IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 27TH DAY OF NOVEMBER 2019 / 6TH AGRAHAYANA, 1941

WP(C).No.31965 OF 2019(U)

PETITIONER:

M/S POLYCAB INDIA LIMITED
HALOL - UNIT 4, PLOT 67-69, 105-106, NURPURA ROAD
BASKA, HALOL DIST., PANCHMAHAL, HALOL - 389350,
REPRESENTED BY ITS AUTHORIZED SIGNATORY MR. M.
SEBASTIAN.

BY ADVS.
SRI.A.KUMAR
SRI.P.J.ANILKUMAR
G.MINI
SRI.P.S.SREE PRASAD
JOB ABRAHAM
SRI.AJAY V.ANAND

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY (TAXES), DEPARTMENT OF
FINANCE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM -
695 001.

2 COMMISSIONER OF COMMERCIAL TAXES
TAX TOWER, KILLIPPALAM, KARAMANA P. O.,
THIRUVANANTHAPURAM - 695 002.

3 ASSISTANT STATE TAX OFFICER
SQUAD NO.VII, STATE GST DEPARTMENT, ERNAKULAM, KERALA
- 682018.

SMT. THUSHARA JAMES; GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.11.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P8 order, by which the goods belonging to the petitioner, were detained by the 3rd respondent, and a tax and penal liability determined by the said respondent. It is the case of the petitioner that the transaction in question involved a sale from the vendor in Gujarat, to the purchaser in Uttarakhand, and pursuant to the instructions received from the purchaser, the goods were consigned to a destination in Trivandrum. The tax invoice issued in this regard, under the Central Goods and Service Tax Act and Rules, clearly indicated that the sale was from the vendor in Gujarat to the purchaser in Uttarakhand and the delivery was to be effected at Trivandrum. The E-way bill that was prepared for covering the transportation also indicated the same details. Nevertheless, the goods were detained by the 3rd respondent on the ground that there was a possibility of evasion of payment of IGST in Kerala and further, that the consignee of the goods in Kerala was indicated as an unregistered dealer at the time of detention of the goods.

2. It is the submission of the learned counsel for the petitioner that the reasons shown in Ext.P7 notice and Ext.P8 order cannot justify a detention of the goods under Section 129, since the said reasons are wholly extraneous to the requirements of the said Section. It is in particular, pointed out that the E-way bill clearly covered the transaction from Gujarat to Trivandrum, and the invoice that covered the transaction was a 'Bill to/ship to' model, which was permissible under the CGST/SGST Act and Rules. As regards the registration

details of the consignee, it is stated that while at the time of detention, it was assumed that the consignee was an unregistered dealer, immediately thereafter, the details of the registration of the consignee was made available to the respondent, and the fact of receipt of such information is acknowledged in Ext.P8 order served on the petitioner.

3. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the Bar and taking note of the factual circumstances narrated above, I am of the view that there was no justification for detention of the goods in terms of Section 129 of the CGST/SGST Act. This is more so because the reasons stated in the detention order are wholly irrelevant for the purposes of S.129 of the Act. I therefore, direct the 3rd respondent to release the goods and vehicle to the petitioner, on the petitioner producing a copy of this judgment, before the said respondent. The 3rd respondent may thereafter, forward the files to the adjudicating authority for an adjudication under Section 130 of CGST/SGST Act.

This writ petition is disposed as above.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

SJ

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE INVOICE NO.GJ29AS-1920101237 DATED 26.10.2019.**
EXHIBIT P2	**TRUE COPY OF THE E-WAY BILL DATED 26.10.2019.**
EXHIBIT P3	**TRUE COPY OF THE CONSIGNOR COPY OF THE LORRY RECEIPT.**
EXHIBIT P4	**TRUE COPY OF THE GST MOV 01.**
EXHIBIT P5	**TRUE COPY OF THE GST MOV 02.**
EXHIBIT P6	**TRUE COPY OF THE GST MOV 04.**
EXHIBIT P7	**TRUE COPY OF THE GST MOV 06.**
EXHIBIT P8	**TRUE COPY OF THE GST MOV 07.**
EXHIBIT P9	**TRUE COPY OF THE REPLY DATED 11.11.2019.**
EXHIBIT P10	**TRUE COPY OF THE INTERIM ORDER DATED 24.10.2018 IN WPC NO.34461 OF 2018.**