

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 29TH DAY OF JANUARY 2020 / 9TH MAGHA, 1941

WP(C).No.807 OF 2020(A)

PETITIONER:

SHAJAHAN A.M.
S/O. MUHAMMED A.M., AKKADAYIL HOUSE,
MUVATTUPUZHA-686 673

BY ADV. SRI.P.N.DAMODARAN NAMBOODIRI

RESPONDENTS:

- 1 THE ASSISTANT STATE TAX OFFICER
MOBILE SQUAD-II, STATE GST DEPARTMENT,
KOLLAM AT KOTTARAKKARA-691 506
- 2 THE STATE TAX OFFICER,
SQUAD-I, STATE GST DEPARTMENT,
KOLLAM AT KOTTARAKKARA-691 506
- 3 THE ASSISTANT COMMISSIONER (INT)
STATE GST DEPARTMENT, KOLLAM -691 002

SMT.M.M.JASMINE, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.01.2020, ALONG WITH WP(C).NO.1289/2020, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 29TH DAY OF JANUARY 2020 / 9TH MAGHA, 1941

WP(C).No.1289 OF 2020(I)

PETITIONER:

SHAJAHAN A.M. ,
S/O. MUHAMMED A.M. , AKKADAYIL HOUSE,
MUVATTUPUZHA-686673.

BY ADVS.

SRI.P.N.DAMODARAN NAMBOODIRI
SHRI. HRITHWIK D. NAMBOOTHIRI

RESPONDENTS :

- 1 THE ASSISTANT STATE TAX OFFICER,
MOBILE SQUAD NO.1, STATE GST DEPARTMENT,
KOLLAM-691002.
- 2 THE STATE TAX OFFICER,
SQUAD NO.1, STATE GST DEPARTMENT, KOLLAM-691002.
- 3 THE ASSISTANT COMMISSIONER (INT) ,
STATE GST DEPARTMENT, KOLLAM-691002.

SMT.M.M.JASMINE, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.01.2020, ALONG WITH WP(C).NO.807/2020, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P.(C) Nos. 807 & 1289 of 2020

Dated this the 29th day of January, 2020

J U D G M E N T

As the petitioner in these two cases is the same person, and as the issues raised in these cases are also similar, these cases are disposed of on the basis of this common judgment.

The prayers in WP(C).No.807/2020 are as follows:

“

- i. *To issue a writ in the nature of certiorari or any other appropriate writ or order quashing Exhibit P1 & P1A and Ext.P2 & P2A notices issued by the first respondent herein, by demanding to remit disputed CGST, SGST and Penalty from the petitioner as illegal, arbitrary and without any jurisdiction, or pass such further or other orders as may deem fit and proper in the circumstances of this case, and render justice;*
- ii. *To issue a writ in the nature of mandamus or any other appropriate writ, direction or order directing the 1st respondent to release the vehicle with goods without insisting for the payment of amount demanded therein;*
- iii. *To pass such other orders as this Hon'ble Court may deem justified in the facts and circumstances of the case; AND*
- iv. *To award the cost of this proceedings to the petitioner.”*

The prayers in WP(C).No.1289/2020 are as follows:

“

- i. *To issue a writ in the nature of certiorari or any other appropriate writ or order quashing Exhibit P1 and Ext.P2 notices issued by the first respondent herein, by demanding to remit disputed CGST, SGST and Penalty from the petitioner as illegal, arbitrary and without any jurisdiction, or pass such further or other orders as may deem fit and proper in the circumstances of this case, and render justice;*
- ii. *To issue a writ in the nature of mandamus or any other appropriate writ, direction or order directing the 1st respondent to*

- release the vehicle with goods without insisting for the payment of amount demanded therein;*
- iii. *To pass such other orders as this Hon'ble Court may deem justified in the facts and circumstances of the case; AND*
 - iv. *To award the cost of this proceedings to the petitioner.”*

2. Heard Sri.P.N.Damodaran Namboodiri, learned counsel appearing for the petitioner in these two cases and Smt.M.M.Jasmine, learned Government Pleader appearing for the respondents.

3. After having heard both sides and after careful evaluation of the facts and circumstances of the case, it is ordered that the detained goods and vehicles involved in these two cases as per the impugned proceedings shall be immediately released to the petitioner on his furnishing Bank Guarantee for the respective values shown in the impugned Exts.P-2 & P-2(a) in WP(C).No.807/2020 and in Ext.P-1 in WP(C).No.1289/2020.

4. However, the 2nd respondent adjudication officer will ensure that the further proceedings pursuant thereto, be adjudicated and finalised after affording reasonable opportunity of being heard to the petitioner without much delay, preferably

within a period of 3 to 4 weeks from the date of production of a certified copy of this judgment. While doing so, the 2nd respondent will specifically consider and advert to the plea made by the petitioner that, the abovesaid transaction is effected by the 1st transaction entered into by the petitioner, and that he was not having thorough knowledge relating to the fine tuned aspects emanated from the Goods and Service Taxes Act and the Rules framed thereunder, and that a sympathetic consideration may be made in this case.

5. Further, the 2nd respondent should also consider the specific plea made by the petitioner that, even otherwise the maximum tax that could be imposed in a case like this could be 12% and not at the rate of 28% as has been ordered in the impugned proceedings, in view of the prescriptions made in Ext.P-5 notification dated 25.1.2018 in WP(C).No.807/2020, and Ext.P-6 notification dated 25.1.2018 in WP(C).No.1289/2020, and in that regard the petitioner would raise a specific plea that, it is admitted by none other than the 1st respondent in the impugned

proceedings that the detained motor cycles are used vehicles and not brand new vehicles, as can be seen from Exts.P-2 & P-2(a) in WP(C).No.807/2020 (given on pages 15 to 18 thereof) and also in Ext.P-1 in WP(C).No.1289/2020 (given on pages 9 & 10 thereof) and therefore the tax imposable could be only at the rate of 12% as per the above notification dated 25.1.2018, etc.

6. The said plea of the petitioner should be duly adverted to and considered by the 2nd respondent while passing orders for the finalization of abovesaid proceedings.

With these observations and directions, both the above Writ Petition (Civil) will stand disposed of.

Sd/-

ALEXANDER THOMAS,
JUDGE

MMG

APPENDIX OF WP(C).NO. 807/2020

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE NOTICE NO.SCN 55/MS.II/2019-2020 DATED 07/01/2020 ISSUED IN FORM GST MOV-07 U/S.129(3) OF THE GST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT- P1A TRUE COPY OF THE NOTICE NO.SCN 56/MS.II/19-20 DATED 07/01/2020 ISSUED IN FORM GST MOV-07 U/S.129(3) OF THE GST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF THE NOTICE NO.MOV-07/55/1920/VTR II DATED 07/01/2020 ISSUED IN FORM GST MOV-07 U/S.129(3) OF THE GST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT-P2A TRUE COPY OF THE NOTICE NO.MOV-07/56/1920/VTR II DATED 07/01/2020 ISSUED IN FORM GST MOV-07 U/S.129(3) OF THE GST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P3 TRUE COPY OF THE NOTICE NOSCN 55/MS.II/2019-2020 DATED 07/01/2020 IN FORM GST MOV-02 OF THE GST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT-P3A TRUE COPY OF THE NOTICE NO.SCN 56/19-10/VTR II DATED 07/01/2020 IN FORM GST MOV-07 OF THE GST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P4 TRUE COPY OF THE NOTICE NO.MSCN 55/M.S.II/209-2020 DATED 07/01/2020 IN FORM GST MOV-06 U/S.129(1) OF THE GST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT-P4A TRUE COPY OF THE NOTICE NO.MSCN 56/M.S.II/209-2020 DATED 07/01/2020 IN FORM GST MOV-06 U/S.129(1) OF THE GST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P5 TRUE COPY OF THE NOTIFICATION NO.8/2018-CENTRAL TAX (RATE) DATED 25.01.2018

APPENDIX OF WP(C) .NO.1289/2020

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE NOTICE NO.MB01/SCN 97/19-20 DATED 06/01/2020 ISSUED IN FORM GST MOV-07 U/S. 129(3) OF THE GST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF THE NOTICE NO.MB01/SCN 97/19-20 DATED 06/01/2020 ISSUED IN FORM GST MOV-06 U/S. 129(1) OF THE CGST/SGST ACT 2017 BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P3 TRUE COPY OF THE NOTICE NO. MB01/SCN97/2019-20 DATED 06/01/2020 ISSUED IN FORM GST MOV-01 BY THE 1ST RESPONDENT TO THE DRIVER OF THE VEHICLE.
- EXHIBIT P4 TRUE COPY OF THE NOTICE NO. MB01/SCN97/2019-20 DATED 06/01/2020 ISSUED IN FORM GST MOV-02 FOR PHYSICAL VERIFICATION BY THE 1ST RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE PHYSICAL VERIFICATION REPORT NO.MB01/SCN97/2019-20 DATED 09/01/2020 ISSUED IN FORM GST MOV-04 BY THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE NOTIFICATION NO.8/2018-CENTRAL TAX (RATE) DATED 25/01/2018.