

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 06TH DAY OF NOVEMBER 2020 / 15TH KARTHIKA, 1942

WP(C).No.22016 OF 2020(B)

PETITIONER/S:

- 1 VEER PRATAB SINGH
AGED 34 YEARS
S/O RAMKUMAR SINGH, PROPRIETOR, MAHALAKSHMI
DISTRIBUTORS, NO 2-23A/.1 RAVI THEATER ROAD SRB MILL
SIVANADHAPURAM, COMBATORE, TAMIL NADU-641 035.
- 2 CHETAN MAGANLAL SABHAYA,
AGED 39 YEARS
S/O MAGANLAL SABHAYA, PROPRIETOR, VRAJ PRODUCTS NO
4335, GIDC PHASE-3, DARED JAMNAGAR, GUJARAT-361 004.

BY ADVS.
DR.K.P.PRADEEP
SHRI.HAREESH M.R.
SRI.T.T.BIJU
SMT.T.THASMI

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY (TAXES), GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, KERALA-695 001.
- 2 COMMISSIONER OF KERALA
STATE GST KERALA STATE GST DEPARTMENT, TAX TOWERS,
KILLIPALAM, KARAMANA P.O.THIRUVANANTHAPURAM, KERALA-
695 002.
- 3 ASSISTANT STATE TAX OFFICER,
SQUAD-VI, OFFICE OF THE DEPUTY COMMISSIONER OF STATE
TAX, INTELLIGENCE, KERALA SGST DEPARTMENT, PALAKKAD-
678 001.
- 4 CHIEF COMMISSIONER OF CENTRAL TAXES,
(CGST) AND CENTRAL EXCISE) CENTRAL REVENUE BUILDINGS,
I.S PRESS ROAD, COCHIN, ERNAKULAM-682 018.
- 5 GOODS AND SERVICE TAX COUNCIL,

GOVERNMENT OF INDIA, OFFICE OF THE GST COUNCIL
SECRETARIAT, 5TH FLOOR, TOWER 11, JEEVAN BHARTI
BUILDING, JANPATH ROAD, CONNAUGHT PLACE , NEW
DELHI-110 001, REPRESENTED BY ITS ADDITIONAL
SECRETARY

- 6 GOODS AND SERVICE TAX NET WORK,
EAST WING 4TH FLOOR, WORLD MARK-1, AEROCITY, NEW
DELHI-110 037, REPRESENTED BY ITS CHIEF EXECUTIVE
OFFICER.

R1-3 BY GOVERNMENT PLEADER
R4-6 BY SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CENTRAL
BOARD OF EXCISE & CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioners are dealers, *inter alia*, in brass and copper scraps, having their business concern in Coimbatore, Tamil Nadu and Jamnagar, Gujarat, respectively. A consignment of scrap that was being transported from Coimbatore to Gujarat from the 1st petitioner, as consigner, to the 2nd petitioner, as consignee, was detained by the respondents at Kodumuda in Palakkad. The detention notice issued to the petitioners indicates that the reason for detention was that the documents that accompanied the transportation of the goods were found to be defective. The consignment in question was accompanied by a tax invoice and an e-way bill that showed payment of IGST as also that the transportation of the goods was from Coimbatore to Gujarat. The respondents, however, obtained evidence that suggested that the loading of the consignment was effected in Palakkad, within the State of Kerala, and not in Coimbatore. While the detention of the goods may have been justified on the said ground, and based on the material available with the respondents to suggest that the transportation shown in the e-way bill was not the actual transportation of the goods in question, the respondents went further, and invoked the provisions of Section 130 of the GST Act, to serve a notice in FORM GST MOV-10 on the petitioners. While the petitioners submitted their replies to the said notice, and thereafter appeared before the respondents for a hearing in connection with the said notice, their contentions were rejected, and an order of confiscation was passed under Section 130 of the CGST Act, confiscating the goods and the vehicle. In the writ petition, the

petitioners impugn the confiscation order passed against them by the respondents.

2. The learned Government Pleader would rely on the documents produced by her along with memos to show that there was ample material available with the Department to proceed against the petitioners in terms of Section 130 of the GST Act.

3. I have heard Dr.Sri.K.P.Pradeep, the learned counsel appearing for the petitioners and also Dr.Smt.Thushara James, the learned Government Pleader appearing for the official respondents of the State.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that while the respondents were justified in detaining the goods and the vehicle, based on the material that was available with them which clearly showed that the transportation undertaken by the petitioners, of the goods in question, was not necessarily from Coimbatore as was declared in the invoice and the e-way bill that were produced by the petitioners, the said material does not point to any intention to evade tax, more so when, there is nothing to doubt the genuineness of the declaration of the petitioners that the goods were consigned to Gujarat from Coimbatore, or any material to suggest that the ultimate destination of the goods was any place other than Gujarat. It has to be noticed that the 1st petitioner had admitted his liability to IGST by declaring the same in

the invoice, and if the goods, even assuming that they were loaded from Palakkad, were destined to Gujarat, it is the IGST that had to be paid by the 1st petitioner/consigner of the goods. To that extent, therefore, it cannot be said that there was any intention to evade payment of tax because the tax liability, in either event, would be the same. That apart, there is no specific averment in the notice served on the petitioners, as regards any act or omission, that was suggestive of an intention to evade payment of tax. I therefore find that the proceedings initiated against the petitioners under Section 130 of the GST Act, cannot be legally sustained. The impugned order under Section 130 of the GST Act is therefore quashed, and the respondents are directed to pass orders under Section 129(3) of the GST Act, after hearing the petitioners, within a week from the date of receipt of a copy of this judgment.

In the meanwhile, however, the respondents shall permit the petitioners to clear the goods and the vehicle on furnishing a bank guarantee for the tax and penalty amounts determined, consequent to the detention of the goods and the vehicle. I make it clear, however, that after the release of the goods and the vehicle, as above, and after passing the final order under Section 129(3), if the said order is adverse to the petitioners, the respondents shall refrain from invoking the bank guarantee furnished by the petitioners for a period of three weeks from the date of communication of the order under Section 129(3) to the petitioners, so as to enable the petitioners to invoke their appellate remedy, if they so desire.

The writ petition is disposed as above. The Government Pleader

shall communicate the gist of this judgment to the respondents so as to enable the petitioners to effect an expeditious clearance of the goods and the vehicle, on their furnishing a bank guarantee for the amount of tax and penalty determined by the respondents.

Sd/-

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

SJ

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE REGISTRATION CERTIFICATE IN FORM GST REG-06 ISSUED DATED 28.12.2019 TO THE 1ST PETITIONER
EXHIBIT P2	TRUE COPY OF THE REGISTRATION CERTIFICATE IN FORM GST REG-06 ISSUED DATED 26.11.2018 TO THE 2ND PETITIONER
EXHIBIT P3	TRUE COPY OF THE INVOICE NO MD/GST/171 DATED 9.10.2020 ISSUED BY THE 1ST PETITIONER TO THE 2ND PETITIONER
EXHIBIT P4	TRUE COPY OF THE E WAY BILL NO 521208038018 DATED 10.9.2020 GENERATED BY THE 1ST PETITIONER
EXHIBIT P5	TRUE COPY OF THE FORM GST MOV 01 IN VC/VI/235/20-21 DATED 9.10.2020 ISSUED BY THE 3RD RESPONDENT
EXHIBIT P6	TRUE COPY OF THE FORM GST MOV 02 IN VC/VI/235/20-21 DATED 9.10.2020 ISSUED BY THE 3RD RESPONDENT
EXHIBIT P7	TRUE COPY OF THE REPLY DATED 13.10.2020 SUBMITTED BY THE 1ST PETITIONER TO THE 3RD RESPONDENT
EXHIBIT P8	TRUE COPY OF THE COMPLAINT DATED 15/10/2020 SUBMITTED TO THE DEPUTY COMMISSIONER, KSGST, PALAKKAD
EXHIBIT P9	TRUE COPY OF THE CIRCULAR NO.41/15/2018/GST DATED 13/4/2018
EXHIBIT P10	TRUE COPY OF THE CIRCULAR NO.49/23/2018-GST DATED 21/6/2018
EXHIBIT P11	TRUE COPY OF THE FORM GST MOV 04 IN VC/V1/235/20-21 DATED 9/10/2020

EXHIBIT P12	TRUE COPY OF THE FORM GST MOV 06 IN VC/V1/235/20-21 DATED 20/10/2020
EXHIBIT P13	TRUE COPY OF THE FORM GST MOV 10 IN VC/V1/235/20-21 DATED 20/10/2020
EXHIBIT P14	TRUE COPY OF THE SUMMONS IN VC/V1/235/20-21 DATED 20/10/2020
EXHIBIT P15	TRUE COPY OF THE REPLY FILED IN EXT P13 NOTICE ON 26/10/2020
EXHIBIT P16	TRUE COPY OF THE ORDER NO.VC/V1/235/20-21 DATED 30/10/2020