

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 02ND DAY OF NOVEMBER 2020 / 11TH KARTHIKA, 1942

WP(C).No.23397 OF 2020(Y)

PETITIONER/S:

MOHAMMED SHEREEF
AGED 61 YEARS
SON OF HUSSAIN, PROPRIETOR, HAYAT TRADERS, NELLIMALA
BUILDINGS, K E ROAD, 1ST MILE, KANJIRAPALLY,
KOTTAYAM-686 507

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

RESPONDENT/S:

- 1 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY (TAXES) GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, KERALA-695001
- 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,
SURVEILLANCE SQUAD NO. 1, KERALA SGST DEPARTMENT,
MUTHANGA, WAYANAD, 673 592.
- 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 II, JEEVAN BHARATI
BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI
110 001, REPRESENTED BY ITS ADDITIONAL SECRETARY..
- 6 GOODS AND SERVICE TAX NETWORK,
EAST WING, 4TH FLOOR, WORLD MARK 1, AEROCITY, NEW

DELHI-110 037, REPRESENTED BY ITS CHIEF EXECUTIVE
OFFICER

7 HONNAPPA K.M,
THOTODA MANE, HEBBASUR AT PORT, CHAMRAJ NAGAR,
KARNATAKA-571313

OTHER PRESENT:

GP THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, who is a purchaser of fresh turmeric from an agriculturist in Karnataka, has approached this Court aggrieved by a detention of the consignment, while in transit, at Muthanga in Wayanad. In the writ petition it is the case of the petitioner that, the consignment in question was being transported under cover of an invoice (Ext.P3) generated by the petitioner in his capacity as purchaser of the goods, which showed the goods as attracting tax on reverse charge basis, and Ext.P5 e-way bill that was also generated by the petitioner, which showed the consignment as comprising of goods that were exempted from tax in as much as they fell under HSN code 910. The vehicle and the goods were detained, and Ext.P10 notice in FORM GST MOV-7 was issued to the petitioner wherein the objection was essentially with regard to the non-registration of the person making the interstate supply, as also the fact that the purchase bill issued by the petitioner was not a valid document for the purposes of supporting an interstate taxable supply.

2. The petitioner contends that, while the consignor agriculturist is not required to take any registration in view of the express provisions of Section 23(1)(b) of the Act, he is also not required to take a compulsory registration under Section 24, since the non-obstante clause in Section 24 does not apply to agriculturists mentioned under Section 23. It is his further case that, while the e-way bill (Ext.P5) clearly indicated that the goods were exempted goods, being turmeric bulbs and turmeric, even if the respondents have a case that the goods have been wrongly classified, the same cannot be a reason for

detaining the goods under Section 129. Alternatively, it is contended that while a delivery challan of the consignor agriculturist did not accompany the consignment, the mere fact that the petitioner had generated an invoice, assuming the goods to be taxable on reverse charge basis, cannot be a ground for detention under Section 129.

3. The learned Government Pleader would submit on instructions that the goods on verification were found to not answer the description of exempted goods under HSN Code 910. It is her further submission that the consignment was not accompanied by a delivery challan that is required to accompany any consignment of exempted goods sold by an unregistered person.

4. On a consideration of the rival submission, I am of the view that in the instant case, the declaration by the petitioner in the e-way bill, as also before the respondent authorities, has consistently been that the purchase was effected from an agriculturist in Karnataka who, going by the provisions of Section 23 of the GST Act, is not required to get himself registered for the sale of agricultural produce. Even assuming that the respondents dispute the said contention of the petitioner, the remedy available to them is to proceed against the agriculturist in question, for not taking the registration as required under the applicable provisions of the Act. The non-registration of the consignor, or the alleged mis-classification of the goods under transportation, cannot be a ground for detention under Section 129 of the GST Act.

5. It is not in dispute that there was a valid e-way bill covering the

transportation in question and the said e-way bill clearly described the product as falling under HSN Code 910. No doubt, the consignor being an unregistered person, and the goods supplied by him to the petitioner being exempted goods, the transportation had to be covered not only by an e-way bill but also by a delivery challan, and since the transportation was not covered by a delivery challan, the respondents were justified in detaining the consignment. The question however arises as to what would be the liability of the petitioner who seeks to get a release of the goods that are detained under Section 129. In the instant case, if this Court ignores the classification issue as also the non-registration issue which are not relevant for the purposes of Section 129 of the Act, then it is the provisions of Section 129(1)(b) that would apply for the purposes of determining the deposit that the petitioner would have to make for obtaining a clearance of the goods and the vehicle. On applying the said provision, the petitioner would have to pay the lesser of an amount equal to 5% of the value of the goods or Rs.25,000/-. In the instant case, the value of the goods being approximately Rs.10 lakhs, the lesser amount would be Rs.25,000/- which amount the petitioner would necessarily have to pay to obtain a release of the goods and the vehicle.

I therefore dispose the writ petition by directing the respondents to release the goods and the vehicle to the petitioner on the petitioner paying an amount of Rs.25,000/-, as required in terms of Section 129(1)(b) read with Section 129(3) of the GST Act. On the petitioner paying the said amount, the respondents shall forthwith release the goods and the vehicle to the petitioner and complete the proceedings under Section 129(3) on the aforesaid basis. The Government Pleader shall communicate the gist of the judgment to the 3rd respondent, who shall comply with the directions in the

judgment, immediately on the petitioner furnishing the amount aforesaid, before the said respondent.

The writ petition is disposed as above.

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 BY THE STATE TAX OFFICER PONKUNNAM KSGST DATED 11.10.2018
EXHIBIT P2	TRUE COPY OF THE LAST RETURN FIELD FOR SEPTEMBER 2020-21 IN GSTR 3B FILED BY THE PETITIONER
EXHIBIT P3	TRUE COPY OF THE PURCHASE INVOICE NO 101 DATED 27.10.2020 ISSUED BY THE PETITIONER
EXHIBIT P4	TRUE COPY OF THE LETTER DATED 27.10.2020 ISSUED BY THE 7TH RESPONDENT
EXHIBIT P5	TRUE COPY OF THE E-WAY BILL NO 201212494060 ISSUED ON 27.10.2020 BY THE PETITIONER
EXHIBIT P6	TRUE COPY OF THE FORM GST MOV 01 DATED 27.10.2020 IN OR/129/SS/GST/20-21 DATED 27.10.2020 ISSUED BY THE 3RD RESPONDENT
-	
EXHIBIT P7	TRUE COPY OF THE FORM GST MOV 2 DATED 27.10.2020 IN OR/129/SS1/GST/20-21 DATED 27-10.2020 ISSUED BY THE 3RD RESPONDENT
EXHIBIT P8	TRUE COPY OF THE FORM GST MOV 04 IN OR/129/SS1/GST/20-21 DATED 27.10.2020 ISSUED BY THE 3RD RESPONDENT
EXHIBIT P9	TRUE COPY OF THER DETENTION ORDER IN FORM GST MOV 06 DATED 28.10.2020 IN OR/129/SS1/GST/20-21 ISSUED BY THE 3RD RESPONDENT
EXHIBIT P10	TRUE COPY OF THE NOTICE IN FORM GST MOV 07 DATED 28.10.2020 IN OR/129/SS1/GST/20-21 ISSUED BY THE 3RD RESPONDENT
EXHIBIT P11	TRUE COPY OF REPLY DATED 29.10.2020 SUBMITTED TO THE 3RD RESPONDENT BY THE PETITIONER