

**GIB/KL/SHEETAL JAIN/19.01.2021/HC-186**

**High Court Category :** CONFISCATION OF GOODS

**State :** Kerala

**Order No.:** GIB/KL/SHEETAL JAIN/19.01.2021/HC-186

**Name of Entry :**  
SR.SHEETAL JAIN

**Date :** 19-01-2021

**Breif Issue :**

**FACTS AND ISSUE OF THE CASE:**

In this case petitioner drew attention to Ext.P2 notice and argued that the respondent department has not followed the provisions of Section 129 of the Central Goods and Services Tax Act, 2017. He contended that Ext.P2 notice reflects that the goods viz-a-viz jewellery items were seized and detained by the respondent authorities and as such, the respondent authority was duty bound to issue notice as envisaged under Section 129(3) of the GST Act, specifying the tax and penalty payable and then to proceed to pass the order after hearing the petitioner.

In case of the adverse order, if any, the respondent authority was duty bound to grant time of 14 days to the petitioner to pay the amount of tax and penalty as per the provisions under Section 129(6) of the GST Act. In submission of the learned counsel appearing for the petitioner, in order to impose huge amount of the tax and penalty apart from confiscation of goods, the respondent authority resorted to the provisions of Section 130 of the GST Act and there is no basis for coming to prima facie conclusion that there was an attempt on the part of the petitioner to evade payment of tax under the GST Act. He argued that seized articles were in fact, samples meant for showing the same to the wholesalers for the purpose of soliciting business. According to the petitioner, Ext.P5 impugned order, nowhere points out as to which provision of the GST Act were contravened by the petitioner. Therefore, according to the learned counsel for the petitioner, the petition needs to be admitted with interim stay as prayed.

**Decision of Advance Ruling Authority :**

**DECISION:**

Perusal of section 129 of the GST Act, 2017 makes it clear that the authorities under the Act

are vested with powers to detain or seize and after detention or seizure to proceed further in the matter for assessing the tax and penalty, in case if it is found that the person transporting the goods or storing the goods while they are in transit indulge in contravention of the provisions of the GST Act or the Rules made thereunder. However, Section 130 of the GST Act deals with *mens rea* of a person who intends to avoid payment of taxes. If any person supplies or misuses any goods in contravention of the provisions of the GST Act or Rules with intend to evade payment of taxes or fails to account for any goods, on which he is liable to pay tax, the provisions of Section 130 of the GST Act applies.

Notice issued under section 130 of the GST Act (Ext.P2) makes it clear that, officers of the respondent department during shadow operation noticed two persons entering and coming out of the jewellery shop. The bags held by them were checked and those were found to be containing gold ornaments weighing 2270.13 grams including stone weight. Ext.P2 notice makes it clear that goods were not accompanied by any documents showing or reflecting payment of tax on them as per the provisions of the GST Act, 2017 - petition dismissed.