



2025:KER:39710

WP(C) No.27856 OF 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 4TH DAY OF JUNE 2025 / 14TH JYAISHTA, 1947

WP(C) NO. 27856 OF 2022

PETITIONER/S:

**ASGAR ALI,
AGED 52 YEARS
S/O NIWAJ KHA, 31 CHOPODA KI DHANI, KHO NAGORIAN, WARD
NO 34, JAIPUR, RAJASTHAN, PIN - 302001**

**BY ADVS.
SHRI.AJAY BEN JOSE
SHRI.AJAY V.ANAND
SMT.LAYA MARY JOSEPH**

RESPONDENT/S:

- 1 UNION OF INDIA,
 REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE,
 MINISTRY OF FINANCE, NEW DELHI, PIN - 110001**
- 2 STATE OF KERALA
 REPRESENTED BY COMMISSIONER ,GST DEPARTMENT,9TH
 FLOOR.TAX TOWER,KILLIPPALAM,KARAMANA P.O,TRIVANDRUM,
 PIN - 695002**
- 3 THE STATE TAX OFFICER,
 MOBILE SQUAD, MANJESWAR, KERALA STATE GOODS AND
 SERVICES TAX DEPARTMENT, KASARAGOD, PIN - 671121**
- 4 ASSISTANT STATE TAX OFFICER
 MOBILE SQUAD, MANJESWAR, KERALA STATE GOODS AND
 SERVICES TAX DEPARTMENT, KASARAGOD, PIN - 671121**

BY ADV GOVERNMENT PLEADER

OTHER PRESENT:

SHRI.ARUN AJAY SANKAR, G.P

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



J U D G M E N T

The Petitioner is the owner of the truck bearing registration No. RJ 14 GJ 6711. According to the petitioner, on 31.10.2021 the petitioner was approached by M/s. Platinum Trade Link, Palakkad, the consignor, through a local transporter in Kerala for transportation of Arecanuts to Delhi. Accordingly, the vehicle referred to above was arranged for transportation. Ext.P4 is the E-Way Bill generated for the said purpose and Ext.P5 is the invoice issued by the consignor.

2. On 01.11.2021, the petitioner's truck was intercepted at Pallikkara by the 4th respondent and during the inspection, it was found that the consignment was being made without valid documents. Accordingly, notices were issued to the consignor and also to the petitioner through his driver, as evidenced by Ext.P6, P7 and P8. Later Ext.P9 notice of confiscation was issued to the driver of the petitioner as well as to the petitioner herein, asking the petitioner as well as the consignor to show cause as to why the confiscation of the goods and the conveyance, shall not be ordered invoking the powers under Sec.130 of the CGST



Act. Later, Ext.P10 order was passed by the 3rd respondent ordering confiscation. On the basis of Ext.P10, Ext.P11 notice was issued granting opportunity to the petitioner to make the payment of penalty in lieu of the auction proceedings in accordance with the provisions of CGST Act. This writ petition is submitted by the petitioner in such circumstances, challenging Ext.P10 and Ext.P11 notices.

3. The main ground on which the challenge is made is that, in Ext.P10 order, there is no specific order of confiscation as far as the conveyance is concerned, as according to the petitioner, paragraph 6 of the said order is in respect of the goods alone and the description of the goods were also mentioned.

4. A detailed counter affidavit has been filed by the respondents, denying the averments made by the petitioner in the writ petition. According to the 3rd respondent, an order of confiscation was indeed passed against conveyance also. It was pointed out that, the petitioner did not respond to the notices issued and discharged the burden by establishing that the transactions which are the subject matter of the proceeding, were carried out without his knowledge, which



ought to have been established in the light of Sec.130(1)(iv) of the CGST Act. It was also asserted that the notices to the petitioner were issued through the driver and all possible medium of communication were utilised. It was also averred that, before passing Ext.P10, several opportunities were granted to the petitioner, but the same were not availed by the petitioner.

5. I have heard Sri. Ajay Ben Jose, the learned counsel for the petitioner and Sri. Arun Ajay Shankar, the learned Government Pleader appearing for the respondents.

6. The question that arises for consideration is whether is it necessary to interfere with the confiscation of the vehicle. In this regard, it is to be noted that, when the matter came up for consideration on earlier occasion, an interim order was passed on 02.09.2022, directing the release of the conveyance of the petitioner, provisionally, subject to the condition that the petitioner deposits a sum of Rs.3,29,063/- which is the penalty payable by the petitioner in lieu of the confiscation. It is reported that, the petitioner had already paid the penalty and the vehicle got released.

7. When coming to the grounds of challenge raised



against Ext.P10 in this writ petition, one of the main grounds is that, in Ext.P10 order of confiscation, there is no specific order directing the confiscation of the conveyance, even though it contains a specific order of confiscation as far as goods are concerned. Even though it is not specifically mentioned in the said order as to the confiscation of the conveyance, while issuing direction in the operative portion of Ext.P10 order, it is specifically directed that the goods and conveyance shall be released on payment of tax, penalty and fine in lieu of the confiscation, if the same is made within 90 days from the date of order. The details of the amounts payable by way of tax, penalty etc., were also specifically mentioned in Ext.P10. On going through Ext.P10 order as a whole, it can be seen that, there is no finding exonerating the vehicle from the confiscation process, whereas, Ext.P9 show cause notice contains a specific proposal to confiscate the vehicle as well. Moreover, in Ext.P10 order of confiscation, it is specifically mentioned that, despite opportunities being granted, the petitioner did not appear and contest the proceedings.

8. When considering this question, the statutory



procedure contemplated under Sec.130 for completing the process of confiscation and the burden imposed upon the owner of the conveyance are very much relevant. It is to be noted that, Sec.130 authorises the confiscation of goods and conveyance. Sub.Sec.1(v) of Sec.130 imposes a burden upon the owner of conveyance that, the conveyance was used in contravention of the provisions of the Act, without the knowledge or connivance of him or his agent, or the person in charge of the vehicle. Thus, it is evident that, as the statute imposes a burden upon the owner to prove that the consignment was used without his knowledge or authorisation, the natural consequence of a show cause notice proposing the confiscation of conveyance, if there was no reply from the person concerned or such persons fails to discharge such burden, would be to confirm the proposal in the show cause notice, in case the proceedings under Sec.130 are otherwise found to be sustainable.

9. In this case, it is discernible from Ext.P10 order that, despite granting several opportunities, the petitioner or the consignor himself did not turn up and avail the said opportunity. It is also evident from Ext.P10 that, no finding



had been entered into by the 3rd respondent, while finalizing the confiscation proceedings, dealing with any contention with regard to the knowledge of the petitioner or lack of knowledge, which obviously was due to the reason that there was no contest from the part of the petitioner, in this regard. Therefore, merely because of the reason that, while ordering the confiscation in para 6 of Ext.P10 order, the conveyance was not specifically included, it cannot be assumed that, the conveyance of the petitioner was exonerated from the confiscation proceedings. The fact that in the operative portion while issuing direction regarding the collection of tax, penalty and fines, in lieu of confiscation, it was specifically ordered that, before release of goods and conveyance, the amounts shall be collected. In such circumstances, I do not find any reason to arrive at a conclusion that the confiscation of conveyance was not ordered as per Ext.P10.

10. Of course, the learned counsel for the petitioner vehemently contended that, the petitioner was not served with any proper notice of the said proceedings. However, it is specifically asserted in the counter affidavit that, the



notices were served to the petitioner through his driver and other methods of communications. The said fact is not denied by way of any reply affidavit as well. Therefore, I do not find any justifiable reason to entertain the said contention as well.

11. In these circumstances, I do not find any valid grounds to interfere with the order passed by the 3rd respondent as evidenced by Ext.P10. If at all the petitioner has any grounds to challenge the proceedings on merits, it is for the petitioner to raise the same by invoking the appellate remedies, if any available. Accordingly, this writ petition is dismissed without prejudice to the right of the petitioner to invoke such remedies, if available. Since the vehicle is already released by payment of penalty in lieu of the confiscation, as per interim order passed by this Court on 02.09.2022, the same is made absolute, subject to the petitioner invoking appellate remedies, if any available.

Sd/-

**ZIYAD RAHMAN A.A.
JUDGE**



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APPENDIX OF WP(C) 27856/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF CERTIFICATE OF REGISTRATION OF THE VEHICLE OF THE PETITIONER
Exhibit P2	TRUE COPY OF CERTIFICATE OF FITNESS ISSUED BY THE AUTHORITY CONCERNED FOR THE VEHICLE OF THE PETITIONER
Exhibit P3	TRUE COPY OF CERTIFICATE OF NATIONAL PERMIT ISSUED BY THE TRANSPORT DEPARTMENT, RAJASTHAN FOR THE VEHICLE OF THE PETITIONER
Exhibit P4	TRUE COPY OF E-WAY BILL NO. 5213 0944 9119 DATED 31.10.2021 GENERATED BY THE CONSIGNOR AND HANDED OVER TO THE DRIVER OF THE TRUCK/CONVEYANCE OF THE PETITIONER
Exhibit P5	TRUE COPY OF THE INVOICE NO.4 DATED 31.10.2021 ISSUED BY THE CONSIGNOR AND HANDED OVER TO THE DRIVER OF THE TRUCK OF THE PETITIONER
Exhibit P6	TRUE COPY OF FORM GST MOV-01
Exhibit P7	TRUE COPY OF FORM GST MOV-02
Exhibit P8	TRUE COPY OF FORM GST MOV-03
Exhibit P9	TRUE COPY OF NOTICE DATED 08.11.2021 IN FORM GST MOV-10
Exhibit P10	TRUE COPY OF ORDER NO. SCN 87/2021-22/MS:MJR DATED 13.12.2021 IN FORM GST MOV-11
Exhibit P11	TRUE COPY OF NOTICE NO. SCN:87/2021-22/MS:MJR DATED 01.02.2022 ISSUED BY THE 3RD RESPONDENT
Exhibit P12	TRUE COPY OF ORDER DATED 11.08.2022 IN W.P. (C). NO. 10532/2022 OF THE HON'BLE HIGH COURT OF KERALA

RESPONDENTS' EXHIBITS:NIL

TRUE COPY

P.A.TO JUDGE