

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 1ST DAY OF FEBRUARY 2022 / 12TH MAGHA, 1943

WP(C) NO. 3194 OF 2022

PETITIONER/S:

KAVERY TRADERS
PATHARIKODE, ELANKUR, MANJERI,
MALAPPURAM DISTRICT, PIN-676121,
REPRESENTED BY ITS MANAGING PARTNER,
P.SAJITH KUMAR.

BY ADVS.
HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA

RESPONDENT/S:

- 1 THE ASST. STATE TAX OFFICER
MOBILE SQUAD NO.2, STATE GST DEPARTMENT,
KOZHIKODE-673006.
- 2 STATE TAX OFFICER,
OFFICE OF THE DEPUTY COMMISSIONER (INTELLIGENCE),
NIRMAL ARCADE BUILDING, ERANHIPALAM P.O.,
KOZHIKODE-673006.
- 3 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

OTHER PRESENT:

SMT.M.M.JASMIN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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BECHU KURIAN THOMAS, J.

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Dated this the 1st day of February, 2022

J U D G M E N T

Petitioner is a dealer in arecanut. Petitioner had transported certain quantities of dry arecanuts, purchased from unregistered persons, allegedly supported by Ext.P1 to P4 e-way bills. While the goods were being transported it was intercepted on 10.01.2022 at 7.50 p.m., and after verification, the 1st respondent initiated proceedings under Section 129 of the CGST/SGST Acts and detained the goods alleging 'excess quantity' as evident from Ext.P7.

2. Subsequently, petitioner filed an objection as Ext.P10, contending that, the quantity of goods that were being transported by the petitioner tallied with the e-way bills and that if a proper ascertainment of the weight of the load is carried out, it would reveal that there was no incongruity in the quantity of goods transported and the e-way bills.

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3. However, by order dated 25.01.2022 the State Tax Officer rejected the objections and issued an order under Section 129(3) in Form GST MOV 09. In arriving at a conclusion that, petitioner is liable to pay the amount stipulated therein, the State Tax Officer has arrived at a conclusion that, there is excess quantity of goods in the vehicle than the quantity declared in the 4 e-way bills.

4. The learned counsel for the petitioner vehemently argued that, if an actual measurement of the goods are carried out, it could be easily realized that the weight of the goods transported tallied with the 4 e-way bills and also that there was no incongruity with the e-way bills.

5. I have heard Sri. Harishankar V. Menon, the learned counsel for the petitioner and Smt. M.M Jasmine, the learned Government Pleader.

6. On a perusal of the impugned order Ext.P11, it can be noticed that the 2nd respondent has arrived at a conclusion that the quantity of the load that was being carried did not tally

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with the quantity mentioned in the e-way bills. Though petitioner disputes the said conclusion, correctness or otherwise of the said conclusion falls within the realm of disputed facts. It is trite law that this Court cannot, in exercise of its jurisdiction under Article 226 of the Constitution of India enter into issues that falls within the realm of disputed facts. Further, petitioner has an alternative and efficacious remedy under Section 107 of the CGST/SGST Act 2017 and hence it will not be subjected to any prejudice also.

7. Accordingly, without entering into any findings on the contentions raised by the learned counsel for the petitioner, I dismiss this writ petition. However, liberty of the petitioner to have recourse to the statutory remedies available shall not be prejudiced by this judgment.

This writ petition is dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

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APPENDIX OF WP(C) 3194/2022

PETITIONER EXHIBITS

- EXHIBIT P1 COPY OF E-WAY BILL NO.521329443018
GENERATED BY THE DEALER TO THE
PETITIONER DATED 10.1.2021.
- EXHIBIT P2 COPY OF E-WAY BILL NO.541329441399
GENERATED BY THE DEALER TO THE
PETITIONER DATED 10.1.2021.
- EXHIBIT P3 COPY OF E-WAY BILL NO.551329445295
GENERATED BY THE DEALER TO THE
PETITIONER DATED 10.1.2021.
- EXHIBIT P4 COPY OF E-WAY BILL NO.521329446653
GENERATED BY THE DEALER TO THE
PETITIONER DATED 10.1.2021.
- EXHIBIT P5 COPY OF INVOICE NO.27 OF M/S. MALABAR
ENTERPRISES, PASUKKADAVU, KAVILUMPARA
KOZHIKODE DATED 10.1.2022.
- EXHIBIT P6 COPY OF E-WAY BILL GENERATED BY M/S.
MALABAR ENTERPRISES, PASUKKADAVU,
KAVILUMPARA , KOZHIKODE DATED 10.1.2022.
- EXHIBIT P7 COPY OF ORDER OF DETENTION IN FORM GST
MOV 06 ISSUED BY THE 1ST RESPONDENT
10.1.2021.
- EXHIBIT P8 COPY OF INVOICE UNDER SECTION 129 (3) IN
FORM GST MOV 07 ISSUED BY THE 1ST
RESPONDENT DATED 10.1.2022.
- EXHIBIT P9 COPY OF E-WAY BILL NO.501329600055
GENERATED BY M/S.MALABAR ENTERPRISES
DATED 10.1.2022.

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EXHIBIT P10

COPY OF LETTER SUBMITTED BY THE
PETITIONER DATED 19.01.2022.

EXHIBIT P11

COPY OF MOV 09 ORDER OF DEMAND OF TAX
AND PENALTY ISSUED BY THE 2ND RESPONDENT
25.1.2022.

// True Copy //

PA To Judge