

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 6TH DAY OF APRIL 2022 / 16TH CHAITHRA, 1944

WP(C) NO. 7716 OF 2021

PETITIONER:

GREENLIGHTS POWER SOLUTIONS
2ND FLOOR, VALAMKOTTIL TOWER,
KAKKANADU, COCHIN - 682021,
REPRESENTED BY ITS PROPRIETOR,
MR. BINU.

BY ADV GIGIMON ISSAC

RESPONDENTS:

- 1 STATE TAX OFFICER
SQUAD NO.III,
STATE GOODS AND SERVICES TAX DEPARTMENT,
ERNAKULAM, KERALA - 682015,
- 2 COMMISSIONER OF COMMERCIAL TAXES
TAX TOWER, KILLIPPALAM, KARAMANA P.O,
THIRUVANANTHAPURAM - 695002.

BY SMT.M.M.JASMIN, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 01.04.2022, THE COURT ON 06.04.2022 DELIVERED
THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C) No.7716 of 2021

Dated this the 6th day of April, 2022

JUDGMENT

Petitioner seeks a direction to release the bank guarantee furnished by it after finding that the detention of goods under section 129 of the Central Goods and Service Tax Act, 2017 (for short the Act), is illegal. Through an amendment, petitioner has challenged the final order under section 129(3) issued in Form MOV-09, imposing a tax of Rs.27,540/- and an equivalent amount as penalty.

2. Petitioner has a valid GST registration and carries on the business in electrical contract works. It is pleaded that, in connection with the work of a hospital at Assam, some goods were transported through a vehicle after paying the required tax. During the course of transportation from Ernakulam, the goods were intercepted by the first respondent, who detained the goods under section 129 of the Act on noticing an irregularity in the e-way bill. Though the goods were being transported on

02-03-2021 (2nd March, 2021) the invoice mentioned the date as 03.02.2021 (3rd February, 2021). There was thus a discrepancy in the date on the invoice. According to the petitioner, the error occurred due to the default computer formatting system. Instead of day-month-year (dd-mm-yyyy) formatting for the Indian system, the computer-generated bill provided for a month-day-year (mm-dd-yyyy) format. As a result, instead of 02-03-2021, the invoice bill mentioned the date as 03-02-2021. Due to the irregularity in the invoice, the goods were detained and tax and penalty was demanded.

3. Petitioner pleaded that since the goods were required urgently, petitioner was compelled to obtain release of the goods by furnishing bank guarantee and according to the petitioner, unless the bank guarantee is released, petitioner would be put to great prejudice.

4. During the pendency of the writ petition, Ext.P6 order was issued under GST MOV-09 under section 129(3) of the Act. In the aforementioned order, the first respondent found a mistake in the format in the date in respect of the e-way bill and hence the petitioner was imposed with an amount of Rs.27,540/- as tax and a penalty of Rs.27,540/-. The said final order is challenged

in this writ petition.

5. Sri. Gigimon Isaac, the learned counsel for the petitioner contended that detention of goods and the demand for furnishing security for the alleged tax and penalty payable was illegal and without authority. It was submitted that the default formatting system in the computer which generated the invoice as "mm-dd-yyyy" instead of the format adopted in India as "dd-mm-yyyy" was the cause of mistake and that for such an inconsequential and minor mistake, petitioner ought not to be subjected to such huge liabilities. The learned counsel further relied upon the Circulars issued by the CBDT dated 14-09-2018 and contended that mistakes of a minor nature cannot be visited with such a huge penalty.

6. Smt.M.M.Jasmin, the learned Government Pleader on the other hand contended that the remedy of the petitioner is to invoke the appellate forum under the statute and not by invoking the provisions of Article 226 of the Constitution of India. She relied upon the decision in **Assistant Commissioner of State Tax and Others v. Commercial Steel Limited** [(2021) SCC Online SC 884] and contended that the petitioner has an efficacious remedy of an appeal under the statute and that there was no reason to

entertain this writ petition. It was further pointed out that the mistake in the format could have been purposeful for evasion of tax and hence the said disputed question ought not to be considered by this court.

7. I have considered the rival contentions. Taking note of the circumstances arising in this case, this Court is of the view that the merits of the contention raised by the petitioner can be considered, despite the availability of alternative remedy.

8. Based on representations received pointing out the imposition of penalty even in cases of minor discrepancies in the invoice/e-way bill etc. and despite the absence of major irregularities in those documents, the Central Board of Direct Taxes and Customs, by virtue of the powers conferred under section 168 of the Act issued a Circular No.64/38/2018 dated 14-09-2018, providing as follows:

"4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section 129 of the CGST Act may be initiated.

"5. Further, in case a consignment of goods is

accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

- a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;*
- b) Error in the pin code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;*
- c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;*
- d) Error in one or two digits of the document number mentioned in the e-way bill;*
- e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;*
- f) Error in one or two digits/characters of the vehicle number.*

6. In case of the above situations, penalty to the tune of Rs.500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1,000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis."

9. A reading of the above statutory Circular reveals that the purpose of issuing such a Circular was to mitigate the hardships being caused to taxpayers for minor discrepancies, which had no bearing on the liability to tax or on the nature of goods being transported. The circular is statutory in nature and

is binding on the Tax Officers. Thus minor discrepancies cannot be penalized contrary to the mode and procedure contemplated under the Circular.

10. However, the Circular refers to only six instances of minor discrepancies. Strictly speaking, the present situation is not covered by the six instances mentioned in the Circular. However, the analysis of the six instances reveals those discrepancies which have no bearing on tax liability and are caused on account of bonafide mistakes like typographical errors, or otherwise are regarded as minor discrepancies. In fact, the situation in the present case can be even brought under the broader umbrage of clause (d) of para 5 of the Circular.

11. In the instant case, the discrepancy pointed out is only on the date of invoice which is shown as 03.02.2021 while that shown in the e-way bill was 02.03.2021. All other details in the invoice and the e-way bill including the nature of goods transported, the details of consignor and consignee, the GSTIN of supplier and recipient, place of delivery, invoice number, value of goods, HSN code, vehicle number etc. tallied and had no discrepancy. Thus the error noticed is insignificant and not of any consequence for invoking the power conferred under section 129

of the Act to impose tax and penalty.

12. The Madras High Court had in **Tvl.R.K.Motors v. State Tax Officer** [(2019) 72 GST 501 (Madras)] considered the applicability of the circular and granted relief to the taxpayer therein. The said decision lends credence to the view I have taken above.

13. The situation arising in the instant case, warranted imposition of only a minor penalty as contemplated under the Circular. In view of the above, the imposition of tax and penalty upon the petitioner to the extent imposed in Ext.P6 is perverse and illegal, warranting interference under Article 226 of the Constitution of India.

14. Hence I quash Ext.P6 and direct the first respondent to reconsider the same in the light of the Circular and the observations in this Judgment and issue fresh orders, after granting an opportunity of hearing to the petitioner, within thirty days of the date of receipt of the copy of this Judgment.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX OF WP (C) 7716/2021

PETITIONER'S/S' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE TAX INVOICE NO.A-13/20-21 DATED 02.03.2021.
- EXHIBIT P2 TRUE COPY OF E-WAY BILL NO.5112 4542 9384 DATED 02.03.2021
- EXHIBIT P3 TRUE COPY OF THE NOTICE U/S 129(3) OF THE CENTRAL GOODS AND SERVICE TAX ACT WITH DETENTION ORDER DATED 02.03.2021.
- EXHIBIT P4 TRUE COPY OF THE REQUEST LETTER SEEKING RELEASE OF GOODS DATED 04.03.2021.
- EXHIBIT P5 TRUE COPY OF THE RELEASE ORDER OF GOODS ON BANK GUARANTEE DATED 06.03.2021.
- Exhibit P6 TRUE COPY OF THE ORDER OF DEMAND OF TAX AND PENALTY SEEMS TO BE AN ORDER PASSED ON 17/3/2021