

Before Ajay Tewari & Pankaj Jain, JJ.

M/s RAGHAV METALS—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.25057 of 2021

March 14, 2022

Constitution of India, 1950—Art. 226—Haryana GST Act, 2017—S.129—Central GST Act, 2017—Delhi GST Act, 2017—Intent to evade tax—On physical verification—Discrepancy found in actual quantity of copper wires and copper scrap in transit and quantity shown in invoice and e-way bill—State’s claim—By showing less quantity petitioner intended to evade tax— Not accepted— Only 1% difference in weight, evasion not more than Rs.11,000/- —Tax paid Rs.12,76,717.68p — Held, petitioner had no intent to evade tax— Mismatch not in contravention of the Act—Petitioner offered to pay tax and penalty—Petition allowed— Proceedings under Section 129 dropped.

Held that, having heard Ld. Counsel for the petitioner we find that even the second ground raised in GST MOV-06 (Annexure P-14) deserves to be struck down. From perusal of the e-Invoice (Annexure P-4/A) it is clear that quantity of consigned goods is shown to be 10430.7 kilograms. An amount of Rs.1276717.68/- has been paid as tax on the consignment whereas as per the State, it was 10520 kilograms. The said difference in weight is less than 1%. As per State, the alleged evasion shall not be more than Rs.11000/-.

(Para 8)

Further held that, keeping in view these circumstances, it cannot be said that the petitioner had any intent to evade the tax or the mismatch in the quantities is of such nature which shall entail proceedings under Section 129 of the Act. A person, who has already paid a tax of Rs.1276717.68/- on a consignment cannot be said to have an intent to evade tax amounting to Rs.11000/-. At this stage, Mr. Goyal states that the petitioner is ready to pay even the tax and penalty imposed by the State-Authorities which comes to be around Rs.22000/-

(Para 9)

Further held that, in light of the fair stand taken by the petitioner and the fact that the mismatch cannot be termed as contravention of the provisions of the Act, we deem it appropriate to allow the present writ petition. Proceedings against the petitioner under Section 129 of the Act are hereby quashed. Fine and penalty, if any, imposed against the petitioner and deposited by him, be refunded to him within a period of 15 days from the date of receipt of certified copy of this order. Since goods already stand released, no further order is required.

(Para 10)

Sandeep Goyal, Advocate
for the petitioner.

Shruti Jain Goyal, Dy. Advocate General, Haryana
for respondents No.1 to 4.

PANKAJ JAIN, J.

(1) In the present writ petition, the petitioner has called in question the action of the respondent/Authorities in proceeding under Section 129 of the Haryana GST Act, 2017/Central GST Act, 2017 (for short, 'the Act') against him and consequential detention of his goods.

(2) As per the petitioner, he is engaged in business of copper wires and copper scraps, which are purchased from the dealers located throughout the country and he is registered under Delhi GST Act, 2017/Central GST Act, 2017. The petitioner claims that in the ordinary course of business, he sold copper scraps to M/s R.N.T. Metals Pvt. Ltd., Bhiwadi (Rajasthan) for an amount of Rs.83,69,594/- (including IGST @ 18%). While the aforesaid goods were in transit in Vehicle No.HR-55S-1938, the same were intercepted by respondent No.4 at Manesar on 27.11.2021. The goods were accompanied by valid Invoice No.RM/64/21-22 and e-way bill, as contemplated under the Act. On the asking of the Authorities, the said documents were produced however the vehicle carrying goods was ordered to be stationed and Form GST MOV-02 was issued. Reply to GST MOV-02 was filed on 03.12.2021. On the same date i.e., 03.12.2021, respondent No.4 issued Order of Detention under Section 129(1) of the Act in Form GST MOV-06 (Annexure P-14). As per the said order, the following discrepancies are said to have been found :-

Discrepancies noticed after physical verification of goods and conveyance
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	Mismatch between the goods in movement and documents tendered, the details of which are as under - a) b)
	Mismatch between E-Way bill and goods in movement, the details of which are as under - a) b) ----- 90 kg and 700 gm c)
	Goods not covered by valid documents, and the details are as under- a) b)
	Others (Specify) - a) ----- Bogus Input Tax credit claim on the b) ----- transaction

Further, notice in Form GST MOV-07 (Annexure P-15) was issued to the petitioner under Section 129 (3) of the Act.

(3) The petitioner filed the present writ petition claiming that the proceedings under Section 129 of the Act against him are without jurisdiction and thus deserve to be quashed.

(4) On notice, respondents No.1 to 4 filed Written Statement. Facts are not in dispute.

(5) We have heard counsel for the parties and have carefully gone through the records of the present case.

(6) Counsel for the respondents fairly states that so far as issue with respect to bogus purchase by the supplier of the petitioner is concerned, the issue stands settled by law laid down by this Court in case of '**M/s. Shiv Enterprises vs. State of Punjab and others**' – CWP-18392- 2021 wherein it has been held that :-

“...The alleged 'intent to evade tax' must have a direct nexus with the activity of trader. The opinion formed by the authorities must reflect such nexus before proceeding under

Section 130 of 2017 Act. A trader cannot be accused of having intention to evade payment of tax for act or omission on part of a person not immediately linked to his activity. Learned counsel for the State agreed that even if a trader wants to be prudent, there is no system in place from where he can check as to whether his predecessors in supply chain have paid input tax credit or not. Meaning thereby, it is virtually impossible for a trader to ascertain as to whether input tax has been paid by his predecessors or not and it is for this reason also that the claim to input tax credit has been made subject to scrutiny and assessment. It is the fundamental legal principle embedded in legal maxim “LEX NON COGIT AD IMPOSSIBILIA”-That the law does not compel a man to do that which he cannot possibly perform”. Once a person cannot be compelled to do something not possible, definitely he cannot be penalized for not doing so.”

(7) However, Deputy Advocate General, Haryana points out that on physical verification discrepancy was found in the actual quantity and the quantity shown in Invoice and e-way bill. Actual quantity was found to be 90 kgs. 700 gms. more than what has been found as per Invoice. Thus, she claims that by showing lesser quantity the petitioner intended to evade tax.

(8) Having heard Ld. Counsel for the petitioner we find that even the second ground raised in GST MOV-06 (Annexure P-14) deserves to be struck down. From perusal of the e-Invoice (Annexure P-4/A) it is clear that quantity of consigned goods is shown to be 10430.7 kilograms. An amount of Rs.1276717.68/- has been paid as tax on the consignment whereas as per the State, it was 10520 kilograms. The said difference in weight is less than 1%. As per State, the alleged evasion shall not be more than Rs.11000/-.

(9) Keeping in view these circumstances, it cannot be said that the petitioner had any intent to evade the tax or the mismatch in the quantities is of such nature which shall entail proceedings under Section 129 of the Act. A person, who has already paid a tax of Rs.1276717.68/- on a consignment cannot be said to have an intent to evade tax amounting to Rs.11000/-. At this stage, Mr. Goyal states that the petitioner is ready to pay even the tax and penalty imposed by the State-Authorities which comes to be around Rs.22000/-.

(10) In light of the fair stand taken by the petitioner and the fact that the mismatch cannot be termed as contravention of the provisions of the Act, we deem it appropriate to allow the present writ petition. Proceedings against the petitioner under Section 129 of the Act are hereby quashed. Fine and penalty, if any, imposed against the petitioner and deposited by him, be refunded to him within a period of 15 days from the date of receipt of certified copy of this order. Since goods already stand released, no further order is required.

Shubreet Kaur