

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA,
1942

RP.No.930 OF 2020 IN WP(C). 23397/2020

AGAINST THE ORDER/JUDGMENT DATED 02.11.2020 IN WP(C)
23397/2020(Y) OF HIGH COURT OF KERALA

REVIEW PETITIONERS/RESPONDENTS 1 TO 3 IN WP(C):

- 1 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY(TAXES), GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, KERALA-695 001
- 2 THE COMMISSIONER OF KERALA STATE GST,
KERALA STATE GST DEPARTMENT, TAX TOWER,
KILLIPALAM, KARAMANA P.O.,
THIRUVANANTHAPURAM, KERALA-695 002
- 3 THE ASSISTANT STATE TAX OFFICER,
SURVEILLANCE SQUAD NOL1, KERALA SGST DEPARTMENT,
MUTHANGA, WAYANAD-673 592

BY GOVERNMENT PLEADER DR.SMT.THUSHARA JAMES

RESPONDENTS/PETITIONER AND RESPONDENTS 4 TO 7 IN WP(C):

- 1 MOHAMMED SHEREEF
SON HUSSAIN, PROPRIETOR, HAYAT TRADERS, NELLIMALA
BUILDINGS, K.E ROAD, 1ST MILE, KANJIRAPPALLY,
KOTTAYAM-686 507
- 2 CHIEF COMMISSIONER OF CENTRAL TAX (CGST) AND
CENTRAL EXCISE,
CENTRAL REVENUE BUILDINGS, I.S PRESS ROAD, COCHIN,
ERNAKULAM-682 018
- 3 GOODS AND SERVICE TAX COUNCIL,
GOVERNMENT OF INDIA, OFFICE OF THE GST COUNCIL
SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARATI
BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW
DELHI-110 001, REPRESENTED BY ITS ADDITIONAL
SECRETARY

4 GOODS AND SERVICE TAX NETWORK,
 EAST WING, 4TH FLOOR, WORLD MARK-I, AEROCITY, NEW
 DELHI-110 037, REPRESENTED BY ITS CHIEF EXECUTIVE
 OFFICER

5 HONNAPPA.K.M,
 THOTADA MANE, BEBBASUR AT PART, CHEMRAJ NAGAR,
 KARNATAKA-571 313

BY ADV.DR.SRI.K.P.PRADEEP
BY ADV.SRI.P.R SREEJITH

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
16.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This Review Petition has been filed by the State seeking to review the judgment dated 02.11.2020 in W.P(C).No.23397 of 2020. By the said judgment, which considered the legality of the detention of a consignment of goods at Muthanga, Wynad, during the course of interstate transportation, this Court had, taking note of the fact that the consignment was not covered by a valid delivery chalan that was one of the prescribed documents for transportation of exempted goods, found that the detention was justified. It was, however, held that the petitioner would only have to pay the lessor of an amount equal to 5% of the value of the goods or Rs.25,000/-, in terms of Section 129 (1)(b) of the CGST Act for obtaining a release of the goods and the vehicle.

2. In the Review Petition, it is the case of the State that, once it was found that the detention was justified, it was incumbent upon the petitioner to pay not only the amount of Rs.25,000/- in terms of Section 129(1)(b) of the CGST Act but also a similar amount under Section 129(1)(b) of the SGST Act since the tax payment under the IGST Act included components of the tax payable under both the CGST and SGST Acts. It is for correcting the said alleged error that the judgment is

sought to be reviewed.

3. I have heard Dr.Smt.Thushara James, the learned Government Pleader for the review petitioner and Dr.Sri.K.P.Pradeep, the learned counsel for the respondents Writ Petitioner.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that, for the reasons that are to follow, the impugned judgment does not call for any review. It has to be borne in mind that when goods are detained in the course of interstate transportation, the power to detain stems from Section 20 of the IGST Act which makes the provisions of the CGST Act, in relation to offences and penalties, inspection, search, seizure, arrest etc., applicable *mutatis mutandis* in relation to integrated tax, as if they were enacted under the IGST Act. The 4th proviso to Section 20 of the IGST Act provides that where penalty is leviable under the CGST Act and the SGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties.

5. The question that arises in the instant case is whether the 4th proviso would be attracted to the detention that was the subject matter of the Writ Petition aforementioned more so when the transportation

involved was of exempted goods. In this connection, it would be worthwhile to consider the provisions of Section 129 (1)(b) of the CGST, which reads as follows:

“129. Detention, seizure and release of goods and conveyances in transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-

(a) xxxxxx

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods

does not come forward for payment of such tax and penalty;"

6. It is clear from a reading of the aforesaid provision that when exempted goods are transported inter-state, in contravention of the provisions of the CGST Act, the goods and the conveyance used for transportation are liable to detention and can be released on payment of an amount equal to 5% of the value of the goods or 25,000 rupees whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty. In the instant case, it is not in dispute that it was not the owner of the goods, who came forward for the payment of tax and penalty. It is also not in dispute that there was no occasion for payment of any tax and penalty as the goods under transportation were exempted from tax under the IGST Act. The only amount to which the writ petitioner was liable was the amount equal to 5% of the value of the goods or 25000 rupees whichever was less as mandated under Section 129(1)(b) of the CGST Act.

7. It has to be borne in mind that in the case of an interstate transaction the applicable statute is the IGST Act and the power of detention is exercised by virtue of the provisions of Section 20 of the IGST Act read with Section 129 of the CGST Act. There is no reference to

the provisions of the SGST Act in Section 20 of the IGST Act, save for the mention in the 4th proviso to Section 20. In my view, the 4th proviso would be attracted only in a situation where, in respect of an interstate transaction, there is a liability to pay tax under the IGST Act that includes components of tax under the CGST and SGST Acts or where a penalty based on tax liability is attracted under both of the said enactments. In the case of an interstate transportation of exempted goods, the phrase used in Section 129 of the CGST Act that is *mutatis mutandis* made applicable to the IGST Act, is “payment of an amount equal to 5% of the value of goods or 25000 rupees whichever is less”. The legislature appears to have used the words “penalty” and “an amount” distinctively and hence they cannot be seen as amounting to the same thing. In my view, the word ‘amount’ has to be seen as referring to a civil liability that accrues to the owner of the goods or such other person at whose instance an interstate transportation of the goods contrary to the provisions of the CGST Act is occasioned. When so viewed, the inference is inescapable that the amount to be collected from a person who is found to have transported exempted goods contrary to the provisions of the IGST Act, can only be such amount as is found payable under the CGST Act since it is the provisions of that Act that are to be deemed as enacted under the IGST Act. In other words, there is no provision that requires one to treat the provisions of the SGST Act as

forming part of the IGST Act.

The upshot of the above discussion is that the liability of a person, who is not the owner of the goods, and who has transported exempted goods in contravention of the IGST Act, can only be in an amount equal to 5% of the value of the goods or 25000 rupees whichever is less, as specified under the CGST Act. He cannot be further mulcted with a similar amount under the SGST Act since the provisions of tax and penalty under the SGST Act are not attracted to the inter-state transaction of exempted goods covered by the IGST Act. I, therefore, see no reason to review the judgment impugned in the Review Petition. The Review Petition fails and is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE