

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 22<sup>ND</sup> DAY OF JULY 2021 / 31ST ASHADHA, 1943

WA NO. 914 OF 2021

AGAINST THE JUDGMENT DATED 21.10.2020 IN WP(C) 22304/2020 OF HIGH  
COURT OF KERALA, ERNAKULAM

APPELLANT/ RESPONDENT IN W.P. (C) :

ASSISTANT STATE TAX OFFICER (INTELLIGENCE),  
STATE GOODS AND SERVICE TAX DEPARTMENT,  
SQUAD NO 111, ALAPPUZHA - 688 001.

BY SR.GOV.T.PLEADER SRI.MOHAMMED RAFIQ

RESPONDENTS/ PETITIONERS IN W.P. (C) :

- 1 VST AND SONS (P) LIMITED,  
ONDIPUR POST, COIMBATORE - 641 016.
- 2 MUTHUKUMAR MEENAKSHY,  
TC 43/305(2), BNRA 93, KAMALESHWARAM,  
MANACAUD, THIRUVANANTHAPURAM,  
KERALA - 695 009.

BY ADV.A.KUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22.07.2021,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING :

**JUDGMENT**

Dated this the 22<sup>nd</sup> day of July, 2021

Bechu Kurian Thomas, J.

Respondents in this appeal had filed the writ petition challenging the detention of the 'RANGE ROVER' motor vehicle belonging to the 2<sup>nd</sup> respondent while being transported from Coimbatore to Thiruvananthapuram as 'used personal effect' of the 2<sup>nd</sup> respondent. The vehicle was detained on the allegation that the same was transported without the E-way bill as contemplated under Rule 138 of the Kerala Goods and Service Tax Rules, 2017. By the impugned judgment, the learned Single Judge allowed the writ petition and quashed Exts.P7 and P8 notices. The Department is in challenge.

2. While dismissing the writ petition, the learned Single Judge relied upon the decision in ***KUN Motor Company Private Limited and Others v. the Assistant State Tax Officer, Squad No.3 Kerala State, Goods and Service Tax Department and Others [(2019) 60 GSRT 144 (Kerala)]***.

3. We have heard Adv.Mohammed Rafiq, the learned Senior Government Pleader for the appellant. We also heard Adv.A.Kumar, the learned counsel for the respondents.

4. We are informed that pursuant to the impugned judgment, the vehicle detained by Ext.P7 and P8 had been released to the 2<sup>nd</sup> respondent.

5. The only reason stated for detaining the goods was that it was transported without the e-way bill. It must be remembered that goods that

are classifiable as used personal and household effect falls under Rule 138(14) (a) of the Kerala Goods and Services Tax Rules, 2017 and are exempted from the requirement of e-way bill. The 2<sup>nd</sup> respondent had purchased the vehicle after payment of IGST. A temporary registration was also taken apart from the motor vehicle insurance. The vehicle was entrusted to the 2<sup>nd</sup> respondent to transport the vehicle from Coimbatore to Thiruvananthapuram instead of driving the same across the State borders. During transportation, the vehicle has detained for the reason of non-generation of e-way bill. We find from the pleadings that the vehicle had in fact run 43 Kms.

6. In the decision in **KUN Motor Company's** case (supra), the Division Bench of this Court had in an almost identical situation observed as follows :-

*"We do not understand how the State could take a contention that if the car had been driven into the State of Kerala from the U.T.of Puthuchery; then there could not have been a detention under Section 129, since then there would have been no question of uploading of e-way bill. We cannot also comprehend how an intra-State sale would be converted to an inter-State sale merely for reasons of it being transported in carriage A.....The incidence of tax is on the supply and not on the nature of transport. There is no distinction in so far as the I.G. & S.T. Act is concerned, of a supply by road or on a carriage. We hence are of the opinion that the supply of the new vehicle by its authorised dealer terminated on it being purchased by the 2<sup>nd</sup> appellant in Puthuchery and the subsequent movement of the goods was not occasioned by reason of the transaction of supply. The goods having come into the possession of the purchaser, and the vehicle having been used, however negligible the*

*distance run, we are also of the opinion that it is his "used personal effect" and there can be alleged no taxable transaction in so far as the movement of goods from Puthuchery to Trivandrum in Kerala, especially since the car had been registered in the name of the purchaser".*

7. The said decision held that used vehicles, even if it has run only negligible distances are to be categorized as 'used personal effects'. We are in respectful agreement with the observations of this Court in the aforesaid decision. The facts in the present appeal is similar if not almost identical to the facts in the above referred decision, except for the change in place from Puthuchery to Coimbatore.

In the circumstances, we are of the view that there is no merit in this appeal and the same is dismissed.

Sd/-  
**S.V.BHATTI, JUDGE**

Sd/-  
**BECHU KURIAN THOMAS, JUDGE**

RKM