, but the same does not contemplate as to in how much time, the same has to be adjudicated upon. Therefore, the contention raised on behalf of

the writ applicants that the goods which are seized are to be released within a short span of time and that the legislature has not contemplated to retain the goods pending the confiscation proceedings. is not tenable. In addition to the above, even otherwise, the provisions of Section 110A of the Customs Act, which deal with the 'provisional release' of the goods, do not contemplate the release of the goods only on payment of penalty and interest but the proposed amount of fine is also to be included for provisional release of the goods. In view of this, the amount of fine should be taken into account while directing the provisional release of the goods/ conveyance as per Section 129(2) read with Section 67(6) of the Act read with Rule 140 of the Rules.

(xiii) Although there is no serious challenge to the validity of the provisions of Sections 129 and 130 respectively of the Act, yet it is a settled principle of law that the power to levy tax includes all the incidental powers to prevent the evasion of such tax. The power to seize and confiscate the goods in the event of evasion of tax and the power to levy penalty are meant to check tax evasion and is intended to operate as a deterrent against the tax-evaders and are, therefore, ancillary or incidental to the power to levy tax on the goods and thus, fall within the ambit and scope of the legislative powers.

(xiv) The goods are not liable to be detained on the ground that the tax paid on the product was less. In such circumstances, the Inspecting Authority is expected to alert the Assessing Authority to initiate appropriate proceedings "for assessment of any alleged

sale at which the dealer will have his opportunities to put forward his pleas on law and on fact. The process of detention of the goods cannot be resorted to when the dispute is bona fide, especially concerning the exigibility of tax and, more particularly, the rate of that tax.

(xv) Even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of confiscation and also pass an order of redemption fine in lieu of the confiscation. In other words, even if the goods or the conveyance has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed.

(xvi) The extraordinary powers under Article 226 of the Constitution, directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under extraordinary situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.

183. One and all should be mindful of the fact that the country has altogether a new tax regime. It has been just two years since the new tax regime, in the form of GST, has been implemented. Although, this path-breaking reform meets the longstanding demand of trade and industry to simplify and streamline the tax regime in the country, yet, there are many issues which need to be addressed. The assessees need to be educated so far as the

new tax regime is concerned. It has been brought to our notice that the government has prepared the Model GST Law in English. Further, all the acts, rules, regulations and FAQ regarding GST are available in English language. Entrepreneurs of many establishments in India may not have proficiency in English language to understand the Model GST Law and the rules associated with it. The government must translate the existing GST rules and regulations in vernacular languages so that it can be better understood by all the assesses, especially in the MSME sector.

184. We would also like to observe that an efficient dispute resolution mechanism is required to be set up to settle the disputes in a time-bound manner. The government may consider the formation of dispute resolution committees in all the states and union territories for hearing such disputes. These committees must be staffed with experts from the legal and audit profession.

185. As a Court of law, we can only urge the assessees to keep their transactions fair and transparent. If the transactions are fair and transparent, then there should be no room for any complaint. At the same time, we also expect the GST Authorities to ensure that no undue harassment is caused to the assessees. The GST Authorities should try to understand the various provisions of the Act as well as the Rules in the best possible manner for the purpose of smooth execution and implementation of the law. The new tax regime in the country, over a period of

time, will prove to be an effective one, and with the passage of time and proper implementation of the provisions of the Act, the difficulties which the assessees are facing today will get minimal. All that we intend to say is that, in a give situation, the authorities should adopt a practical approach to resolve the dispute rather than enter into a long drawn litigation. The Government should strive hard to ensure that the litigation arising from the new tax regime gets minimized over a period of time.

186. We clarify that we have, otherwise, not gone into the merits of the petitions. All the petitions are at the stage of notice for the purpose of confiscation. In all the cases, this Court has ordered interim release of the goods as well as the conveyance. This release is subject to the final outcome of the confiscation proceedings. We have not examined individual petition for the purpose of finding out whether the notice for confiscation under Section 130 of the Act is justified in the facts and circumstances of the case or not. We have laid down general principles with regard to the applicability of Sections 129 and 130 of the Act. Let these matters now be notified before the Hon'ble Court taking up tax matters for the purpose of deciding whether the confiscation notice deserves to be quashed and set aside or not.

(J. B. PARDIWALA, J)

(A. C. RAO, J)

(PER : HONOURABLE MR.JUSTICE A.C.RAO)

187. I have had the benefit of going through the final conclusion drawn by my Learned Brother Justice J.B. Pardiwala in the judgment, with which, I have concurred. However, I would like to add few words of my own on the subject.

188. From the plain reading of Sections 129 and 130 of the Act, it is clear that the suppliers or receivers of the goods transport any goods in contravention of provisions of the Act or the Rules made thereunder are liable for the detention or seizure of the goods under Section 129 of the Act and under Section 130 (i)(v) of the Act for confiscation of the goods and conveyance. Thus, for the same breach and/or contravention of the provisions of the Act, there are two types of penalties provided under Section 129 and Section 130(i)(v) of the Act.

189. In this regard, we would like to observe as held by the Supreme Court that it would be important to notice certain well settled canons of interpretation of statutes. The primary and foremost task of a Court in interpreting a statute, is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactments. If two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering

uncertainty and practical inconvenience in the working of the statute. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need not be meek and mute submissions to the plainness of the language. To avoid patent injustice, anomaly or asburdity, the Court would well be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary. Though normally it is not permissible to read words in a statute which are not there, but, "where the alternative lies between either supplying by implication words which appear to have been accidently omitted or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words." Having regard to the context in which a provision appears and the object of statute in which the said provision is enacted, the Court should construe it in a harmonious way to make it meaningful. An attempt must always be made so as to reconcile the relevant provisions as to advance the remedy intended by the statute.

190. I am of the view that the Legislature should, once again, look into both the provisions, i.e, Sections 129 and 130 of the Act and amend the sections accordingly so as to remove certain inconsistencies in the two provisions. Let this aspect be looked into by the State Government in accordance with law.

(A. C. RAO, J)

Vahid