

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 18<sup>TH</sup> DAY OF JANUARY 2023 / 28TH POUSHA, 1944

WP(C) NO. 31445 OF 2022

PETITIONER/S:

- 1 SASI PATHIRAKUNNATH, AGED 55 YEARS  
SASI PATHIRAKUNNATH, PROPRIETOR,  
A ONE GOLD, TC-26/289-1,  
MYLIPADAM, CHEMBUKKAVU P O;  
THRISSUR DISTRICT., PIN - 680020
- 2 NIKHIL SURESH ,AGED 20 YEARS  
NIKHIL SURESH, S/O. SURESH T V,  
AGED 20, RESIDING AT THIRUVAMBADY HOUSE,  
KEERAMKULAGARA, THRISSUR ., PIN - 680005  
BY ADV TOMSON T.EMMANUEL

RESPONDENT/S:

- 1 ASSISTANT STATE TAX OFFICER (INTELLIGENCE)  
ASSISTANT STATE TAX OFFICER (INTELLIGENCE),  
STATE GOODS & SERVICES TAX DEPARTMENT,  
SQUAD NO.1, EDAPPALLY, COCHIN ., PIN - 682024
- 2 STATE TAX OFFICER (INTELLIGENCE)  
STATE TAX OFFICER (INTELLIGENCE),  
STATE GOODS & SERVICES TAX DEPARTMENT,  
SQUAD NO.1, EDAPPALLY, COCHIN ., PIN - 682024
- 3 RAILWAY PROTECTION FORCE  
RAILWAY PROTECTION FORCE,  
ERNAKULAM SOUTH RAILWAY STATION, COCHIN ,  
REPRESENTED BY ITS CIRCLE INSPECTOR., PIN - 682016
- 4 STATE OF KERALA,  
STATE GOODS & SERVICES TAX DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM ., PIN - 695001
- 5 COMMISSIONER (GST), GOVERNMENT OF INDIA, MINISTRY OF  
FINANCE, DEPARTMENT OF REVENUE,  
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,  
GST POLICY WING, NEW DELHI., PIN - 110001
- 6 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,  
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW  
DELHI ., PIN - 110001

ADV. THUSHARA JAMES (SR GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
18.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The first petitioner is stated to be the proprietor of an establishment known as 'A One Gold', having its place of business at Chembukavu in Thrissur district. The 2<sup>nd</sup> petitioner is an acquaintance of the 1<sup>st</sup> petitioner. The 2<sup>nd</sup> petitioner was travelling on a train from Thrissur to Alleppy on 07.09.2022. He was carrying some gold ornaments from Thrissur to Alleppy, at the instance of the 1<sup>st</sup> petitioner.

2. The 2<sup>nd</sup> petitioner was detained at about 02.35 pm by the officials of the Railway Protection Force (RPF). On being questioned as to the documents available with the 2<sup>nd</sup> petitioner for carrying the gold, he is stated to have shown certain documents on his mobile phone, which did not appear satisfactory to the Railway Protection Force. Thereafter, by about 05.55 pm, the 1<sup>st</sup> petitioner reportedly brought certain documents, which according to the 1<sup>st</sup> petitioner were sufficient to establish that the gold was being *bona fide* transported with full compliance of the GST laws. The railway police, however, entrusted the matter with the GST Department. It is the case of the petitioners that, by the time, the GST officials had

intercepted the goods, the goods were having every document necessary to prove that they were being transported in full compliance with the GST laws. It is submitted that notwithstanding the above and completely ignoring the documents available with the petitioners, the 2<sup>nd</sup> respondent initiated and concluded proceedings under Section 130 of the CGST/SGST Acts as per Ext.P18, which is under challenge in this writ petition.

3. It is the case of the learned counsel appearing for the petitioners that there was absolutely no warrant for initiation, continuation and conclusion of proceedings under Section 130 of the CGST/SGST Acts and therefore, Ext.P18 order is completely without jurisdiction. It is submitted that when the goods in question were supported by valid documents, the action of the officers in initiating and concluding proceedings under Section 130 of the CGST/SGST Acts was completely unwarranted and without jurisdiction.

4. Learned Senior Government Pleader would submit that even if it were to be assumed that the interception can only be with respect to the time at with the notices under the CGST/SGST Acts were issued (05.55 pm on 07.09.2022), the

proceedings initiated and concluded against the petitioners under Section 130 of the CGST/SGST Acts cannot be said to be vitiated in any manner. It is submitted that immediately after the RPF had intercepted the goods, the goods were subject matter of physical verification and the physical verification report suggests that the quantity of gold ornaments recovered from the 2<sup>nd</sup> petitioner had a total weight of 724.99 gms whereas the labour invoice and other documents produced to substantiate that the goods were being transported in a *bona fide* manner, showed that the total quantity was approximately 825 gms. It is submitted that this discrepancy itself is sufficient to prove that the proceedings under Section 130 of the CGST/SGST Acts was completely warranted as there was clear attempt to evade payment of tax. It is submitted that the subsequent explanation offered by the 2<sup>nd</sup> petitioner that he had forgotten to handover about 100 gms of gold, which he was carrying in his pocket, is nothing but an afterthought and is an attempt to ensure that the quantity of goods seized by the railway police and which was subsequently the subject matter of proceedings under the CGST/SGST Acts, completely tallys with the documents stated to have been produced later by the 1<sup>st</sup> petitioner before the authorities. It is submitted that the there

is nothing to show that the discrepancy was not on account of any illegal sale during the course of carriage.

5. Learned counsel appearing for the petitioners, in reply, would submit that when the goods were completely covered by documents, the mere fact that there was some discrepancy in the total quantity is no ground to initiate proceedings under Section 130 of the CGST/SGST Acts. He refers to the provision of Section 130 of the CGST/SGST Acts and submits that proceedings under Section 130 of the CGST/SGST Acts could have been initiated only if there was a wilful attempt to evade the payment of tax. It is submitted that even if the entire case of the GST Department is accepted, there is nothing to show that there was any attempt to evade the payment of any tax rightly due to the Government. It is submitted that the proceedings are therefore liable to be quashed.

6. I have considered the contentions raised. The undisputed facts of the case are that the 2<sup>nd</sup> petitioner was carrying certain gold ornaments in a train from Thrissur to Alleppy. He was initially intercepted by the officials attached to the Railway Protection Force and the 2<sup>nd</sup> petitioner was able to

only shown certain documents on his mobile phone, which according to the petitioners, suggest that the gold ornaments were being carried in a valid manner and in accordance with all the requirements of the CGST/SGST Acts and the Rules made thereunder. It is also not disputed before me that, by the time, the State GST officers got involved in the matter, the 1<sup>st</sup> petitioner had produced certain documents, which according to the petitioners, are sufficient to carry gold in the manner carried by the 2<sup>nd</sup> petitioner. However, there is no satisfactory explanation for the fact that there was a discrepancy in the quantity mentioned in the documents produced by the 1<sup>st</sup> petitioner in the evening before the Tax authorities and the quantity actually recovered from the petitioner. The contention of the learned counsel appearing for the petitioners that the 2<sup>nd</sup> petitioner had forgotten to hand over about 100 gms of gold, which was being carried in his pocket, cannot be accepted, at least at this stage. The fact that there was discrepancy in the quantity in the documents stated to have been produced and the quantity recovered from the 2<sup>nd</sup> petitioner itself, in my opinion, is sufficient for the Department to suspect the evasion of tax. I do not propose to find anything on merits regarding the order of adjudication issued by the 2<sup>nd</sup> respondent under Section 130 of

the CGST/SGST Acts for the reason that it would not be proper to do so, considering the fact that the petitioners have appellate remedies against Ext.P18 order. Therefore, this question is being considered only for the purpose of deciding whether the officers were right in initiating proceedings under Section 130 of the CGST/SGST Acts. In the totality of the facts and circumstances of the case, I am unable to find that there was any malice or ill-will or lack of jurisdiction in initiating proceedings under Section 130 of the CGST/SGST Acts. I make it clear that I have not found that Ext.P18 order is valid on its merits and it will be open to the petitioners to raise all their contentions before the appellate authority in a duly constituted appeal.

The writ petition is therefore dismissed, without interfering with Ext.P18 order and holding that it will be open to the petitioners to raise all their contentions before the appellate authority. On such appeal being filed, the appellate authority shall consider the matter untrammelled by any observations contained in this judgment. If the petitioners file an appeal within a period of two weeks from today, the period from 11.10.2022 (date of issuance of Ext.P18 order) till today

(18.01.2023) shall be excluded for the purposes of determining any period of limitation within which such appeal had to be filed.

**sd/-**

ajt

**GOPINATH P.,**  
**JUDGE**

**APPENDIX OF WP(C) 31445/2022****PETITIONER EXHIBITS**

- Exhibit P1                    TRUE COPY OF REGISTRATION CERTIFICATE DATED 17.07.2018 ISSUED TO 1ST PETITIONER UNDER THE GST ACT 2017.
- Exhibit P2                    TRUE COPIES OF FORM GSTR-1 FILED UNDER ONLINE PORTAL OF GST DEPARTMENT FOR APRIL TO AUGUST OF 2022.
- Exhibit P3                    TRUE COPY OF LABOUR INVOICE NO.J55 DATED 07.09.2022 ISSUED BY 1ST PETITIONER TO ADHIPARASKTHI BANGLE WORKS, ALAPPUZHA.
- Exhibit P4                    TRUE COPY OF LABOUR INVOICE NO.J56 DATED 07.09.2022 ISSUED BY 1ST PETITIONER TO BROTHERS JEWELLERS, AMBALAPPUZHA.
- Exhibit P5                    TRUE COPY OF LABOUR INVOICE NO.J57 DATED 07.09.2022 ISSUED BY 1ST PETITIONER TO ADHIPARASKTHI BANGLE WORKS, ALAPPUZHA.
- Exhibit P6                    TRUE COPY OF FORM GST MOV- 02, GST MOV-04, AND GST MOV-06 DATED 07.09.2022 ISSUED TO 2ND PETITIONER AT 5.55 PM BY 1ST RESPONDENT, IN DETAINING THE GOODS U/S.129(1) OF GST ACT.
- Exhibit P7                    TRUE COPY OF STATEMENT DATED 08.09.2022 SENT TO 1ST RESPONDENT BY 2ND PETITIONER.
- Exhibit P8                    TRUE COPY OF LETTER DATED 08.09.2022 SENT TO 1ST RESPONDENT BY 1ST PETITIONER, ALONG WITH ORIGINAL OF EXT-P3 TO P6 LABOUR INVOICES.
- Exhibit P9                    TRUE COPY OF LETTER DATED 12.09.2022 SUBMITTED BY 1ST PETITIONER BEFORE 1ST RESPONDENT.
- Exhibit P10                  TRUE COPY OF LETTER DATED 12.09.2022 SUBMITTED BY 2ND PETITIONER BEFORE 1ST RESPONDENT.
- Exhibit P11                  TRUE COPY OF NOTICE DATED 14.09.2022, HAVING

DIN320620220001031 ISSUED U/S.130 OF THE GST ACT ISSUED BY 2ND RESPONDENT TO PETITIONERS IN PROPOSING TO DEMAND PENALTY AND FINE, IN LIEU OF CONFISCATION.

- Exhibit 12                    TRUE COPY OF REPLY DATED 26.09.2022 SENT TO 2ND RESPONDENT AGAINST EXT-P11 NOTICE.
- Exhibit P13                TRUE COPY OF CIRCULAR NO.17/2018 DATED 29.06.2018 ISSUED BY PRINCIPAL SECRETARY & COMMISSIONER OF KERALA SGST DEPARTMENT.
- Exhibit P14                TRUE COPY OF DOCUMENT IDENTIFICATION NUMBER DETAILS TO DIN320920220001031.
- Exhibit P15                TRUE COPY OF ORDER DATED 23.09.2020 ISSUED BY 4TH RESPONDENT IN SANCTIONING REWARD SCHEME FOR INFORMANTS AND GOVERNMENT EMPLOYEES.
- Exhibit P16                TRUE COPY OF INTERIM ORDER DATED 06.10.2022 PASSED BY THIS HON'BLE COURT FOR COMPLETING ADJUDICATION.
- Exhibit P17                TRUE COPY OF SUBMISSION MADE BY PETITIONERS BEFORE 2ND RESPONDENT, AT THE TIME OF APPEARANCE FOR ADJUDICATION, IN PRODUCING BOOKS OF ACCOUNTS.
- Exhibit P18                TRUE COPY OF ORDER DATED 11.10.2022 PASSED BY 2ND RESPONDENT, IN CONFIRMING THE PROPOSAL CONTAINED IN EXT-P11.