

Kerala High Court

Saji S. vs The Commissioner on 12 November, 2018

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU
MONDAY, THE 12TH DAY OF NOVEMBER 2018 / 21ST KARTHIKA, 1940
WP(C).No. 35868 of 2018

PETITIONERS:

- 1 SAJI S., PROPRIETOR, ADITHYA AND
AMBADI TRADERS, CONVENT ROAD
NELLIVILA P.O., VENGANOOR
THIRUVANANTHAPURAM, PIN 695 523.
- 2 RANJITH R., PROPRIETOR, RANJITH ROADLINES
5/6A, SAKTHI VINAYAKA NAGAR
VELLALORE, COIMBATORE, -641111.

BY ADVS.
SRI.S.SANTHOSH KUMAR
SMT.ANJANA.S.SANTHOSH
SMT.P.LISSY JOSE.

RESPONDENTS:

- 1 THE COMMISSIONER, STATE GST DEPARTMENT
TAX TOWER, KILLIPALAM, KARAMANA P.O.,
THIRUVANANTHAPURAM, PIN 695 002.
- 2 THE ASSISTANT STATE TAX OFFICER,
SQUAD NO.VII, STATE GST DEPARTMENT
PALAKKAD, KERALA-678001.

DR THUSHARA JAMES, GP.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
WP(C).No. 35868 of 2018 2

JUDGMENT

The petitioner, a registered dealer, purchased certain goods from Chennai. He had them transported to Kerala. When the goods were in transit, the Assistant State Tax Officer (ASTO), for the reasons not germane here, detained the goods and issued the Ext.P3 notice, dated 30.09.2018.

2. Based on the demand in the Ext.P3 notice, the consignor paid the tax and penalty, as is evident from Ext.P4 payment receipt. But the remittance was made under the head 'SGST'.

3. The petitioner, who is the consignee and transporter, insists that the consignor paid the tax and penalty under that only based on the ASTO's directions. But the fact remains that the remittance

must have been under the head 'IGST'. So the authorities have refused to release the goods. Aggrieved, the petitioner has filed this writ petition.

4. The petitioner's counsel has drawn my attention to Section 77 of the GST Act and also Rule 4(1) of the GST Refund Rules, 2017, especially the proviso appended to the Rule. To hammer home his contentions that even if the remittance were to be treated as a mistake on the consignor's part, the statute empowers the authorities to transfer the deposit from one head to another: from SGST to IGST.

5. The Government Pleader, on the other hand, submits that the petitioner could as well pay the amount under 'IGST' and then claim a refund from the head 'SGST'. According to her, if the authorities have to go for an adjustment, it will take more than a couple of months.

6. Heard the learned counsel for the petitioner as also the Government Pleader.

7. I reckon the facts are not in dispute. The petitioner, as a consignee and transporter, purchased goods from the consignor in Chennai. While those goods were in transit, they were detained. Further not in dispute is the fact that the consignor paid the tax and penalty. Either on the ASTO's advice or on its own, it remitted the amount under the head 'SGST', instead of 'IGST'. In this context, we may refer to Section 77 of the GST Act. And it reads:

Section 77: Tax wrongfully collected and paid to Central Government or State Government:

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable."

8. We may as well examine Rule 4(1) of the GST Refund Rules, for much turns upon it. And it reads:

"4. Order sanctioning refund (1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06, sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable: PROVIDED that in cases where the amount of refund is completely adjusted against any outstanding demand under

the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07."

(italics supplied)

9. As seen, Section 77 provides for the refund of the tax paid mistakenly under one head instead of another. But Rule 4 speaks of adjustment. Where the amount of refund is completely adjusted against any outstanding demand under the Act, an order giving details of the adjustment is to be issued in Part A of FORM GST RFD-07. The petitioner's counsel lays stress on this process of adjustment and asserts that the amount remitted under one head can be adjusted under another head, for the demand can be any amount under the Act.

10. Under these circumstances, I find no difficulty for the respondent officials to allow the petitioner's request and get the amount transferred from the head 'SGST' to 'IGST'. It may, as the Government Pleader has contended, take some time, but it is inequitable for the authorities to let the petitioner suffer on that count.

11. So I hold that the 2nd respondent will release the goods forthwith along with the vehicle and, then, ensure that the tax and penalty already stood remitted under the 'SGST' is transferred to the head 'IGST'.

The writ petition is disposed of accordingly.

Sd/-

DAMA SESHADRI NAIDU JUDGE APPENDIX PETITIONERS' EXHIBITS:

EXHIBIT P1 TRUE COPY INVOICE NO.377 DATED 28.9.2018 EXHIBIT P2 TRUE COPY OF E-WAY BILL NO.5510 5785 4271 DATED 28.9.2018 EXHIBIT P3 TRUE COPY OF NOTICE VC NO.VII/65/18-19 DATED 30.9.2018 ALONG WITH STATEMENT OF THE OWNER, ORDER FOR PHYSICAL VERIFICATION OF VEHICLE, PHYSICAL VERIFICATION REPORT AND ORDER OF DETENTION EXHIBIT P4 TRUE COPY OF PAYMENT RECEIPT DATED 17.10.2018 RESPONDENTS' EXHIBITS NIL // TRUE COPY // P.A. TO JUDGE SD