

## Salim P.A Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 30, 2025

**Acts Referred:** Central Goods and Services Tax Act, 2017 â€” Section 129(1), 130

**Hon'ble Judges:** Dr. A.K.Jayasankaran Nambiar, J; Easwaran S, J

**Bench:** Division Bench

**Advocate:** K.P.Pradeep, T.T.Biju, T.Thasmi, M.J.Anooa, Pooja V.M., V.K Shamsudheen

**Final Decision:** Allowed

### Judgement

Dr. A.K.Jayasankaran Nambiar, J.

1. This Writ Appeal is preferred by the petitioner in Writ petition (C) No. 3411 of 2025, aggrieved by the judgment dated 28.01.2025 of the learned

Single Judge dismissing the writ petition.

2. The Brief facts necessary for disposal of this Writ Appeal are as follows:- The appellant runs a proprietary concern dealing in scrap materials under

the name M/s Oriental Metals. In the writ petition he was aggrieved by the proceedings initiated against him under Section 129(1) of the GST Act,

2017 and notice issued under Section 130 of CGST Act/SGST Act and he sought for a declaration that the notices issued under those Sections were

illegal. He also sought for a release of the consignment of goods and the conveyance that were detained by the respondents in connection with the

notice issued to him under Sections 129(1) and 130 of CGST Act/SGST Act.

3. The contention of the appellant in the Writ petition was essentially that while the notice issued to him stated that the detention of the goods and

conveyance was on account of an alleged non-production of valid transport documents at the time of detention of the consignment of goods, the

subsequent notices issued to him clearly indicated that the reason for continuing the detention was the allegation that he had obtained goods from non-

existing dealers in the past. In other words the subsequent notices received by the appellant revealed that the reasons that formed the basis of the

detention, were found to be non-existent at subsequent stages of the investigation and it was different reasons that informed the continued detention of

the consignment of goods and the conveyance.

4. The learned Single Judge who considered the matter took note of the subsequent reasons that were urged by the revenue for the purpose of

detaining goods, and also the main contention of the respondents that the proprietary concern of the appellant had colluded with fraudulent activities of

dealers with bogus GST registrations and received bogus invoices without actual receipt of bills, to find that the appellant had not made out a case for

a provisional release of the goods that were detained. Taking further note of the submission of the respondents that the adjudicating proceeding under

Section 130 of the GST Act would be completed within a short time, the learned Single Judge dismissed the Writ petition and relegated the appellant to

pursue his statutory remedies against any order that was to be passed by the respondents.

5. Before us it is submission of Sri. Dr. Pradeep K.P, the learned counsel for the appellant that, the learned Single Judge did not consider the fact that

the detaining authority had given up their original reason for detaining the goods and had now sought to justify the detention on grounds that were

entirely different from those that formed basis of the detention itself. It is his submission therefore that the subsequent grounds cited by the detaining

authority could not have justified the detention of a consignment of goods that had nothing to do with those reasons. In other words he impugns the

proceeding initiated against him under Section 130 of the CGST/SGST Act as without jurisdiction.

6. Per contra the learned Government Pleader, Sri. Shamsudheen places reliance on the finding of the learned Single Judge in the impugned judgment

to contend that adverse inferences having been drawn by the respondents based on the documents available with them, there was no necessity for

interfering with the impugned judgment in the present appeal.

7. On a consideration of the rival submissions, we are of the view that while it is trite that this Court would not ordinarily interfere with proceedings

initiated by the GST authorities in matters of detention of goods in transit, this Court cannot shut its eyes to glaring irregularities/illegalities committed

by the detaining authorities, such as in the instant case. It is clear from a perusal of the documents produced before us that the grounds that informed

the original detention were given up by the authorities at later stages of the proceedings, and the continued detention was justified based on events that

happened in the past and had nothing to do with the goods or the conveyance that formed the subject matter of the first notice issued to the appellant.

Under the said circumstances, and considering that the adjudication under Section 130 is yet to take place, we deem it appropriate to permit the

release of the consignment of the goods and the conveyance in these proceedings on the appellant furnishing a bond for the value of the goods in the

form GST/INS 04, and furnishing security in the form of bank guarantee for an amount equivalent to the amount of penalty shown in Ext.P6

document. We make it clear that on the appellant furnishing the bond and bank guarantee as aforesaid the respondents shall forthwith release the

consignment of goods and conveyance and thereafter proceed to adjudicate the issue and pass orders thereon after hearing the appellant. We also

make it clear that we have not decided the issue with regard to the legality of the proceedings initiated under Section 130 and the observations in this

judgment are to be taken solely as a prima facie view based on the documents available before us. The adjudicating authority shall however consider

the all legal contentions raised by the appellant at the time of hearing and pass a reasoned order dealing with said contentions.

The appeal is therefore allowed as above.