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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 20<sup>TH</sup> DAY OF FEBRUARY 2026 / 1ST PHALGUNA, 1947

WP(C) NO. 881 OF 2026

PETITIONER/S:

M/S. AUTHENTIC METALS,  
NO.451/A, WARD NO.6, KULAMBUMUKKU, VALLATHOL GRAMA  
PANCHAYATH, CHERUTHURUTHI, THRISSUR, KERALA,  
REPRESENTED BY ITS PROPRIETOR MR. HARSHAD A H, PIN -  
679531

BY ADVS.  
SRI.JIKKU SEBAN GEORGE  
SMT.DEEPTI SUSAN GEORGE  
SMT.SHRUTHI BALAKRISHNAN  
SRI.CYRIAC TOM

RESPONDENT/S:

- 1 THE ENFORCEMENT OFFICER,  
ENFORCEMENT SQUAD NO.1, PALAKKAD, CENTRAL ZONE 1ST  
FLOOR, STATE GST COMPLEX ANNEX, BEHIND CIVIL STATION,  
PALAKKAD, PIN - 678001
- 2 THE ASSISTANT STATE TAX OFFICER,  
THE ASSISTANT STATE TAX OFFICER, ENFORCEMENT SQUAD  
NO.1, PALAKKAD, CENTRAL ZONE 1ST FLOOR, STATE GST  
COMPLEX ANNEX, BEHIND CIVIL STATION, PALAKKAD, PIN -  
678001
- 3 STATE GOODS AND SERVICE TAX DEPARTMENT,  
PREM NAGAR, KARAMANA, THIRUVANANTHAPURAM,  
KERALA, REPRESENTED BY ITS AUTHORISED OFFICER, PIN -  
695002

SRI. MOHAMMED RAFIQ, SPL.GOV'T.PLEADER (TAXES)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
09.02.2026, THE COURT ON 20.02.2026 DELIVERED THE FOLLOWING:

i. Can goods can be hold in transit during the pending confiscation proceedings.

WP(C) No.881 of 2026.

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2. Can the goods be released on provisional Basis.

### JUDGMENT

The short question that arises for consideration in this Writ Petition, is with regard to the powers conferred upon the authorities under the Central Goods and Services Tax /Kerala State Goods and Services Tax, Act, 2017 (CGST and KSGST) to hold/retain the goods in transit, during the proceedings of confiscation under section 130 of the CGST Act. Incidentally, another question that arises in this case is whether Section 130(2) enables the authority concerned, to release the goods as a provisional measure, pending the adjudication proceedings, by accepting the fine in lieu of the confiscation proposed in the notice issued in Form MOV-10.

2. The facts which led to the filing of this Writ Petition are as follows:

2.1. The petitioner is a registered taxpayer under the provisions of CGST Act and deals with scrap materials. As part of the business, the petitioner undertook the delivery of certain goods on 25.11.2025, vide invoice No. AM./010/2025-26 dated 24.11.2025 and E-way Bill No.5619 1335 5668 dated 24.11.2025, for transporting copper scrap. Exhibits P1 and P2 are the invoice and e-way bills referred to above, respectively. The goods were being transported in a vehicle bearing registration KA-01-AM-0216.

2.2. During such transit, the 2<sup>nd</sup> respondent detained the goods

and ordered for physical verification of the vehicle on the ground that genuineness of the goods in transit requires scrutiny. Exhibit P3 is the Form MOV-1 issued by the 2<sup>nd</sup> respondent on 4.12.2025 and Exhibit P4 is the Form MOV-2 issued by the 2<sup>nd</sup> respondent on the same day. Exhibit P5 is the Form MOV-4 dated 27.11.2025. According to the petitioner, the goods were being transported with all necessary documents to be accompanied, and there was no irregularity in such transit.

2.3. Thereafter, the petitioner was issued with Ext.P7 notice proposing confiscation of the goods and conveyance in Form GST MOV-10 on 3.12.2025. In Ext.P7, several discrepancies are alleged against the petitioner and a fine of Rs.18,92,053/- was proposed in lieu of the confiscation of the goods, apart from the penalty payable. The petitioner submitted Ext.P10 reply to Ext.P7, where the non-compliance of the mandatory procedure to be followed, while detaining the goods and initiating proceedings for confiscation, were highlighted. The petitioner also sought permission to cross-examine the witnesses and the release of the vehicle as a provisional measure, after making the payment of the fine proposed in Ext.P7 in lieu of the confiscation. Exhibit P12 is the challan form DRC03 evidencing the payment of the entire amount proposed as fine.

2.4. According to the petitioner, the release of the goods, pending adjudication of the confiscation, is permissible under section

130(2) of the CGST Act, in the light of the principles laid down by this Court in the **Sales Tax Officer v. Y. Balakrishnan (RP No.630/2021 dated 29.11.2021)**, a copy of which is produced as Ext.P15. The petitioner also challenges the authority of the respondents to retain the said vehicle in their possession, pending finalisation of the confiscation proceedings. The Writ Petition was filed in such circumstances seeking the following reliefs:

- “i) Issue a writ of mandamus or any other appropriate writ, order or direction quashing the Exhibit P7 MOV-10 show cause notice dated 03.12.2025 issued proposing confiscation under section 130, and/or all consequential proceedings thereto, as illegal, arbitrary, without jurisdiction and vitiated by violation of mandatory procedure and principles of natural justice;*
- ii) Declare that the continued detention/non-release of the goods and conveyance despite payment of fine in lieu of confiscation is illegal, arbitrary, and unconstitutional, violative of Articles 14, 19(1)(g) and 300A of the Constitution of India;*
- iii) Issue any other appropriate writ, order or direction, which this Hon'ble Court deems fit in the circumstances of the case;*
- iv) Permit the petitioner to dispense with the filing of translation of the vernacular documents;*
- v.) To allow this writ petition with costs to the petitioner.”*

3. A detailed counter affidavit was submitted by the 1<sup>st</sup> respondent, and along with the said counter affidavit, Exhibits R1(a) to R1(j) were produced to substantiate the objections raised in the counter affidavit. The said documents include the copies of the Forms GST MOV-1 and MOV-2 that contain the signature of the person in charge of the conveyance, as an acknowledgment thereof. It was contended that, all the statutory requirements as contemplated under Section 130 and also Ext.P6 Circular No.41/15/2018-GST dated 13.4.2018 published by the Central Board of Indirect Taxes and

Customs that governs the field, are complied with. Thus, dismissal of the writ petition was sought.

4. I have heard Sri. Cyriac Tom, the learned counsel appearing for the petitioner, Sri. Mohammed Rafiq, the learned Special Government Pleader (Taxes), appearing for the respondents 1 to 3.

5. The learned Counsel for the petitioner vehemently contended that, Ext.P7 requires to be interfered with, as the same was passed without following any of the procedure contemplated under section 130, as clarified in Ext.P6 circular issued by the Central Board of Indirect Taxes and Customs. It was also contended that, the petitioner is entitled to get the goods released under section 130(2) of the CGST Act in the light of the principles laid down by this Court in Ext.P15 order, since the petitioner had already paid the penalty proposed in lieu of confiscation.

6. On the other hand, learned Special Government Pleader seriously opposes the said contentions, by pointing out that, as far as Section 130(2) of the CGST Act is concerned, the same would not enable the petitioner to claim provisional release of the articles or conveyance, as the release contemplated under the said provision, is a release after finalization of the proceedings. The contention of the petitioner that, the respondent does not have any authority to retain the goods, is also seriously opposed by the learned Special Government Pleader, by pointing out that, since confiscation

proceedings are already initiated as per Ext.P7 and that Ext.R1(b)-Form GST MOV 02 issued to the petitioner, contains a prohibition that the petitioner shall not move the goods and conveyance from the place at which it is stationed until further orders, they are entitled to retain the possession of the articles.

7. The learned Special Government Pleader also places reliance upon large number of decisions rendered by the Hon'ble Supreme Court and various High Courts to substantiate the points and the same are; ***Union of India v. Lexus Exports (P) Ltd [(1997) 10 SCC 232]***, ***Commissioner of Customs v. Jagdish Cancer & Research Centre [(2001) 6 SCC 483]***, ***Collector of Customs v. Elephanta Oil & Industries Ltd [(2003) 4 SCC 325]***, ***Gunwantlal Godawat v. Union of India [(2018) 12 SCC 309]***, ***Commissioner of Customs (Import) Air Cargo Complex v. Air India Ltd. Materials Management Department [(2023) SCC OnLine Bom 1449: (2023) 386 ELT 236]***, ***State of Punjab v. Shiv Enterprises [(2023) 109 GSTR 100 (SC) ]***, ***Fathima v. Canara Bank [2025(3) KLT 367 (F.B.)]***, ***J.K. Bardolia Mills v. M.L.Khunger, Dy Collector of Central Excise [1975 GLR 16 119]***, ***M/S. J.K. Bardolia Mills v. M.L.Khunger, Dy Collector of Central Excise [(1994) 5 SCC 332]***, ***Harbans Lal v. Collector of Central Excise and Customs [(1993) 3 SCC 656]***, ***Suresh Kumar P.P. v. Deputy Director General of GST Intelligence (DGGI), Thiruvananthapuram, Kerala and Others [(2020) 81 GSTR 137 (Ker.)]*** , ***Muhammad Saleem Shemsudeen v. Enforcement Officer***

**[(2024)122 GSTR 243 (Ker.)], ASP Traders v. State of Uttar Pradesh [(2025) 144 GSTR 693 (SC)] and Trade Tax Officer v. Royal Trading Co. [(2005) 11 SCC 518].**

8. The learned Special Government Pleader also brought to the notice of this Court, the judgment rendered in WP(C) No.40450/2023, where a learned Single Judge of this Court followed Ext.P15 order, but the provisional release was ordered only on payment of fine in lieu of the confiscation and also the payment of the entire penalty proposed, as an interim measure. Apart from Ext.P15, the learned Counsel for the petitioner places reliance upon the **Commissioner of Income Tax (Central)- 1, New Delhi v. Vatika Township Pvt Ltd. [(2015) 1 SCC 1]**.

9. I have carefully gone through the records, examined the statutory provisions and considered the contentions raised by both sides.

10. Before considering the questions that arise for consideration, it is necessary to examine the relevant statutory provisions under the CGST Act, relating to the detention, seizure and confiscation. Section 67 of the CGST Act deals with power of inspection, search and seizure in any place and the same reads as follows:

**“Section 67. Power of inspection, search and seizure.-**

*“(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that-  
(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or*

*(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.*

*(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:*

*PROVIDED that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:*

*PROVIDED FURTHER that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.*

*(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.*

*(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah , electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah , electronic devices, box or receptacle is denied.*

*(5) The person from whose custody any documents are seized under subsection (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.*

*(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.*

*(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:*

*PROVIDED that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.*

*(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.*

*(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.*

*(10) The provisions of the Code of Criminal Procedure, 1973(2 of 1974) relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.*

*(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.*

*(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."*

11. Section 68 of the Act deals with the inspection of goods in movement which reads as follows:

**“Section 68. Inspection of goods in movement.-**

*“(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.*

*(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.*

*(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods."*

Section 129 deals with the powers and procedure for detention, seizure and release of the goods and conveyance in transit which reads as follows;

### **Section 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 penalty equal to two 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 penalty;*

*(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twentyfive thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such 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.] omitted by Finance Act, 2021 w.e.f. 1-1-2022 vide Noti. No. 39/2021- Central Tax dt. 21-12-2021.*

(3) *The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice , for payment of penalty under clause (a) or clause (b) of sub-section (1). [substituted as per the Finance Act, 2021, w.e.f 1-1.2022\_ prior to substitution, it read as “ 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).”]*

(4) *No 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 such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3): PROVIDED that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:*

*PROVIDED FURTHER 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 fifteen days may be reduced by the proper officer.”*

***[ Substituted as per Finance Act, 2021 w.e.f 1-1-2022 and before substitution it reads as “Where the person transporting any goods or the owner of the goods fails to pay the amount of tax or penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130***

***PROVIDED where the detained or seized goods are perishable or hazardous in nature or are likely to depreciated in value with passage of time, the said period of fourteen days may be reduced by the proper officer]***

Section 130 deals with the confiscation of the goods for conveyance and levy of penalty and the said provision reads as follows:

***“Section 130. Confiscation of goods or conveyances and levy of penalty.-***

***(1) Where any person-***

***(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or***

***(ii) does not account for any goods on which he is liable to pay tax under this Act; or***

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the penalty equal to hundred per cent. of the tax payable on such goods

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

[(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 in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance] **omitted by Finance Act, 2021 w.e.f. 1-1-2022 vide Noti. No. 39/2021- Central Tax dt. 21-12-2021.**

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of **confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.**"

12. In order to provide a transparent and uniform procedure for interception, seizure and inspection of goods in movement and the

detention, release and confiscation of such goods and conveyance etc., the Central Board of Indirect Taxes and Customs, after referring to Sections 68, 129 and 130 of CGST Act, issued Ext.P6 Circular dated 13.4.2018. It contemplates a detailed procedure to be followed, while initiating proceedings for seizure, detention and confiscation of goods in movement. The said notification prescribed various forms in which notices and orders are to be issued, while recording the statements, conducting inspections, issuing notices, passing orders etc. The said Circular was issued under Section 168(1) of the CGST Act and therefore, being a statutory notification, the same is binding upon all the officers who are exercising powers under the CGST/SGST Act. A detailed procedure and guidelines are formulated as per the same and the relevant clauses which are applicable to the dispute involved in this case are as follows:

*“(a) The jurisdictional Commissioner or an officer authorised by him for this purpose shall, by an order, designate an officer/officers as the proper officer/officers to conduct interception and inspection of conveyances and goods in the jurisdictional area specified in such order.*

*(b) The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. An e-way bill number may be available with the person in charge of the conveyance or in the form of a printout, sms or it may be written on an invoice. All these forms of having an e-way bill are valid. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to <http://mis.ewaybillgst.gov.in> or the Mobile App or through SMS by sending EWBVER to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).*

*(c) For the purposes of verification of the e-way bill, interception and inspection of the conveyance and/or goods, the proper officer under*

rule 138B of the CGST Rules shall be the officer who has been assigned the functions under sub-section (3) of section 68 of the CGST Act vide Circular No. 3/3/2017 - GST, dated 05.07.2017.

(d) Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in FORM GST MOV01. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty four hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.

(e) Within a period of three working days from the date of issue of the order in FORM GST MOV-02, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in FORM GST MOV-03 from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.

(f) On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST MOV-04 and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST EWB-03 within three days of such physical verification/inspection.

(g) Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in FORM GST MOV-05 and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention in FORM GST MOV-06 and a notice in FORM GST MOV-07 in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable. The said notice shall be served on the person in charge of the conveyance.

(h) Where the owner of the goods or any person authorized by him comes forward to make the payment of tax and penalty as applicable under clause (a) of sub-section (1) of section 129 of the CGST Act, or where the owner of the goods does not come forward to make the payment of tax and penalty as applicable under clause (b) of sub-section (1) of the said section, the proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules, release the goods and conveyance by an order in FORM GST MOV-05. Further, the order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to

*such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.*

*(i) Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in FORM GST MOV-05, after obtaining a bond in FORM GST MOV-08 along with a security in the form of bank guarantee equal to the amount payable under clause (a) or clause (b) of sub-section (1) of section 129 of the CGST Act. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings."*

13. The issues raised in this writ petition are to be considered in the above factual and legal background. The first issue to be considered is with regard to the question as to whether, a provisional release of the goods pending confiscation proceedings is permissible under the Act. The petitioner places reliance upon Section 130(2) of the CGST Act to show that, such a provision is made in the Act. It is to be noted in this regard that, in Ext.P15, the order passed by this Court in **Sales Tax Officer v. Y. Balakrishnan** (Supra), this question was considered by this Court in detail and after referring to the statutory stipulations in the Act and also referring to the decisions in **Union of India v. Lexus Exports Pvt. Ltd.& Another [(1997) 10 SCC 232]**, **M.S. Meghdoot Logistics v. Commercial Tax Officer (Enforcement-09) South Zone, Bengaluru of the Karnataka High Court [WP(C)No.10832/2020]**, **Commissioner of Customs (Import) v. Dilip Kumar & Company and Others [(2018) 9 SCC 1]** and **Synergy Fertichem (P) Ltd. v. State of Gujarat [(2019)**

**103 taxmann.com 426/72 GST 641]**, this Court came to a finding that, such a course is permissible. The conclusion arrived at by this Court in Ext.P15 at paragraph 46 is as follows:

*“(1) The provision of section 130 of the Act contemplate release of goods on payment of fine in lieu of confiscation at two stages (i) during the process of adjudication, under section 130(2) and, (ii) post-adjudication under section 130(3) of the Act.*

*(2) At the time of release of goods under section 130(2) of the Act, the owner of the goods is required to pay the fine in lieu of confiscation alone, while penalty tax and other charges can be paid after adjudication.*

*(3) The basis for calculating the fine in lieu of confiscation under section 130 of the Act is only the market value as defined under section 2(73) of the Act and not the maximum retail price.”*

It is pointed out by the learned Special Government Pleader that, Ext.P15 order was challenged by the State before a Division Bench of this Court and while the Writ Appeal filed in this regard was pending consideration, a final order of confiscation was passed by the authorities concerned. In such circumstances, the writ petitioner therein, sought permission to withdraw the writ petition itself, without prejudice to the right to challenge the final order of confiscation, which was allowed. Accordingly, the challenge raised against Ext.P15 was not considered by the Division Bench of this Court. In this regard, the specific contentions raised by the learned Special Government Pleader is that, Ext.P15 was an order passed in a Review Petition submitted by the State, seeking review of an interim order passed and as the said writ petition in which the said interim order was passed, itself was withdrawn, the observations in

Ext.P15 need not be taken into account, as the same cannot be treated as a binding precedent.

14. After carefully examining the relevant circumstances, I am of the view that, even though the writ petition in which Ext.P15 order was passed was withdrawn, the detailed discussion made in the said order regarding the question of law and the principles laid down therein cannot be simply ignored by this Court, when the same issue being adjudicated.

15. However, even while arriving at the conclusion that the principles laid down in Ext.P15 order will have to be considered for determining the similar issue involved in this case, certain crucial change in the position of law by virtue of amendments carried out in the relevant statutory provisions, after the said order, cannot be ignored. Ext.P15 order was rendered by interpreting the provisions contained in section 130 as it stood before the amendment by way of the Finance Act, 2021 with effect from 1.1.2022. Exhibit P15 order was rendered on 29.11.2021. As per the Finance Act, 2021, crucial amendments were carried out in Section 129 as well as Section 130 of CGST Act. Before amendment, section 130 commenced with the words ***“Notwithstanding anything contained in the ...”*** whereas, as per the amendment the said words were substituted with the word ***‘Where’***. Similarly, section 130(3), which was specifically referred to in Ext.P15 order,

was deleted. Apart from the above, in section 129 also, which deals with detention, seizure and release of goods, certain amendments were brought in, by deleting sub-section (2) of Section 129. The relevance of section 129(2) is that, as per the said provision, the provisions in sub-section (6) of section 67 were made *Mutatis mutandis* applicable to the detention and seizure of goods or conveyance. Sub-section (6) of Section 67 of the CGST Act deals with the provisional release of the goods seized, upon execution of a bond and furnishing of a security in such manner and of such quantum as may be prescribed or on payment of applicable tax, interest and penalty payable as the case may be. Thus, on going through the change brought in by way of amendment to the scheme of the Act relating to the seizure, detention and confiscation by virtue of the aforesaid amendment, it can be seen that, there are drastic amendments with regard to the provisional release of the goods seized, detained or subject to confiscation.

16. Yet another aspect to be noticed is that, in section 129(6) as stood prior to the amendment, it was provided that, in case, there is failure on the part of the person concerned in paying the penalty determined under section 129,

the remedy of the State to realize the same, was to initiate proceedings under section 130 of the Act. However, after the amendment, the sub-section (6) was modified, by deleting the requirement of initiation proceedings under section 130, and instead, the authorities are empowered to dispose of the goods by following the procedure prescribed, without resorting to the provisions under section 130. Thus, to that extent, section 129 was made more independent and the independence of section 130 proceedings was diluted to some extent, by deleting the non obstante clause therein. On account of such amendments, the provisional release contemplated under section 129 r/w section 67(6) was taken away. Thus, there are drastic changes in the matter of procedure relating to seizure, detention and confiscation.

17. Therefore, the statutory stipulations contained in Section 130(2) of the Act need to have a different interpretation than made in **Y. Bakakrishan's** case (supra), as there is a substantial change in the legal procedure and power to release the goods, in view of the aforesaid amendments. When Section 130(2) is considered in that perspective, I find merit in the submission made by the learned Special Government Pleader. It is to be noted that, Section 130(2) of the Act, provides an option to the owner of the goods to get the goods or conveyance released, by paying fine in lieu of confiscation. However, on careful reading of sub-section (2) of Section 130, it can

be seen that, what is intended therein is not a provisional release, but it is a release of the goods after confiscation and the amounts to be paid, are determined by way of final order of confiscation by the authority concerned. Nowhere in sub-section (2) of Section 130, any reference with regard to the provisional release of the goods is made. The examination of sub-section (7) of Section 130 would make this aspect clear. The said provision deals with the time within which the fine in lieu of confiscation has to be paid, which is within three months from the date of issuance of a final order of confiscation. A careful reading of the aforesaid provisions, would make it amply clear that, subsection (2) of section 130 exists for subsection (7) of section 130 and both the said provisions will have to be read together. Thus, it is a fact that, after the amendment, the scheme of the Act relating to the procedure dealing with the goods seized/detained had undergone a drastic change by virtue of the amendment and there is no reference in sub-section (2) of section 130 with regard to the provisional release of the goods. Thus, the only conclusion possible is that, what is contemplated under sub-section (2) of Section 130, is a release by paying fine in lieu of confiscation and the same has to be invoked within, the time limit contemplated under section 130 (7), i.e., within the three months from the date of issuance of the confiscation order. An interpretation that treats section 130 (2) as the one for provisional release, would

make section 130(7) and the time limit contemplated therein, meaningless. This is because, once the provisional release is permitted pending finalization of the confiscation proceedings, there will not be any significance for the time limit in section 130(7).

18. In this regard, it is worthy to note that, the concept of provisional release is expressly provided under Section 67(6) of the Act. However, such a provision is conspicuously absent in Section 130. Such exclusion of provisional release under section 130 and inclusion under section 67 (6) evidences the legislative intent not to permit provisional release under Section 130. It is a settled rule of interpretation that, if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect, as can be rightly found in the maxim "*expressio unius est exclusio alterius*". Thus, when an authority is given expressly, though by affirmative words, the expression of that condition excludes the doing of the act authorised under other circumstances than those defined. Therefore, the power of provisional release being specifically provided under Section 67(6), cannot be extended to proceedings under Section 130 in the absence of an express statutory mandate. Another aspect to be noted in this regard is that such an exclusion of provisional release from section 130 is a conscious exclusion of the legislature and such

omission or exclusion cannot be filled or implied by the courts if the language of the section is plain and unambiguous as enumerated in **Union of India v. Rajiv Kumar, [(2003) 6 SCC 516], Padma Sundara Rao ( Dead) v. State of T.N., [(2002) 3 SCC 533] . In CST v. Parson Tools and Plants, [(1975) 4 SCC 22],** it was observed that;

*16. If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of legislature" [ At p. 65 in Prem Nath L. Ganesh v. Prem Nath L. Ram Nath, AIR 1963 Punj 62, Per Tek Chand, J.] , the primary function of a Court of law being jus dicere and not jus dare.*

*23. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give full 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.*

In **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. [(2012) 9 SCC 552] ,** it was observed that:

*"64. ... that it is not the function of the court to supply the supposed omission, which can only be done by Parliament. In our opinion, legislative surgery is not a judicial option, nor a compulsion, whilst interpreting an Act or a provision in the Act. The observations made by this Court in Nalinakhya Bysack [Nalinakhya Bysack v. Shyam Sunder Haldar, (1953) 1 SCC 167 : AIR 1953 SC 148] would tend to support the aforesaid views, wherein it has been observed as follows: (AIR p. 152, para 9)-;*

*"9. ... It must always be borne in mind, as said by Lord Halsbury in Commissioners for Special Purposes of Income Tax v. Pemsel [1891 AC 531 at p. 549 (HL)] , that it is not competent to any court to proceed upon the assumption that*

*the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature the Court cannot, as pointed out in Crawford v. Spooner [(1846-49) 6 Moo PC 1 : 13 ER 582 : 4 Moo IA 179 : 18 ER 667] , aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in Hansraj Gupta v. Official Liquidators [(1932-33) 60 IA 13 : (1933) 37 LW 445 : AIR 1933 PC 63] , for others than the courts to remedy the defect."*

Thus, there is no scope for incorporating the concept of provisional release into Section 130(2) by enabling the authority concerned, to release the goods as a provisional measure, pending the adjudication proceedings, by accepting the fine in lieu of the confiscation proposed in the notice issued in Form MOV-10.

19. It is to be noted that, the interpretation of the expression in section 130(2) that **"whenever the confiscation of goods or conveyance is authorized by this Act"**, is a matter of crucial importance. The word **'authorized'** has been discussed in *Corpus Juris Secundum*, [7A C.J.S, AUDITA QUERELA , § 12, at p. 915 (1980)] as thus ;

*"In the past tense, or as the past participle, "authorized" has been defined as meaning clothed with authority, warrant, or legal power; directed; empowered; empowered and directed ; entitled; permitted; possessed of, or endowed with, authority; sanctioned or approved with authority."*

20. It is to be noted that, word used under section 130(2) is **"authorized"** and not, "permitted" or "provided" or 'contemplated". Therefore, the question that arises is when such an authorization comes into effect. Evidently, mere notice to initiate confiscation

proceedings will not amount to authorisation for confiscation. On the other hand, authorisation would come into force when the final order of confiscation is passed after following the procedure contemplated in this regard. It is also to be noted in this regard that, as per sub-section 5 of section 130 of the CGST Act, where any goods or conveyance are confiscated under the Act, the title of such goods or conveyance immediately vests with the Government. Thus, the authorization comes into effect only upon final order of confiscation is passed and until such an order is passed, the proceedings that are undergoing can only be a proposal to confiscate the goods, which is falling short of an authorization to confiscate. The Hon'ble Supreme Court in **Gunwantlal Godwat v. Union of India and Another [(2018) 12 SCC 309]** considered the meaning of the words 'confiscation authorized by the Act' as contained in section 73 of the Gold (Control) Act, 1968 which is a provision providing option to pay fine in lieu of confiscation and held that 'confiscation authorized by this Act' limits the operation of section 73 only to the confiscations adjudged under the Gold Act. Thus, the view taken by this court is fortified by the aforesaid observations of the Honourable Supreme Court.

21. Moreover, section 130(2) does not expressly refer to the powers of the officer concerned to pass an order for releasing the articles proposed to be confiscated as a provisional measure. Since

such a provisional release is not specifically contemplated under any of the provisions of section 130, I am of the opinion that, this Court cannot confer such a power upon the officer concerned, to release the goods provisionally by paying fine in lieu of confiscation. As mentioned above, section 67 of the CGST Act, that deals with the seizure of goods, contains specific provision namely, subsection (6), providing for provisional release. Thus, as per the scheme of the statute, wherever, the provisional release is permitted, it is expressly provided. Therefore, as section 130 does not contain an express provision that deals with provisional release, is a factor which is very conspicuous, when it comes to the question of interpretation of the said provision. Moreover, a careful scrutiny of subsections (2) and (7) of section 130 would make it clear that, subsection (7) is depending upon subsection (2). It is to be noted that, even though, subsection (7) of section 130 deals with the release of the confiscated goods and conveyance, on payment of fine in lieu of confiscation, the manner in which such fine is to be calculated, is not provided therein, but on the other hand, the same is contemplated in subsection (2). Thus, it is amply clear that, stipulations in subsection (2) is for the purpose of subsection (7) and thus, the release on payment of fine in lieu of confiscation, provided therein, is only after the order of confiscation and not as a provisional measure.

22. The next question that arises for consideration is whether the official respondents have the power to retain the goods proposed to be confiscated, until an order of confiscation is passed. While considering this question, it is to be noted that, Article 300A of the Constitution of India provides that **“No person shall be deprived of his property save by authority of law”**. Admittedly, the goods which are sought to be confiscated, are the properties of the petitioner and the title vests upon the petitioner, so long as an order of confiscation is not passed, by following the procedure contemplated under the Act. Sub-section (5) of Section 130 provides that, the title of the goods passes on to the Government only upon issuing an order of confiscation. Therefore, since the petitioner is the owner of the goods, it can be deprived off its right to hold the said goods, by the actions of any statutory authority, only in exercise of statutory powers, which are specifically incorporated in the relevant statute or if it can be implied from the scheme of the Act.

23. While considering the said question under the scheme of the Act relating to the procedure of confiscation, I find merit in the submission made by the learned counsel for the petitioner, who challenges the right of the respondents to retain the goods before the order of confiscation is passed. When going through the statutory stipulations contained in the CGST Act, it can be seen that, the power of seizure and detention of the goods is contemplated

under section 67 and also in section 129 of the Act. As far as section 67 of the Act is concerned, the same deals with the situation in respect of the searches to be conducted in places and it is not applicable to the transport of goods through vehicles. Of course, section 68 of the Act specifically authorizes the authorities concerned, to inspect the goods in movement. However, conspicuously, the powers conferred under section 68 are confined only to carryout the inspection, which would mean that once an inspection is completed, the authority concerned cannot further retain the goods invoking the powers under the said provision.

24. Section 129 of the Act provides for detention, seizure and release of the goods and conveyances in transit. Thus, as far as the transportation of the goods are concerned, the relevant provision for detention and seizure is under section 129. On a careful scrutiny of section 129, it can be seen that, the same starts with a non-obstante clause and proviso to sub-section (1) of section 129 clearly specifies that, no goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods. Sub-section (3) of Section 129 clearly prescribes the time limit of seven days for passing an order specifying the penalty payable within a period of seven days from the date of service of a notice, which is to be issued within seven days of detention, proposing to impose penalty under sub-section (1) of section 129.

The said time limit was incorporated in the amendment brought in as per the Finance Act, 2021 with effect from 1.01.2022. Therefore, section 129 contemplates a procedure for detaining the goods and necessary safeguards to protect the interests of the person, who is subjected to such proceedings, are also prescribed therein, which include the issuance of an order of detention and to pass an order imposing a penalty within seven days from the date of issuance of notice. The consequences of the same is that, if the officer concerned fails to follow the timeline as contemplated under the Act or issuing a detention order and serving the same, as contemplated under proviso to sub-section (1) of section 129 of the Act, the detention affected by the authorities concerned becomes illegal. In such circumstances, the owner of the goods would be entitled to get the goods released, as the officer concerned would not have any right to hold the possession of the articles. As far as this case is concerned, no order of detention as contemplated under section 129 of the Act has been passed. Even though in the counter affidavit submitted by the respondents, it is averred that, the proceedings under section 68(3) r/w section 129 are initiated on 25.11.2025, there is nothing on record to indicate that any order of detention as required under proviso to sub-section (1) of section 129 was passed.

25. In this regard, it is to be noted that, the Central Board of Indirect Taxes and Customs, has issued Ext.P6 Circular for ensuring

uniform procedure to be followed by the officers concerned, while initiating proceedings under section 68, 129 and 130 of the Act. The procedure contemplated therein, provides for the issuance of notices in Forms GST MOV-1 to MOV-11, depending upon the various stages of the proceedings. Clause 2(d) of Ext.P6 provides for the issuance of Form GST MOV-1, and as per the said clause, where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in **FORM GST MOV-01**. It also provides that, in addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in **FORM GST MOV-02**, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty four hours of the aforementioned issuance of **FORM GST MOV-02**, prepare a report in **Part A** of **FORM GST EWB-03** and upload the same on the common portal. Clause 2(e) of Ext.P6 further provides that, within a period of three working days from the date of issue of the order in **FORM GST MOV-02**, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant that such time to be extended, he shall obtain a written

permission in **FORM GST MOV-03** from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance. Thus, going by the procedure contemplated as per Ext.P6, there is an obligation on the officer concerned to issue Form MOV-2 for inspection of the goods and such inspection has to be completed within a period of three working days. The procedure contemplated after issuance of GST MOV-3 is to prepare a report of physical verification in Form GST MOV-4 and serve a copy of the said report to the person in charge of the said conveyance. This is contemplated under clause 2(f) of Ext.P6 and the said clause provides that the proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST EWB-03 within three days of such physical verification/inspection. Thus, a specific timeline is contemplated for completing the inspection as per the aforesaid Circular.

26. In this case, the relevance of these clauses is that, the petitioner was served with notices in Forms MOV-1, MOV-2 and MOV-4. Thereafter, the officer concerned had straight away issued Form GST MOV-10, which is intended to invoke section 130 of the CGST Act for the purpose of confiscation. The specific case of the learned Special Government Pleader while defending the right of the officer concerned to retain the possession of the goods, is by placing

reliance upon the directions in Form GST MOV-2. Three directions are contemplated therein which read as follows:

*“i) To station the conveyance carrying goods at..... (place) at your own risk and responsibility.*

*ii) To allow and assist in physical verification and inspection of the goods in movement and related documents.*

*iii) Not to move the goods and conveyance from the place at which it is stationed until further orders and not to part with the goods in question.”*

27. According to the learned Special Government Pleader, the direction No.3, i.e., *“Not to move the goods and conveyance from the place at which it is stationed until further orders and not to part with the goods in question”* is a prohibitory order, which is sufficient enough to retain the possession of the goods and conveyance, as far as the officer is concerned. However, going by the sub clauses (d) and (e) of Clause 2 of Ext.P6, it is evident that, Form MOV-2 is intended for conducting an inspection as contemplated under section 129(1) r/w section 68 of the CGST Act. As far as Section 68 is concerned, the same is only confined to the power of the inspection of the goods in transit, and the said provision does not authorise any detention. When it comes to section 129(1), even though the detention is specifically contemplated therein, the same can be affected only by issuing an order of detention, and an order of penalty is to be passed within a time limit from the date of detention. Therefore, the scheme is that, once the inspection is completed the same has to be followed by a detention order, if the officer is satisfied that, further proceedings are warranted.

28. In this case, admittedly no order under section 129 for detaining the goods are passed. Even though Form MOV-2 is relied on by the learned Special Government Pleader, a perusal of clause 2(d) of Ext.P6 in which, such form is prescribed, it can be seen that, the purpose of issuing of MOV-2 is only to ensure the inspection of goods and conveyances, which has to be completed within a period of three working days as provided in clause 2(e). Moreover, clause 2(f) further provides that proper officer shall prepare a report in GST MOV-4 and the final report of inspection in Part B of FORM GST EWB-03 within three days of such physical verification/inspection. In this case, Form GST MOV-4 is issued within the time prescribed as per Ext.P6 Circular. However, the consequence of submission of MOV-4 is that, once the said physical verification report is prepared and uploaded, the scope and purpose of inspection as contemplated as per section 68 is over and therefore the respondent cannot keep the articles in their possession, unless an order of detention as contemplated under proviso to sub-section (1) of section 129 is passed.

29. Even though the learned Special Government Pleader vehemently contended that the MOV- 02 and the directions contained therein are the nature of a prohibitory order requiring the owner of the goods not to take the goods away until further orders, I am not inclined to accept the same. This is because, the learned

Special Government Pleader could not explain the source of power under which, such a prohibitory order could be issued. It is a settled principle that exercise of the power is always referable to the source of power and must be considered in conjunction with it, as rightly observed by the Apex Court in a catena of judgments including **Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435**. Similarly in **Union of India v. Tulsiram Patel, (1985) 3 SCC 398**, it was observed that;

*“126. As pointed out earlier, the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules while the source of his power to dispense with the disciplinary inquiry is derived from the second proviso to Article 311(2). There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. The Court's attention in *Challappancase [(1976) 3 SCC 190 : 1976 SCC (L&S) 398 : (1976) 1 SCR 783]* was not drawn to this settled position in law and hence the error committed by it in considering Rule 14 of the Railway Servants Rules by itself and without taking into account the second proviso to Article 311(2). It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions.....”*

30. Thus, in the absence of any discernible powers interdicting the rights vested upon the owner of the goods, who has the right to enjoy the goods as per Art.300A of the Constitution of India, it must be ensured that no person is deprived of the said right save by the

authority of law, as held by the Apex Court in ***Jilubhai Nanbhai Khachar v. State of Gujarat***, [AIR 1995 SC 142], ***Hari Krishna Mandir Trust v. State of Maharashtra and others***, [(2020) 9 SCC 356], ***State of Mysore v. K. Chandrasekhara Adiga***, [AIR 1976 SC 853], ***Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.***, [(2007) 8 SCC 705]. In ***Prabin Ram Phukan v. State of Assam***, [(2015) 3 SCC 605], the following observations were made in para 27;

27. *“It is a settled principle of law that no person can be deprived of his property or any interest in the property save by authority of law. Article 300- A of the Constitution recognizes this constitutional right of a person, which was till 1978 recognized as the fundamental right of a citizen. Indeed whether fundamental or constitutional, the fact remains that it has always been recognized as a right guaranteed under the Constitution in favour of a citizen/person and hence no person cannot be deprived of this valuable right which the Constitution has given to him save by authority of law.”*

31. Thus, in the light of Article 300 A, an interference in the right of the property of a person can be made only by the authority of law. The word “law” in the context of Article 300-A must mean an Act of Parliament or of a State legislature, a rule, or a statutory order, having the force of law, that is positive or State made law. The rights in property can be curtailed, abridged or modified by the State only by exercising its legislative power. Deprivation of property can only be done according to law. Without law, there can be no deprivation of property. No law, no deprivation of property is the principle underlying Article 300A as held in ***Bishambhar Dayal Chandra Mohan v. State of U.P.***, [(1982) 1 SCC 39], as well as in ***State of***

***Mysore v. K. Chandrasekhara Adiga, [AIR 1976 SC 853]***. Even if the right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, the same cannot be taken away except in accordance with law. Article 300A of the Constitution protects such rights. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300A of the Constitution of India, must be strictly construed, as observed in ***Tukaram Kana Joshi v. MIDC, [(2013) 1 SCC 353]***, ***K. T. Plantation (P) Ltd. v. State of Karnataka, [(2011) 9 SCC 1]***, ***P. N. Padmamma v. S. Ramakrishna Reddy, [(2008) 15 SCC 517]***, ***Hari Krishna Mandir Trust v. State Of Maharashtra [(2020) 9 SCC 356]***, ***Lachhman Dass v. Jagat Ram [(2007) 10 SCC 448]***, ***Amarjit Singh v. State of Punjab [(2010) 10 SCC 43]***, ***State of Haryana v. Mukesh Kumar [(2011) 10 SCC 404]*** and ***Delhi Airtech Services (P) Ltd. v. State of U.P. [(2011) 9 SCC 354]***. Hence, it becomes the bounden duty of the official respondents to demonstrate the source of power they are exercising, while taking any decision or passing an order interfering with such Constitutional rights.

32. In this case, going by the scheme of CGST Act, a detention is authorized only under section 67 and 129 of the Act. As far as section 67 is concerned, that cannot be made applicable to the case of the petitioner, since the said provision deals with a situation in

respect of a search to be conducted in a place. Even though section 68 of the Act provides for inspection of goods in transit, the same is confined only to the inspection of goods in transit, and no power of detention is provided. When it comes to the powers under section 129, which provides for detaining the goods in transit, a specific procedure is contemplated therein and as per the same, an order of detention is mandatory for effecting such detention. Sub-section (3) of section 129 also specifies a period of seven days within which an order of penalty has to be passed and therefore, the order of detention can only be before the said date. Thus, in cases where no order or detention as contemplated under section 129(1) is passed, the officer concerned cannot hold the goods and conveyances in their possession, once the procedure for inspection as contemplated under clause 2(d) and (e) of Ext.P6 Circular is expired. It is to be noted in this regard that, Ext.P6 is the Circular issued by the Board under section 168 of the CGST Act and therefore it is binding upon all the officers concerned and they are bound to strictly follow them. Thus, the conclusion possible is that, merely because MOV-02 contains a prohibitory clause restraining the parties concerned not to move the goods and conveyances from the place at which it is stationed and not to part with the goods in question until further orders, the impact of the same cannot be continued after proceedings relating to inspection are completed as contemplated

under sub-clauses 2(d), (e) and (f) of Clause 2 of Ext.P6. This is particularly because, a mere direction in Form MOV-2 restraining the person from taking the goods until further orders cannot substitute the requirement of passing an order or detention as provided in section 129(10). Since what is required is “order of detention”; necessarily it must be an order, highlighting the reasons for such detention, and it cannot be in the form of a simple direction.

33. The learned Special Government Pleader specifically contended that, the procedure contemplated under section 129 and 130 of the CGST Act, are independent proceedings and clause (l) of Ext.P6 Circular specifically authorises the officer concerned to strictly invoke the powers under section 130 without resorting to the procedure under section 129 of the Act. Thus, according to the learned Special Government Pleader, since MOV-10 is already issued and there is a prohibitory order passed in MOV-02, the officer concerned is entitled to keep the custody of the goods until the finalisation of the confiscation. However, I am not inclined to accept the said contention. Of course, it is true that, nothing precludes the officer concerned from initiating proceedings under section 130 of the CGST Act directly, if the conditions necessary for such invocation are satisfied, without resorting to the proceedings under section 129 of the Act. This would mean that, mere fact that, before initiating proceedings under section 130 of the Act, no proceedings

under section 129 were initiated, by itself would not affect the validity of the section 130 proceedings. However, the question that arises is, how the officer concerned can retain the possession of the property until confiscation is ordered by following the procedure contemplated in this regard. When the scheme under section 130 is examined in that perspective, it can be seen that, none of the provisions contained in Section 130 authorises the detention of goods, pending consideration of the final confiscation, expressly or with necessary implication. On the other hand, sub-section (6) of Section 130 specifically provides that, the proper officer adjudicating confiscation shall take the possession of the things confiscated and every officer of Police on requisition of the proper officer shall assist him in taking and holding such possession. Moreover, sub-section (5) provides that title of the goods passes on to the Government upon order of confiscation is passed. A combined reading of both these provisions would indicate that, in order to initiate confiscation proceedings, physical possession of the goods is not necessary. This is because, proceedings under section 130 are independent and the same can be invoked irrespective of the question whether the goods are in the custody of the officer concerned or not. Once a confiscation order is passed and the title is vested upon the Government, the proper officer shall be entitled to take possession of the goods and conveyances if the possession is

not already with the said authority. Therefore, mere initiation of proceedings under section 130 of the Act, by itself is not an authority for the officer concerned, to retain the goods in his possession and such retention of possession can be made, only following the procedure for detention contemplated under section 129 of the Act.

34. It is to be noted that, there is no prohibition in invoking section 130 proceedings after initiating the proceedings under section 129 of the Act. To be precise, in a case where, the proceedings were initiated under section 129 and during the course of such proceedings, the officer concerned arrives at a reasonable belief that the transactions which are the subject matter of the proceedings were carried out by the party concerned with an intention to evade the tax, it shall be open to the officer concerned, to switch over to the proceedings under section 130 of the Act. If that switching over of the proceedings takes place after an order of detention as contemplated under section 129(1), that would enable the officer concerned to hold the possession of the goods which are under confiscation proceedings. In other words, only in cases where, an order of detention was passed by following the statutory procedure contemplated in this regard, the officer concerned would be in a position to hold the goods in their possession. In cases where no such order is passed, the moment the statutory period

contemplated under section 129 expires, without passing an order of detention, the possession of the goods by the officer concerned would become illegal. Mere initiation of the confiscation proceedings would not validate such possession. This is because, when the detention is authorised by the statute by following certain procedure and issuance of certain orders, the same can be affected only by following such course of action. Any other method would defeat the purpose of the provisions. Thus, any action of the officer concerned to retain the possession without passing an order of detention as contemplated under the Act would be illegal which would enable the party concerned to seek release of the goods and conveyances.

35. The learned Special Government Pleader places reliance upon the decision of the Hon'ble Supreme Court in ***Union of India v. Lexus Exports Pvt. Ltd and Another [(1997)10 SCC 232]***, where it was observed that “...***The proceedings of seizure and confiscation are the proceedings in rem. Until the culmination of the adjudication it is difficult to envisage any right on the part of the respondents from whom they are seized, to export them on the basis of a future title, they expect to acquire by payment of fine.....***” However, the crucial aspect to be noticed is that, the said observations were made while interpreting the provisions in the Customs Act, 1962, where, section

110 specifically contemplates seizure and detention of goods before confiscation. Therefore, the said observations cannot be made applicable to this case, since section 130 of the CGST Act does not contain any provision for detention of goods and the detention is authorised only under section 129 of the CGST Act, and in this case, no order of detention, as contemplated under the section 129, is passed.

36. Similarly, the learned Government Pleader also relied on a decision of the Hon'ble Supreme Court in **J.K.Bardolia Mills v. M.L.Khunger, Dy.Collector and Others[(1994) 5 SCC 332]**. That was also a decision rendered under the provisions of the Customs Act. The question considered therein was whether the seizure of the goods under section 110 of the Act would be vitiated if the authorities failed to follow the procedure contemplated under the Act, for non-compliance of the stipulation in section 110(2) of the Act fixing a time line for initiating proceedings under section 124 of the Act, i.e., within a period of six months. After analysing the provisions, it was held that, merely because of the reason that, the officer concerned failed to follow the timeline contemplated under section 110 of the Customs Act, the initial seizure of the goods would not be vitiated. At the most, goods will have to be returned to the party concerned. This is not a proposition that supports the contentions raised by the learned Special Government

Pleader, in the factual circumstances of this case, with regard to the authority of the officer concerned to retain the goods.

37. Another aspect to be noticed in this regard is that, permitting the officer concerned, to retain the goods and conveyances, without issuing a detention order, merely because of the reason that proceedings under section 130 are initiated, has to be treated as improper, for a different reason. This is because, such an interpretation would enable the officer concerned, to exercise uncontrolled powers, without following the timeline contemplated under section 129(1) for issuing an order of detention. In other words, when a detention is specifically authorised under section 129, subject to a procedure bound by a timeline, if section 130 is interpreted to have such power, it would create a situation where, the officer concerned would be in a position to retain the goods without following the timeline contemplated under section 129. Thus, even in cases where, the officer concerned failed to follow the timeline contemplated under section 129 in the matter of detention, it would be possible for such officer to continue the possession of the goods, by issuing a notice under section 130 of the Act, if the contention of the learned Special Government Pleader is accepted.

38. Evidently, going by the scheme of the Act as revealed from the aforesaid provisions, that does not appear to be the intention of

the legislature. Since the detention of the goods is something that interferes with the proprietary rights of a person that is recognised under Art.300A of the Constitution of India, unless there is a specific authority conferred upon the officer concerned, he cannot interfere. In this case, section 130 of the CGST Act, does not contain any provision that enables the retention of the goods, merely because of the reason that such proceedings are in progress. In order to have such possession of the goods, the officer must follow the procedure for detention as contemplated under section 129 of the Act and in the absence of the same, the possession becomes illegal, in which event, the owner of the goods would get the right to release the articles. In the light of principles laid down by the Apex Court in a catena of decisions including ***K. Ramadas Shenoy v. Chief Officers , Town Municipal Council, Udipi , [(1974) 2 SCC 506], Ramachandra Keshav Adke v. Govind Joti Chavare, [(1975) 1 SCC 559], J.N. Ganatra v. Morvi Municipality, [(1996) 9 SCC 495], Meera Sahni v. Lt. Governor of Delhi , [(2008) 9 SCC 177], Union of India v. International Trading Company, [(2003) 5 SCC 437] , Ramdeen Mayurya v. State of UP, [(2009) 6 SCC 735]***, it is well settled that one individual can do all things save and except those, which are prohibited under the law, whereas the Statutory Body only can do anything as are prescribed

within the jurisdictional parameters or control of the concerned statute.

39. In this regard, the observations of the Hon'ble Supreme Court in **Chief Settlement Commissioner, Punjab & Others v. O.M. Prakash & Ors. [AIR 1969 SC 33]** are very much relevant. These observations were made while dealing with the powers of officers, when they exercise their statutory duties and the said observations in paragraph 7 read as follows:

*"7. In this context it is essential to emphasise that under our constitutional system the authority to make the law is vested in the Parliament and the State Legislatures and other law making bodies and whatever legislative power the executive administration possesses must be derived directly from the delegation of the legislature and exercised validly only within the limits prescribed. The notion of inherent or autonomous law-making power in the executive administration is a notion that must be emphatically rejected. As observed by Jackson, J., in a recent American case — Youngstown Sheet & Tube Co. v. Sawyer [343 US 579, 655] — "With all its defects, delays and inconveniences men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations". In our constitutional system, the central and most characteristic feature is the concept of the Rule of law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court. The Rule of law rejects the conception of the Dual State [343 US 579, 655] in which governmental action is placed in a privileged position of immunity from control by law. Such a notion is foreign to our basic constitutional concept."*

Similarly in **Renu and Others v. District & Sessions Judge, Tis Hazari and Another [ (2014) 14 SCC 50]**, it was observed that:

*5. ....The exercise of powers by an authority cannot be unguided or unbridled as the Constitution prescribes the limitations for each and every authority and therefore, no one, howsoever high*

*he may be, has a right to exercise the power beyond the purpose for which the same has been conferred on him. Thus, the powers have to be exercised within the framework of the Constitution and legislative provisions, otherwise it would be an exercise of power in violation of the basic features of the Constitution i.e. Part III dealing with the fundamental rights which also prescribes the limitations."*

Thus, it is clear that, the officers can exercise only those powers which are conferred upon them by the statute, because the powers of statutory bodies are derived, controlled and restricted by the statutes which create them and that any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires in view of the law laid down in ***Sukhdev Singh v. Bhagatram [(1975) 1 SCC 421]***.

40. The learned counsel for the petitioner raised various contentions with regard to the discrepancies in following the procedure, which include the delay in uploading MOV-1, MOV-2 and MOV-4 in the web portal. However, it is the case of the learned Special Government Pleader, that all the Forms were prepared and got the signature of the person in charge of the conveyance, within the period stipulated in the statute as well as Ext.P6 circular, but the uploading took place only later, as it was not possible for them to upload immediately after preparing the said documents, since those documents were prepared on site. However, I am not going into those aspects in view of the fact that confiscation proceedings are pending consideration, and it shall be open to the petitioner to

raise all those contentions in such proceedings and it shall be considered by the authorities concerned.

41. Now when it comes to the facts of this case, it can be seen that based on Ext.P7 notice issued to the petitioner in Form MOV-10, wherein, it was proposed to impose an amount of Rs.8,92,053/, as fine in lieu of confiscation of goods, the petitioner had already deposited the said amount. Even though the petitioner sought provisional release of the said goods on payment of confiscation of goods, I am of the view that, since I found that the provisional release is not contemplated under section 130, the said prayer cannot be granted. However, I have already found that the continued detention of the goods is not legally sustainable, merely because of the reason that proceedings under section 130 of the Act is in progress. In the absence of any valid order of detention, the respondents cannot hold the possession of the goods.

In such circumstances, this Writ Petition is disposed of directing the respondents 1 to 3 to release the goods of the petitioner forthwith, upon the petitioner furnishing a simple bond, as it was found that the detention of the aforesaid goods and conveyance by the respondents are not supported by any statutory provisions. The competent officer shall comply with the proceedings for confiscation initiated as per Ext.P7 and shall finalise the same after giving the petitioner an opportunity to be heard, as expeditiously as

possible. All the other contentions of the petitioner are left open to be considered by the competent authority.

**Sd/-**  
**ZIYAD RAHMAN A.A.**  
**JUDGE**

pkk

APPENDIX OF WP(C) NO. 881 OF 2026

## PETITIONER EXHIBITS

EXHIBIT P1 A COPY OF THE INVOICE AM/010/2025-26 DATED 24.11.2025 RAISED TO METRO TRADING

EXHIBIT P2 A COPY OF THE E-WAY BILL NO - 5619 1335 5668 DATED 24.11.2025 FOR TRANSPORTING COPPER SCRAP TO METRO TRADING

EXHIBIT P3 A COPY OF THE GST MOV01 ISSUED BY THE ON 04TH DECEMBER 2025 BY THE 2ND RESPONDENT

EXHIBIT P4 A COPY OF THE GST MOV 02 ISSUED BY THE SECOND RESPONDENT ON 04TH DECEMBER 2025

EXHIBIT P5 COPY OF GST MOV 04 DATED 27TH NOVEMBER 2025

EXHIBIT P6 A COPY OF THE CIRCULAR NO. 41/15/2018-GST DATED 13TH APRIL 2018

EXHIBIT P7 A COPY OF THE GST MOV 10 DATED 03.12.2025 ISSUED BY THE 1ST RESPONDENT

EXHIBIT P8 A COPY OF THE INVOICE AND E-WAY BILL SHOWING THE SUPPLY OF THE GOODS BY M/S MARVEL DATED 24-11-2025

EXHIBIT P9 A COPY OF THE CONFIRMATION LETTER DATED 21.12.2025

EXHIBIT P10 A COPY OF THE REPLY DATED 21.12.2025

EXHIBIT P11 A COPY OF THE LETTER DATED 03.01.2026 ISSUED BY THE 1ST RESPONDENT

EXHIBIT P12 A COPY OF THE CHALLAN IN DRC 03 DATED 30.12.2025 SHOWING THE PAYMENT OF FINE LIEU OF CONFISCATION OF VEHICLE AND GOODS

EXHIBIT P13 A COPY OF THE REPLY DATED 05.01.2026

EXHIBIT P14 A COPY OF THE LETTER NO VC/ENFS1/PKD/39/2025-26 DATED 06.01.2026

EXHIBIT P15 A COPY OF THE JUDGMENT DATED 29.11.2021 IN R.P NO.630/2021

## RESPONDENT EXHIBITS

EXHIBIT- R1 (A) TRUE COPIES OF FORM GST MOV-01 DATED 25/11/2025

EXHIBIT- R1 (B) TRUE COPIES OF FORM GST MOV-02 DATED 25/11/2025

EXHIBIT- R1 (C) THE STATEMENT REGARDING THE GOODS IN QUESTION PROVIDED BY MR. HARSHAD, THE PROPRIETOR OF THE PETITIONER

EXHIBIT- R1 (D) A TRUE COPY OF INVOICE NO. 11 DATED 24/11/2025 PRODUCED BY MR. HARSHAD

EXHIBIT- R1 (E) A TRUE COPY OF TOLL GATE PASSAGE RECORD

EXHIBIT- R1 (F) A TRUE COPY OF THE STATEMENT GIVEN BY MR. GAFOOR

EXHIBIT- R1 (G) A TRUE COPY OF THE MAHASSAR DATED 01/12/2025

EXHIBIT- R1 (H) A TRUE COPY OF THE STATEMENT FROM SRI. ABDUL RASHEED R.M

**EXHIBIT- R1 (I)**  
**EXHIBIT- R1 (J)**

**THE ABSTRACT OF CASH LEDGER HISTORY  
TDS CERTIFICATES AND INVOICE DETAILS OF THE  
PETITIONER**