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“C.R”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE BASANT BALAJI

TUESDAY, THE 24TH DAY OF JUNE 2025 / 3RD ASHADHA, 1947

WA NO. 973 OF 2025

[AGAINST THE JUDGMENT DATED 11.04.2025 IN WP(C) NO.2082 OF 2025 OF HIGH COURT OF KERALA]

APPELLANT/PETITIONER:

MATHAI M.V., AGED 55 YEARS,
S/O. VERKEY, RESIDING AT MANGALATH HOUSE,
WEST VENGOLA P.O. PERUMBAVOOR,
ERNAKULAM, PIN - 683556.

BY ADV.SRI.FAIZEL K.

RESPONDENTS/RESPONDENTS:

- 1 THE SENIOR ENFORCEMENT OFFICER,
ENFORCEMENT SQUAD NOT, ERNAKULAM,
STATE GOODS AND SERVICES TAX DEPARTMENT,
SECOND FLOOR, SGST COMPLEX, PERUMANOOR,
ERNAKULAM, PIN - 683542.
- 2 THE PRINCIPAL SECRETARY,
THE DEPARTMENT OF FINANCIAL SERVICES,
MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
3RD FLOOR, JEEVAN DEEP BUILDING, SANSAD MARG,
DELHI, PIN - 110001.

BY SENIOR GOVERNMENT PLEADER DR. THUSHARA JAMES

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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“C.R”

JUDGMENTDated this the 24th day of June, 2025.**Nitin Jamdar, C. J.**

Being aggrieved by the dismissal of W.P.(C) No.2082 of 2025 by the judgment dated 11 April 2025, the Original Petitioner has filed this appeal under Section 5 of the Kerala High Court Act, 1958.

2. The Petitioner filed the writ petition stating that he is the owner of a truck bearing registration No. KL-31 J-5759. According to him, on 23 November 2024, his truck transported bilge water from INS Vikramaditya at the Cochin Wharf. On 25 November 2024, the Respondents – Authorities moved the truck to a Truck parking place. On 10 January 2025, the Petitioner received a copy of the detention order, which stated that a notice under Section 130 of the Central Goods and Services Tax Act, 2017 (the Act of 2017) was served on the consignor, Petro Chemicals, for alleged tax evasion.

3. The Petitioner challenged the detention, and the confiscation order issued under the Act of 2017 by filing W.P.(C) No. 2082 of 2025 on 17 January 2025. The Petitioner contended before the learned Single Judge that he had no knowledge or involvement in the alleged tax evasion and the vehicle was hired only to transport goods. He asserted that no notice or copy of the detention and confiscation orders pertaining to the vehicle was served on him.

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4. A counter affidavit was filed on behalf of Respondent No.1, contending that the Petitioner has approached the Court with unclean hands by misrepresenting facts. It was stated that, upon contacting the driver of the truck, it was found that no documents have been entrusted to him. The order of confiscation dated 21 December 2024 was duly received by the Petitioner. It was contended that on merits, the Petitioner does not have a good case. It was specifically asserted by the Respondents that there were repeated communications with the Petitioner through *WhatsApp*.

5. The learned Single Judge noted the contention of the Petitioner that he was not served with any notice or copy of the order of confiscation dated 21 December 2024 issued under Section 130 of the Act of 2017. The learned Single Judge also noted that the Petitioner had endorsed in the order dated 10 January 2025 that he had received the order. It was stated that the writ petition was filed on 17 January 2025 and there was no reference to the receipt of the order of confiscation. The learned Single Judge found that the contention regarding non-service of the confiscation order on the Petitioner cannot be accepted, and the petition was dismissed by the impugned judgment, leaving it open to the Petitioner to proceed as per the Act of 2017. Hence, this appeal.

6. We have heard Mr. Faizel K., learned counsel for the Petitioner, and Dr. Thushara James, learned Senior Government Pleader.

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7. There are two different facets. Service of notice prior to confiscation and service of confiscation order.

8. The primary contention raised before us by the learned counsel for the Petitioner is that no notice was issued to the Petitioner prior to the order dated 21 December 2024 passed under Section 130 of the Act of 2017 confiscating the vehicle No. KL-31 J-5759. Therefore, two questions arise. Firstly, whether a notice was served prior to the order under Section 130 of the Act of 2017, and secondly, whether a copy of the order passed under Section 130 was sent.

9. The order dated 21 December 2024 issued under Section 130 of the Act of 2017 was placed on record by way of additional counter affidavit in the writ petition. The order states that notice was given to the driver of the vehicle, Mr. Mari Selvam, and his statement was recorded. The order also states that notice was also stated to have been given to M/s. Petroliv Petroleums. Thereafter, the order proceeds to conclude that there was fraudulent transportation of Sullage without a valid document which attracts action under Section 130 of the Act of 2017. The Petitioner has placed on record a notice to show cause dated 5 November 2024 issued under Section 130 of the Act of 2017, which is addressed to M/s. Petroliv Petroleums, calling upon it to show cause why the goods and the conveyance should not be confiscated. There is no clarity in the counter affidavit as to the action for confiscation of the vehicle taken under Section 130 of the Act of 2017. The Petitioner has asserted that his

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vehicle continues to be in the custody of the Respondents and he is losing revenue. It was specifically stated in the counter affidavit filed on behalf of Respondent No.1 by the Deputy Commissioner (Law) before the learned Single Judge that the confiscation proceedings under Section 130 of the Act of 2017 stood concluded against the Petitioner by order dated 10 January 2025. This would suggest that the vehicle of the Petitioner is now confiscated.

10. Even assuming that the confiscation proceedings under Section 130 of the Act of 2017 against the Petitioners were not concluded, we had asked the learned Government Pleader to take instructions whether the Petitioner could be granted a hearing, and thereafter, the authority could pass a reasoned order, at least on the application for provisional release. After granting one week to take instructions, the learned Senior Government Pleader submitted that instructions have been received to contest the matter, thereby denying the Petitioner an opportunity of hearing. As regards the application for provisional release, the Respondents contended that since the proceedings under Section 130 of the Act of 2017 have concluded, the application cannot be entertained. This would mean that the proceedings under Section 130 were concluded against the Petitioner.

11. As regards the notice to be issued prior to the order dated 21 December 2024, the counter affidavit filed by Respondent No.1 only states that the vehicle was intercepted on 21 November 2024, the

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Petitioner was contacted, the driver's phone number was collected, and the driver appeared and gave a written statement. It was further stated that no documents corresponding to the goods loaded in the tanker lorry had been entrusted to him by M/s. Petroliv Petroleums.

12. Section 130 of the Act of 2017 provides for the confiscation of goods or conveyances and the levy of penalty. Section 130 reads thus:

“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 rule 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 pay penalty under section 122.

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

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

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

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

[* *]*

(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

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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.

This clause provides for provisions relating to confiscation of goods or conveyances. This clause also provides for a fine which shall be payable for release of such goods. (Notes on Clauses)."

*** (emphasis supplied)

Under Section 130(4), no order of confiscation of goods or conveyance shall be issued without giving the person an opportunity of being heard. That is so because the owner of the conveyance under Section 130(1)(v) has an opportunity to prove that the conveyance was used without his knowledge and connivance, or that of his agent or the person in charge of the conveyance.

13. For giving this opportunity, notice has to be served on the owner. The manner of serving notice under the Act of 2017 is provided under Section 169. Section 169 of the Act of 2017 reads thus:

*"169. Service of notice in certain circumstances.-
(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:--*

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised

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representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgment due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in subsection (1).

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(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

The Petitioner admittedly is the owner of the vehicle (conveyance). The statute prescribes the mode of notice. The notice stated to have been sent to the Petitioner/owner through *WhatsApp* is not a mode of service contemplated under Section 169 of the Act of 2017. While such a practice was permitted during the COVID-19 pandemic, it no longer constitutes a valid mode of issuing notice under the provisions of the Act of 2017, and there is no debate regarding the same. The notice served on the Petitioner before holding that the proceedings under Section 130 are concluded against the Petitioner is not placed on record. There is, therefore, a serious lacuna in the procedure adopted by the Respondents as far as confiscation of the Petitioner's vehicle is concerned. The Petitioner has consistently taken this stand.

14. The Petitioner has relied upon the decision of the Division Bench of the High Court of Gujarat at Ahmedabad in the case of *M/s Lakshay Logistics v. State of Gujarat*¹, and the decision of the High Court of Madras in the case of *M/s. Poomika Infra Developers, Erode and others v. State Tax Officer and others*². In the case of *M/s Lakshay Logistics*, the

1 Order dated 23/10/2020 in R/Special Civil Application No. 11369 of 2020.

2 Order dated 09.04.2025 in WP Nos.33562 of 2024 and etc., batch.

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Division Bench has taken the view that proceedings initiated under Section 130 of the Act of 2017 would be without jurisdiction if notice is not served on the person interested and the owner.

15. The Petitioner's conveyance was seized without there being any notice as contemplated under Section 130 of the Act of 2017. In such circumstances, we find that the decision rendered by the Division Bench of the Gujarat High Court in the case of *M/s Lakshay Logistics* would squarely apply to the case of the Petitioner. In this decision, the Division Bench of Gujarat High Court set aside the order passed under Section 130 of the Act solely on the ground of non-service of notice. Therefore, the proceedings stated to have been concluded against the Petitioner under Section 130 of the Act of 2017 in respect of the vehicle (Truck No. KL-31 J-5759) are without jurisdiction for want of valid notice.

16. Accordingly, the Appeal is allowed. The judgment of the learned Single Judge dated 11 April 2025 in W.P.(C) No.2082 of 2025 and the order of confiscation/detention proceedings in respect of the Petitioner's vehicle (Truck No. KL-31 J-5759) dated 21 December 2024 are quashed and set aside. The matter is remanded to the competent authority for fresh consideration. The Respondents will issue notice to the Petitioner as contemplated under Section 130 of the Act of 2017, and thereafter, pass orders in accordance with law after giving an opportunity of hearing to the Petitioner within three weeks from the date the Petitioner appears

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before the Authority, which will be within one week from today. The Petitioner will co-operate with the proceedings.

17. We make it clear that we have not gone into the merits of the action of confiscation. It is also clarified that this judgment will not affect the order of confiscation of the goods of which the Petitioner is not the owner.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
BASANT BALAJI,
JUDGE

krj/-

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P.A. TO C.J.