

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN  
&

THE HONOURABLE MR. JUSTICE ASHOK MENON

FRIDAY, THE 22ND DAY OF JUNE 2018 / 1ST ASHADHA, 1940

**W.A.No.1038 of 2018**  
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AGAINST THE INTERIM ORDER IN W.P(C) No.16303/2018 DATED 23-05-2018  
OF HIGH COURT OF KERALA.  
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APPELLANT(S)/ RESPONDENTS:-  
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- 1 THE ASSISTANT STATE TAX OFFICER,  
STATE GOODS AND SERVICES TAXES DEPARTMENT,  
SURVEILLANCE SQUAD, ANAPPARA BUILDING, LEO HOSPITAL ROAD,  
KALPETTA, WAYANAD-673121.
- 2 THE STATE TAX OFFICER,  
SURVEILLANCE SQUAD, STATE GOODS AND SERVICES TAX DEPARTMENT,  
ANAPPARA BUILDING, LEO HOSPITAL ROAD, KALPETTA,  
WAYANAD-673121.

BY SENIOR GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ.

RESPONDENT(S)/ PETITIONER:-  
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1. M/S ALFA ALUMINIUM,  
PEECHAMCODE, WAYANADU-670731,  
REGISTERED PARTNERSHIP FIRM  
REPRESENTED BY ITS MANAGER PARTNER YUNUS,S/O.AMMED,  
121, KUTTIPRAVAN, 10TH MILE, VELIYARANA,  
VELLAMUNDA PANCHAYATH, WAYANAD-670731.
2. M/S.ALUMINIUM HOUSE,  
GOVIND BUILDING, V.C.ROAD, MANANTHAVADY,  
A PROPRIETARY CONCERN OWNED BY ITS PROPRIETOR,  
MANOJ.N, REVATHI HOUSE, VEMOM POST, VINCENT GIRI,  
MANANTHAVADY, WAYANAD-673121.

R1 & R2 BY ADV.SRI.DINESH R.SHENOY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22-06-2018,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K. Vinod Chandran & Ashok Menon, JJ.

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W.A.No.1038 of 2018

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Dated, this the 22<sup>nd</sup> day of June, 2018

**JUDGMENT**

Vinod Chandran, J:

State is in appeal challenging the interim order passed by the learned Single Judge.

2. The respondents/writ petitioners, dealers under the Central Goods and Service Tax Act, 2017 [for brevity "CGST Act"], were transporting goods from Ernakulam, after powder coating, to their business premises at Wayanad. The goods were accompanied with the purchase invoice of the goods and also for powder coating, which is a 'service' under the CGST Act. However, there was a specification with respect to uploading of E-way bills as per Rule 138 of the Central Goods and Service Tax Rules. Only on uploading of E-way bill, would the Department be notified of purchase and movement, is the contention. Without that, there could be an evasion suspected. The learned Single Judge found that the case of the writ petitioners is covered by the decision in W.P.(C) No.196 of 2018.

3. We had partly heard the appeal from the aforesaid writ petition today. We notice that there is clear distinction on facts insofar as, therein the transaction was alleged to be not taxable for reason of the transport being made to the work site of one of the applicants and the other after job works, to the business premises of the dealer. Therein, there was a delivery challan under Rule 55 of the Kerala Goods and Services Tax Rules. The learned Single Judge had found that since the genuineness of the said challan was not suspected, there could be no tax evasion. In the present case, the goods were transported on payment of tax; but, however, the dealer intends to re-sell the goods from his dealership. In such circumstances, suspicion of evasion cannot be brushed aside at this stage.

4. The learned Single Judge directed payment of Rs.10,000/- [Rupees ten thousand] each by the writ petitioners and furnishing of simple bonds for the amounts covered by the detention orders. We do not think that the same can be sustained after looking at the provisions. However, we do not say anything on this, since the writ petition is pending and it may not be proper for this Court to pre-empt the learned Single Judge from elaborate

consideration of the matter. We, therefore, set aside the interim order and direct release of the goods on execution of a simple bond for the value of goods in the prescribed form and furnishing of security in the form of Bank Guarantee equivalent to the amount of applicable tax and penalty payable as has been demanded in Exhibits P17 and P18 orders.

The Writ Appeal is disposed of, leaving the questions to be considered in the writ petition itself.

Sd/-  
K.Vinod Chandran  
Judge

Sd/-  
Ashok Menon  
Judge

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