

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY ,THE 27TH DAY OF NOVEMBER 2018 / 6TH AGRAHAYANA,
1940

WP(C) .No. 38306 of 2018

PETITIONER/S:

CARPENTERS CLASSICS INDIA PVT. LTD. ,
NO.28, GROUND FLOOR, MUSCAT TOWERS, S.A.
ROAD,, KADAVANTHRA, KOCHI - 682 020.
(REPRESENTED BY SMT.NIRMALA C.P., AUTHORISED
SIGNATORY) .

BY ADVS.
SRI.K.N.SREEKUMARAN
SRI.N.SANTHOSHKUMAR
SRI.P.J.ANILKUMAR (A-1768)

RESPONDENT/S:

- 1 ASSISTANT STATE TAX OFFICER,
STATE GOODS AND SERVICE TAX DEPARTMENT,
SURVEILLANCE SQUAD NO.15, WAYANAD,
MUTHANGA, PIN - 673 121.
- 2 COMMISSION OF STATE TAXES,
TAX TOWER, KARAMANA,
THIRUVANNATHAPURAM-695002.
- 3 STATE OF KERALA,
REPRESENTED BY IT'S SECRETARY TO TAXES,
SECRETARIAT, THIRUVANANTHAPURAM-695002.

OTHER PRESENT:

DR. THUSHARA JAMES, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, based at Bangalore, imports Kitchen cabinets, then, supplies and installs them in the houses of the customers, on their placing the orders. On 21.11.2018, the petitioner sent a consignment of three sets of kitchen cabinets to be installed in the houses of the customers in Thalassery and Kozhikode. The petitioner proposed to send them to Ernakulam and from there, it wanted to distribute to the customers at Thalassery and Kozhikode, through local conveyance. The petitioner thus claims to have generated the invoice and e-way bill at 5.57 PM on 21.11.2018 and dispatched the goods through a truck.

2. As the petitioner pleads, because of the customers' demand and also as a matter of commercial expediency, rather than route the consignment through Ernakulam, it sent the goods directly to the customers. *En route*, the Assistant State Tax Officer intercepted

the goods and detained them. On his demand, the vehicle driver showed the invoices and e-way bills meant for intra-state transport, that is from Ernakulam to Thalassery and Kozhikode. He could not show the e-way bill from Bangalore to Ernakulam.

3. In response to the statutory notice issued, the petitioner submitted the Ext.P15 reply, besides pleading personally before the authorities for the release of the goods. But as the Assistant State Tax Officer persisted with the demand of statutory compliance under Section 129 of the GST Act, for the provisional release of the goods, the petitioner has filed this writ petition.

4. Sri K. N. Sreekumaran, the petitioner's counsel has advanced his arguments laced with emotion and a bit of rhetoric, too. He stressed that despite the change in tax regime, the authorities still refuse to change their mind set. According to him, the authority's literal approach is virtually stifling every industry and dampening the entrepreneurial spirit of the business people, as well.

5. Sri Sreekumaran also contends that even before the consignment could be dispatched from Bangalore, the petitioner

generated the e-way bill online—and it is a verifiable fact. Though the driver carried the bill physically, as he is illiterate or semi-literate, he could not understand what the Assistant Tax Officer demanded. Perhaps panicked, he produced only the invoices and the local e-way bill, but not the e-way bill first generated for transporting the consignment from Bangalore to Ernakulam. Sri Sreekumaran also asserts that, viewed from any perspective, there is no tax evasion. Not even the authorities could entertain any such suspicion because the entire transaction is above board. He has fervently pleaded that it is a fit case where the Court should take a pragmatic view, instead of a pedantic one.

6. In response, Dr.Thushara James, the Government Pleader, has drawn my attention to Rule 138A of the GST Rules. According to her, though the e-way bill, once generated, could be verified on-line, the legislature and the executive in their wisdom have mandated under this Rule that the consignment should carry a copy of the e-way bill in physical form, or at least its number in the electronic form. Therefore, the Assistant State Tax Officer has detained the

goods only in compliance with Rule 138A, she adds.

7. Dr. James has also submitted that after getting the goods provisionally released under Section 129(3) of the GST Act, in the adjudication by the State Tax officer, the petitioner can put forward all its defences and may avoid any fine or penalty.

8. Heard Sri K. N. Sreekumaran, the learned counsel for the petitioner and Dr. Thusahara James, the learned Government Pleader for the respondents.

9. Indeed, I reckon the petitioner may have a genuine grievance. I also accept that it may not have tried to evade any tax. And the transaction, in that sense, could have been above board. That said, I must also note that the Assistant State Tax Officer followed only the law—especially, Rule 138A. And that rule reads thus:

138A. Documents and devices to be carried by a person- in-charge of a conveyance.-(1) The person in charge of a conveyance shall carry-

- (a) the invoice or bill of supply or delivery challan, as the case may be; and
- (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel: [Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in **Part A** of **FORM GST EWB-01**.

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in **FORM GST IN V-1** and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading

(3) Where the registered person uploads the invoice under sub-rule (2), the information in **Part A** of **FORM GST EWB-01** shall be auto-populated by the common portal on the basis of the information furnished in **FORM GST INV-1**.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, he Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill.

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply."

10. As the learned Government Pleader has rightly contended, if online generation of e-way bill suffices, the Rule would not have insisted on the consignment carrying a copy of the bill or the number in electronic form. At any rate, the issue now concerns only the provisional release and the statute provides an efficacious mechanism for that. Of course, the statutory compliance for the provisional release does visit on the petitioner with certain financial burden, as it has to produce the Bank Guarantee. But the pleas now the petitioner's counsel has urged before me are the ones that deserve consideration on merits, when the State Tax Officer decides on the legality of detention.

11. I may add a word in response to the petitioner's plea that the Court should adopt a pragmatic view rather than a pedantic one. True. But in the name of interim orders and in the name of our exercising judicial discretion at the threshold, we cannot afford to chip away at the statutory scheme—especially if the scheme has an

economic efficacy. I do agree that under exceptional circumstances, we can soften the rigour of the law, but can ill afford to ignore the law. The issues the petitioner raised here are the ones to be considered on merits finally—but not at the threshold and definitely not as a *prima facie* factor.

Under these circumstances, preserving the petitioner's right to advance all its pleas before the State Tax Officer, I dispose of the writ petition, holding that the authorities will release the goods if the petitioner complies with Section 129(3) of the GST Act.

Sd/-

DAMA SESHADRI NAIDU

JUDGE

das

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE INVOICE NO.BNG/0423/2018-19 DATED 21.11.2018 ISSUED TO THE PETITIONER FROM ITS HEAD OFFICE
EXHIBIT P2	THE COPY OF E-WAY BILL NO.121083533279 DATED 21.11.2018 GENERATED ON LINE AGAINST EXT-P1
EXHIBIT P3	TRUE COPY OF THE INVOICE NO.KOC/0003/2018-19 DATED 21.11.2018 ISSUED BY THE PETITIONER TO SRI.RANJITH MENON, VALICUT
EXHIBIT P4	THE COPY OF E-WAY BILL NO.561068566665 DATED 21.11.2018 ISSUED AGAINST EXT-P3
EXHIBIT P5	TRUE COPY OF THE INVOICE NO.KOC/0004/2018-19 DATED 21.11.2018 ISSUED BY THE PETITIONER TO SRI.JAFFER, CALICUT
EXHIBIT P6	THE COPY OF E-WAY BILL NO.541068570798 DATED 21.11.2018 ISSUED AGAINST EXT-P5
EXHIBIT P7	TRUE COPY OF THE INVOICE NO.KOC/0005/2018-19 ISSUED BY THE PETITIONER TO MRS.PRIYA PREJITH
EXHIBIT P8	THE COPY OF E-WAY BILL NO.541068574141 DATED 21.11.2018 ISSUED AGAINST EXT-P7
EXHIBIT P9	TRUE COPY OF THE NOTICE NO.VCR-SSXV- 01/2018-19 DATED 21.11.2018 IN FORM GST MOV-01 ISSUED BY THE 1ST RESPONDENT

EXHIBIT P10	TRUE COPY OF THE NOTICE NO.VCR-SSXV-01/2018-19 DATED 22.11.2018 IN FORM MOV-02 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P11	TRUE COPY OF THE NOTICE NO.VCR-SSXV-01/2018-19 DATED 22.11.2018 IN FORM MOV-04 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P12	TRUE COPY OF THE NOTICE OR NO.SS/2018-19/35 DATED 22.11.2018 IN FORM MOV-06 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P12 A	TRUE COPY OF THE NOTICE OR NO.SS/2018-19/35 DATED 22.11.2018 IN FORM MOV-07 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P13	TRUE COPY OF THE NOTICE OR NO.SS/2018-19/36 DATED 22.11.2018 IN FORM MOV-06 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P13 A	TRUE COPY OF THE NOTICE OR NO.SS/2018-19/36 DATED 22.11.2018 IN FORM MOV-07 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P14	TRUE COPY OF THE NOTICE OR NO.SS/2018-19/37 DATED 22.11.2018 IN FORM MOV-06 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P14 A	TRUE COPY OF THE NOTICE OR NO.SS/2018-19/37 DATED 22.11.2018 IN FORM MOV-07 ISSUED BY THE 1ST RESPONDENT