

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 359 OF 2023
(Arising out of SLP (C) No. 19295/2022)

THE STATE OF PUNJAB

Appellant(s)

VERSUS

M/S SHIV ENTERPRISES & ORS.

Respondent(s)

O R D E R

1. Leave granted.
2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 04.02.2022 passed by the High Court of Punjab and Haryana at Chandigarh in Writ Petition No. 18392 of 2021, by which the High Court has set aside the order of detention of the goods/vehicle dated 30.08.2021 issued by the Office of Assistant Commissioner State Tax, Mobile Wing, Chandigarh-2 and also the notice dated 14.09.2021 issued under Section 130 of the CGST Act, 2017, the State has preferred the present appeal.
3. We have heard learned counsel appearing for the respective parties at length.
4. From the notice dated 14.09.2021, it can be seen that the original writ petitioner was called upon to show cause within 14 days from the receipt of the said notice, as to why the goods in question and the conveyance used to transport such goods shall not be confiscated under the provisions of Section 130 of the Punjab GST Act, 2017 and IGST Act, 2017 and CGST Act, 2017 and why the tax, penalty and other charges payable in respect of such goods and the conveyance shall not be payable.
5. In the show cause notice, there was a specific allegation with

respect to evasion of duty, which was yet to be considered by the appropriate authority on the original writ petitioner's appearing before the appropriate authority, who issued the notice. However, in exercise of powers under Article 226 of the Constitution of India, the High Court entertained the writ petition against the show cause notice and set aside the show cause notice under Section 130 of the Act by observing in para 29 as under:-

"29. From the pleadings on record, it is clear that there is no allegation that the petitioner has contravened any provision of the Act or the rules framed thereunder much less with an intent to evade payment of tax. It is also not the case of the State that the petitioner did not account for any goods on which he is liable to pay tax under the Act or that he supplied any goods liable to tax under the Act without having applied for registration or that he supplied or received any goods in contravention of any of the provisions of the Act. From the perusal of show cause notice issued to the petitioner under Section 130, the case alleged against the petitioner is that of wrongful claim of input tax credit. The petitioner or for that matter any registered person shall be entitled to tax credit of input tax on any supply of goods or services, only when he shall is able to show that the tax in respect of such supply has been paid to the Government either in cash or through utilization of input tax credit admissible in respect of the said supply. Needless to reiterate any person can claim input tax credit under the provisions of the 2017 Act only if the same has been actually paid to the Government. Thus, the action of the respondents in initiating proceedings under Section 130 on the basis of show cause notice dated 14.09.2021 cannot be sustained.

Apart from the fact that the aforesaid is factually incorrect, even otherwise, it was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice under Section 130 of the Act was issued. Therefore, we are of the opinion that the High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same. However, at the same time,

the order passed by the High Court releasing the goods in question is not to be interfered with as it is reported that the goods have been released by the appropriate authority.

6. In view of the above and for the reasons stated above and without expressing anything on merits in favour of either parties, more particularly, against respondent-herein (original writ petitioner), on the aforesaid ground alone, we set aside the impugned judgment and order passed by the High Court to the extent quashing and setting aside the notice dated 14.09.2021, issued under Section 130 of the CGST Act and remand the matter to the appropriate authority, who issued the notice. It will be for the respondent-herein - original writ petitioner to file a reply to the said show cause notice within a period of four weeks from today and thereafter the appropriate authority to pass an appropriate order in accordance with law and on its own merits.

7. All the contentions/defences which may be available to the respondent-original writ petitioner are kept open to be considered by the appropriate authority in accordance with law and on its own merits.

8. The present appeal is partly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

.....J
(M.R. SHAH)

.....J
(C.T. RAVIKUMAR)

New Delhi;
January 16, 2023

ITEM NO.55

COURT NO.4

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19295/2022

(Arising out of impugned final judgment and order dated 04-02-2022
in CWP No. 18392/2021 passed by the High Court Of Punjab & Haryana
At Chandigarh)

THE STATE OF PUNJAB

Petitioner(s)

VERSUS

M/S SHIV ENTERPRISES & ORS.

Respondent(s)

Date : 16-01-2023 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE C.T. RAVIKUMARFor Petitioner(s) Ms. Nupur Kumar, AOR
Mr. Divyansh Tiwari, Adv.For Respondent(s) Mr. Sandeep Goyal, Adv.
Mr. Pawanshree Agrawal, AOR
Ms. Vidisha Swarup, Adv.
Ms. Shubhangi Negi, Adv.UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The present appeal is partly allowed to the extent as
indicated in the signed order.(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS(NISHA TRIPATHI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)