

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

MONDAY ,THE 04TH DAY OF FEBRUARY 2019 / 15TH MAGHA, 1940

WA.No. 253 of 2019

AGAINST THE ORDER/JUDGMENT IN WP(C) 35665/2018 of HIGH
COURT of KERALA DATED 29.11.2018

APPELLANT/PETITIONER:

DAILY EXPRESS,
VAZHICHERRY WARD, ALAPPUZHA - 1,
REPRESENTED BY ITS DESIGNATED PARTNER, MEENA
KURUVILLA, AGED 62 YEARS, W/O T.T.KURUVILLA,
RESIDING AT THOTTATHIL HOUSE, CULLEN ROAD,
VAZHICHERRY WARD, ALAPPUZHA - 1.

BY ADV. SUJINI S

RESPONDENT/RESPONDENTS:

- 1 THE ASSISTANT STATE TAX OFFICER,
SURVEILLANCE SQUAD NO.8,
STATE GST DEPARTMENT,
KOLLAM - 691 002.
- 2 COMMISSIONER OF KERALA STATE GOODS AND SERVICE
TAX DEPARTMENT,
OFFICE OF THE COMMISSIONER OF KERALA STATE
GOODS AND SERVICE TAX DEPARTMENT, TAX TOWER,
KARAMANA, THIRUVANANTHAPURAM.
- 3 STATE OF KERALA,
THIRUVANANTHAPURAM - 695 001,
REPRESENTED BY ITS SECRETARY TO TAXES.

OTHER PRESENT:

SR GP SRI MOHAMMED RAFIQ FOR RESPONDENTS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
04.02.2019, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.VINOD CHANDRAN & ASHOK MENON, JJ.

W.A.No.253 of 2019

Dated this the 4th day of February, 2019

J U D G M E N T

Ashok Menon, J.

Could the transporter having no tax liability, for the goods transported, face detention, seizure and penalty, as provided under Section 129 of the Central Goods and Services Tax Act, 2017 ("CGST Act" for brevity)?, is the question that arises for consideration in this appeal over WP(C) No.35665/2018 before us.

2. The facts in brief are thus:

The petitioner is a transporting firm engaged in plying about 100 lorries as carriers of goods in India. On 15.10.2018, while the petitioner was transporting goods bound to Kollam in vehicle No.KL-04/V-9334 with a consignment by VIP Industries to be delivered to M/s.VTWO Ventures, Kollam, the vehicle

was intercepted by the first respondent, Assistant Sales Tax Officer (ASTO). The driver had all documents in tact and in order, with the exception that, Part-B of the e-way bill was not complete. The vehicle was detained for the reason that it was not valid for movement under Section 138 of the CGST Act. The goods which were being carried, was invoiced as per Ext.P5 and there was admittedly no tax liability. Ext.P6 notice was issued under Section 129(1) of the CGST Act. The goods were ordered to be detained. Tax of Rs.64,128/- with 100% penalty totalling to Rs.1,28,256/- was imposed vide Ext.P7 notice under Section 129(3) of the CGST Act in Form GST MOV-07.

3. The petitioner filed the Writ Petition. Vide the impugned judgment dated 29.11.2018, the Writ Petition was dismissed holding that the provisions under Section 129(1)(b) applies to the transporter as person interested in the goods and therefore, Exts.P5 to P7 notices of detention do not suffer from any

legal infirmity calling for interference.

4. We have heard Smt.S.Sujini, learned counsel appearing for the appellant/petitioner and Sri.Mohammed Rafiq, learned Senior Government Pleader appearing for the Revenue.

5. It is submitted by Smt.Sujini that even admittedly, there is no case of tax evasion made out. The invoices were all in order and the only infraction was non-filling of Part-B of the e-way bill. The learned counsel draws our attention to Section 126 of the CGST Act to argue for the proposition that no officer shall under this Act impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence. According to her, non-filling of part-B of e-way bill is only a minor breach as stated in Section 126. More over, in

view of the fact that there is no tax evasion, tax and penalty could not have been demanded, because there is no wilful misstatement or suppression of facts as required under Section 74 of the CGST Act. The learned counsel also takes us to Section 122 (xiv) of the CGST Act to argue for the proposition that even if there is a breach by the transporter, transporting any taxable goods without the cover of documents as may be specified in this behalf, at best, penalty to the tune of Rs.10,000/- alone could be imposed. Even if general penalty is to be imposed under Section 125 of the CGST Act, it could only be to the extent of Rs.25,000/- and nothing more. Hence, the learned counsel argues that imposition of tax and penalty to the tune of Rs.1,28,256/- is atrocious and needs to be interfered with. Smt.Sujini would further draw our attention to Circular No.76/50/2018-GST, F.No.CBEC-20/16/04/2018-GST of Government of India, Ministry of Finance dated

31.12.2018, wherein it has been clarified that the 'owner of the goods' for the purpose of Section 129(1) of the CGST Act would be either the consignor or the consignee, if the invoice or other specified document is accompanying the consignment of goods. According to the learned counsel, in the instant case, the consignment was with all accompanying documents pertaining to the sale and therefore, the transporter could not be mulcted with liability to pay tax and penalty as per Ext.P7.

6. Sri.Mohammed Rafiq, learned Senior Government Pleader would contend that infraction of Section 129 would be liable for penalty as stated therein irrespective of whatever is stated in any other provision in the Act, because Section 129 is a self contained code by itself as the Section starts with a non-obstante clause. The provision is applicable to "any person transporting any goods", which would also include a transporter as well.

7. We cannot accept the argument of the appellant for the reason that Section 129(1) makes it adequately clear that any person who is interested in the goods shall be liable under Section 129(1)(b). Particularly, a reading of Section 129(6) would indicate that where a person transporting any goods or the owner of the goods, fails to pay the amount of tax and penalty as provided in sub-Section (1) within 14 days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of Section 130. This would undoubtedly indicate action not only against the goods, but also against the transporter.

8. The non-obstante clause in Section 129 indicate that neither Section 126, nor the general provision of penalty under Section 125, or Section 122 would apply in cases where Section 129 is attracted. Section 126 refers to 'minor breaches'. Explanation(a) to section 126 states that a breach

shall be considered a 'minor breach', if the amount of tax involved is less than five thousand rupees. Hence for that reason alone, Section 126 is not attracted in the instant case.

9. This Division Bench had occasion to consider a similar matter in **2018 KHC 498 : 2018(3) KLT SN 53 [Assistant State Tax Officer and Another v. M/s.Indus Towers Limited]**, wherein a question of release of goods ordered as provided under sub-Section (1) or order passed under sub-Section (3) of Section 129 of the CGST Act was raised, and it was held by us as thus:-

"The finding that the transaction would not fall within the scope of taxable supply under the statute, cannot be sustained for reason of there being no declaration made under R.138. The resultant finding that mere infraction of the procedural rules cannot result in detention of goods though they may result in imposition of penalty cannot also be sustained. If the conditions under the Act and Rules are not complied with, definitely S.129 operates and confiscation would be attracted."

The learned Single Judge had rightly dismissed

the Writ Petition refusing to find any infirmity in Exts.P5 to P7 notices and therefore, the Writ Appeal is without any merits and requires to be dismissed, which we do. No order as to costs.

Sd/-

K.VINOD CHANDRAN

JUDGE

Sd/-

ASHOK MENON

JUDGE