

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 17TH DAY OF AUGUST 2022 / 26TH SRAVANA,
1944

WP(C) NO. 17223 OF 2022

PETITIONER:

SANSKRUTHI MOTORS
FLAT NO.1, GURUKRUPA APARTMENT, PLOT NO.J1-
J2, SECTOR NO.3, BHOSARI, PUNE, MAHARASHTRA,
PIN - 411 039, REPRESENTED BY N.R.KALKUTE,
PARTNER.

BY ADVS.
V.PREMCHAND
SURYA MOHAN P.

RESPONDENTS :

- 1 THE JOINT COMMISSIONER (APPEALS) II
STATE GOODS & SERVICE TAX DEPARTMENT,
ERANHIPALAM, KOZHIKODE, PIN - 673 006.
- 2 THE STATE TAX OFFICER (INT) SQUAD NO.I
WAYANAD DISTRICT, PIN - 673 121.

ADV. DR. THUSHARA JAMES - SR. G.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17.08.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioner is an entity engaged in the transportation of goods. It has an agreement with M/s.Tata Motors Limited for transportation of commercial and passenger vehicles and chassis, which are driven to various destinations as required by that Company. On the request of M/s. Tata Motors Limited, the petitioner, transported a new tipper lorry (the goods) from Tamil Nadu to Kozhikode, Kerala. The said vehicle was intercepted and detained by the Assistant State Tax Officer of the Kerala GST Department, and a show cause notice was issued on 9.7.2019 at 12.20 p.m. It was found that the e-way bill had expired on 8.7.2019. Since the vehicle was detained, the petitioner moved this Court through W.P.(C)No.19284/2019 and the lorry was directed to be released on production of bank guarantee. Following the directions of this Court, the notice was adjudicated and Ext.P3 order was issued on 16.8.2019, imposing a penalty of Rs.5,24,017/- on the petitioner along with a demand for IGST for the same amount making a total demand of Rs.10,48,034/- on the petitioner. The petitioner preferred Ext.P4 appeal against Ext.P3 order under Section 107 of the Central Goods and Services Tax Act/ State Goods and Services Tax Act (hereinafter also referred to as the 'CGST/SGST Acts' or as 'GST Law'). The appeal filed by the petitioner

as Ext.P4 has been returned, stating that the appeal cannot be entertained as the petitioner had not paid any admitted tax, and there is no pre-deposit of 10% of the disputed tax. It was also pointed out that stamp paper equivalent to 1% of the disputed tax is not remitted towards the legal benefit fund.

2. The learned counsel for the petitioner would contend that there was no warrant for imposing any penalty on the petitioner in the facts and circumstances of the case. It is submitted that there is no suppression or evasion of tax. It is submitted that the e-way bill was valid up to 11.59 p.m. on 8.7.2019, and the vehicle was intercepted the next day. It may be noted here that though the writ petition proceeds (based on the endorsement in Ext.P1), that the vehicle was intercepted at 12.20 a.m. on 9.7.2019, it is clear from a reading of Ext.P3 that the detention was at 12.20 p.m. on 9.7.2019. It is pointed out by the learned counsel that the vehicle had failed to cross the check post on 8.7.2019 itself because it developed some mechanical problems on its way to Kozhikode and had to be taken to a workshop and also since the Bandipur Highway was closed during night hours. He also relied on Ext.P6 judgment of this Court to contend that for minor discrepancies, a major penalty cannot be imposed. He also relied on the judgment of the Madras High Court in WMP (MD) No.4567/2020 to contend that where there is only a technical breach and

no intention to evade tax, there is no justification for imposing a heavy penalty under the GST laws. He also relied on the judgment of the Madhya Pradesh High Court in W.P No.6118/2021 to contend that where there is only a bonafide mistake in the e-way bill, only a minor penalty can be imposed. The judgments of the Madras High Court and Madhya Pradesh High Court are produced as Exts.P7 and P8 along with the writ petition. The learned counsel appearing for the petitioner placed considerable reliance on the judgment of a Division Bench of the Telangana High Court in ***M/s. Satyam Shivam Papers Pvt.Ltd & Another v. Asst. Commissioner (ST) and others; 2021 SCC OnLine TS 698 : (2021) 50 GSTL 459.*** It is submitted that the fact situation, in this case, is almost identical to the fact situation considered by the Telangana High Court. It is pointed out that there also the validity of the e-way bill had expired just before the detention and that on a consideration of the provisions of Section 129 of the CGST/SGST Acts, the Court held that when there was a valid explanation for the expiry of the e-way bill and there were no materials to suggest evasion of tax, the power of detention under Section 129 was wrongly invoked and was a blatant abuse of power by the authorities concerned. He points out that the Court had even proceeded to impose costs on the officer concerned in the judgment referred to above. He submits that the State had challenged the

judgment of the Telangana High Court before the Hon'ble Supreme Court and the Supreme Court, through order in SLP(C) No.21132/2021 had dismissed the Special Leave Petition finding that the High Court had acted correctly and even observed as under:-

“The analysis and reasoning of the High Court commend to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.”

3. The learned senior Government Pleader appearing for respondents would contend that the contention of the learned counsel for the petitioner that the detention is within 20 minutes of the expiry of the e-way bill is absolutely incorrect. She states that the detention was at 12.20 p.m and the indication in Ext.P1 that the detention was on 12.20 a.m. is a genuine mistake. She relied on the judgment of a Division Bench of this Court in ***Ranjilal Damodaran v. Asst. State Tax Officer and another; 2020 SCC OnLine Ker 23975***, to contend that the petitioner could not have been allowed to continue the transport

without extending the validity of the e-way bill as provided under Rule 138 (10) of the CGST Rules. It is submitted that though there is an enabling provision, the transport could not have continued without extending the validity of the e-way bill. She also placed reliance on the judgment of a learned Single Judge of this Court in ***Podaran Foods India Pvt. Ltd and others v. State of Kerala and others; 2021 (1) KHC 471***, to reiterate the scheme of Section 129 of the Act. It is contended that since it is the admitted case of the petitioner that the e-way bill had expired when the detention was effected, there is absolutely no jurisdictional error or infirmity warranting interference with Ext.P3 at the hands of this Court under Article 226 of the Constitution of India at this stage of the proceedings. It is submitted that the petitioner has an effective remedy by way of an appeal and the defects pointed out in respect of Ext.P4 appeal, through Ext.P5 memo are justified as they only refer to the statutory requirements for maintaining the appeal under Section 107 of the CGST/SGST Acts. It is contended that the fact situation in the judgments relied on by the petitioner are completely different and do not apply in the case of the petitioner.

4. Having heard the learned counsel for the petitioner and the learned senior Government Pleader, I am of the view that the petitioner is entitled to succeed in this case. The availability of the alternate remedy

does not dissuade me from granting relief as I am clearly of the view that the demand for tax and the imposition of a major penalty, in the facts of this case, was clearly without jurisdiction. The learned single Judge of this Court in ***Podaran Foods India's*** case (*supra*) had observed as under:-

“5. Tax legislations in our country, especially those dealing with indirect taxes, have always found the need to have provisions for detaining goods and vehicles while in transit to ensure that tax that is legitimately due to the State is not lost through deliberate evasion by unscrupulous assesseees. It is therefore that such provisions have been incorporated as incidental machinery provisions for levying the tax as contemplated in the statute concerned. The detection of evasion, and the consequential recovery of tax due to the State, are seen as acts that subserve larger public interest, and hence the restrictions to the exercise of the constitutional freedoms are seen as reasonable.

6. It follows, as a corollary to the above position, that unless there is a possibility of tax evasion, a detention of goods and vehicles cannot be justified, and that an authority vested with the powers of detention under a taxing statute has to bear in mind that the provisions authorizing detention have to be strictly construed for what is at stake is a constitutional right, fundamental or otherwise, of a citizen. There is also the aspect of fairness in the levy and collection of taxes that must inform the authorities entrusted with the said task, for fair implementation of the law has

been recognised as an essential attribute of the rule of law in a republic such as ours.” (Emphasis is supplied)

The Learned Judge also held as follows:-

“It has to be borne in mind that Section 129 forms part of the machinery provisions under the Act to check evasion of tax and a detention can be justified only if there is a contravention of the provisions of the Act in relation to transportation of goods or their storage while in transit.”

The reason for invoking Section 129 of the CGST laws in this case, is only one - that the e-way bill has expired. A Division Bench of this Court in ***Renjilal Damodaran's*** case (supra), no doubt, observed that transport could continue only after e-way bill had been extended in the manner provided for in Rule 138(10) of the CGST Rules. However, the said finding does not compel me to take a view different from the view taken by the Telangana High Court in ***Satyam Shivam's*** case (supra) as the Division Bench has not considered the question as to whether the imposition of a major penalty along with a demand for IGST was justified for the reason that the e-way bill had expired. In the facts of the present case, it is clear from a reading of Ext.P3 that the vehicle (the goods) was accompanied by an invoice which showed the value of the vehicle to be Rs.23,96,505.64 including IGST at Rs.5,24,016.86. It was also

accompanied by an e-way bill that was valid up to 8.7.2019. The only discrepancy noted was that the e-way bill had expired on 8.7.2019. The officer who issued Ext.P3 has not found that there was any attempt to evade any tax. In Ext.P.6 judgment this Court held as follows:-

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.

I am of the view that this is a case where the aforesaid judgment of this Court squarely applies. Further, as noticed by the Division Bench of the Telangana High Court in ***Satyam Shivam's*** case (*supra*), the officer was duty bound to consider the explanation offered by the petitioner for the expiry of the e-way bill. In Ext P.3 (the impugned order), the explanation offered by the petitioner has been rejected, stating that no evidence of repair being carried out has been produced. The further justification for imposing a penalty/tax is that the petitioner had ample time to revalidate the E-way bill. There is no finding in Ext P.3 that there was any attempt to evade tax. Further, the judgment of the Telangana High Court in ***Satyam Shivam's*** case (*supra*) was challenged before the Supreme Court and the Special Leave Petition was dismissed by a speaking order. There is clearly a merger of the judgment of the Division Bench of the Telangana High Court with the order of the Supreme Court in the Special Leave Petition mentioned above. Therefore, the view taken by the Telangana High Court as affirmed by the Supreme Court is a binding precedent as far as this Court is concerned.

In view of the aforesaid findings, this writ petition is allowed. Ext.P3

will stand quashed. The matter will stand remanded to the 1st respondent who shall consider the amount of penalty to be imposed on the petitioner taking note of the findings in this Judgment and also keeping in mind the observations of this Court in Ext.P6 judgment (extracted hereinbefore), after affording an opportunity of hearing to the petitioner. In the light of the above findings, it is not necessary to examine the question as to whether the conditions stipulated in Ext.P5 for maintaining Ext.P4 appeal are valid.

Sd/-

**GOPINATH P.
JUDGE**

acd

APPENDIX OF WP (C) 17223/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 09/07/2019.
- Exhibit P2 TRUE COPY OF THE JUDGMENT DATED 15/07/2019 IN WP O NO 19284/2019 OF HIGH COURT OF KERALA.
- Exhibit P3 TRUE COPY OF THE ORDER DATED 16/08/2019 PASSED BY THE 2ND RESPONDENT.
- Exhibit P4 TRUE COPY OF THE APPEAL MEMORANDUM DATED 08/11/2019.
- Exhibit P5 TRUE COPY OF THE TRUE COPY OF THE NOTICE DATED 05/01/2022 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT.
- Exhibit P6 TRUE COPY OF THE JUDGMENT DATED 06/04/2022 IN WP (C) NO. 7716/2021 OF THIS HON'BLE COURT.
- Exhibit P7 TRUE COPY OF THE JUDGEMENT DATED 30/03/2022 IN WMP (MD) NO. 4567/2022 OF HON'BLE MADRAS HIGH COURT.
- Exhibit P8 TRUE COPY OF THE JUDGMENT DATED 30/03/2022 IN WP NO 6118/2021 OF HON'BLE MADHYA PRADESH HIGH COURT.