

W.P.(C) Nos.17454 &17463 of 2022

-:1:-

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 20TH DAY OF JULY 2022 / 29TH ASHADHA, 1944

WP(C) NO. 17454 OF 2022

PETITIONER:

HINDUSTAN STEEL AND CEMENT
N.H. KARIMBILANGADI,
VENNIYUR P.O, MALAPPURAM REPRESENTED BY ITS
MANAGING PARTNER
T P MUNEEER, PIN - 676508

BY ADVS.R.JAIKRISHNA
NARAYANI HARIKRISHNAN
C.S.ARUN SHANKAR
ANISH P.
VIVEK BHAT D.

RESPONDENTS:

- 1 ASSISTANT STATE TAX OFFICER, 24 X 7 MOBILE SQUAD
@ VATAKARA, STATE GOODS AND SERVICE TAX
DEPARTMENT, MINI CIVIL STATION, VATAKARA P.O
KOZHIKODE, PIN - 673101
- 2 ASSISTANT STATE TAX OFFICER, 24 X 7 MOBILE SQUAD
@ KOYILANDY, STATE GOODS AND SERVICE TAX
DEPARTMENT, MINI CIVIL STATION, KOYILANDY P.O
KOZHIKODE, PIN - 673305
- 3 COMMISSIONER, OFFICE OF THE COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT
TAX TOWER, KARAMANA P.O., THIRUVANANTHAPURAM,
PIN - 673006
- 4 JOINT COMMISSIONER OF STATE TAX
OFFICE OF THE JOINT COMMISSIONER, STATE GOODS AND
SERVICE TAX DEPARTMENT, JAWAHAR NAGAR COLONY,
ERANHIPALAM P.O, KOZHIKODE, PIN - 673006
- 5 JOINT COMMISSIONER (APPEALS, STATE GOODS AND
SERVICE TAX DEPARTMENT, NIRMAL ARCADE,
ERANHIPALAM P.O, KOZHIKODE, PIN - 673006

BY ADV GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.07.2022, ALONG WITH WP(C).17463/2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 20TH DAY OF JULY 2022 / 29TH ASHADHA, 1944

WP(C) NO. 17463 OF 2022

PETITIONER/S:

B M STEEL AGENCIES
20/913-A, KALLAI P.O
KOZHIKODE
REPRESENTED BY ITS MANAGING PARTNER
- MUJEEB RAHIMAN C, PIN - 673003

BY ADVS.
R.JAIKRISHNA
NARAYANI HARIKRISHNAN
C.S.ARUN SHANKAR
ANISH P.
VIVEK BHAT D.

RESPONDENT/S:

- 1 ASSISTANT STATE TAX OFFICER
24 X 7 MOBILE SQUAD @ KOYILANDY
STATE GOODS AND SERVICE TAX DEPARTMENT,
MINI CIVIL STATION, KOYILANDY P.O
KOZHIKODE, PIN - 673305
- 2 COMMISSIONER
OFFICE OF THE COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT
TAX TOWER, KARAMANA P.O
THIRUVANANTHAPURAM, PIN - 673006
- 3 JOINT COMMISSIONER OF STATE TAX
OFFICE OF THE JOINT COMMISSIONER,
STATE GOODS AND SERVICE TAX DEPARTMENT,
JAWAHAR NAGAR COLONY, ERANHIPALAM P.O,
KOZHIKODE, PIN - 673006
- 4 JOINT COMMISSIONER (APPEALS)
STATE GOODS AND SERVICE TAX DEPARTMENT,
NIRMAL ARCADE, ERANHIPALAM P.O,
KOZHIKODE, PIN - 673006

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BY ADVS.
GOVERNMENT PLEADER
JOINT COMMISSIONER (APPEALS) (Party-In-Person)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20.07.2022, ALONG WITH WP(C).17454/2022, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

[WP(C) Nos.17454/2022, 17463/2022]

The only point that arises for consideration in these cases is whether a person who opts to make payment in terms of Clause (a) of Sub-Section (1) of Section 129 of the Central Goods & Services Tax Act / State Goods & Services Tax Act (hereinafter referred to as the 'CGST/SGST Acts') to get goods/conveyance/documents detained or seized in proceedings under Section 129 released is deprived of his right to file an appeal against the proceedings. While the petitioners in these cases contend for the position that they are not deprived of such right, the State contends that on account of the stipulation in sub-section (5) of Section 129 of the CGST/SGST Acts, on payment of amounts under sub-section (1), all proceedings which are the subject matter of a notice under sub-section (3) of Section 129 "*shall be deemed to be concluded*".

2. In order to consider the issue, it is not necessary to refer to the facts of these cases in any detail. It would be sufficient to notice that goods/conveyance of the petitioners were the subject matter of detention/seizure under Section 129 of the CGST/SGST Acts and the petitioners in these cases opted to pay amounts in terms of the pre-

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amended provisions of Section 129(1)(a) of the CGST/SGST Acts, to get the goods/conveyance released pending finalisation of proceedings. On payment of the amount, the goods and the conveyance were released as contemplated by sub-section (1) by issuing Form MOV-05. While an order was issued in Form MOV-09 (issued under sub-section (3) of Section 129), a corresponding summary of order/demand in form DRC-07 was not issued. As a result, the petitioners are not in a position to approach the appellate authority by filing an appeal under Section 107 of the CGST/SGST Acts.

3. Sri.R.Jaikrishna, the learned counsel for the petitioners submits that on the reading of sub-section (3) of Section 129 CGST/SGST Acts with Rule 142 (5) of the CGST/SGST Rules and the provisions of Ext.P5 circular No.41/15/2018-GST, dated 13.04.2018, the order under sub-section (3) of Section 129 issued in Form MOV-09 should have been accompanied by a summary of the order in Form DRC-07. It is submitted that without a summary of the order in Form DRC-07, the petitioners are disabled from filing an appeal as the system accepts an appeal only if there is a summary of an order issued in Form DRC-07.

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4. Dr. Thushara James, the learned Senior Government Pleader appearing for the respondents would point out that on an assessee or a person who is the subject matter of proceedings under Section 129 CGST/SGST Acts, opting to make payment of tax and penalty in terms of Section 129(1)(a), the proceedings under Section 129 come to an end. She states that this is the effect of sub-section (5) of Section 129. She states that payments made under Section 129(1)(a) are paid and accepted in Form DRC-03, which is a form for voluntary payment and such payments cannot be the subject matter of any refund or adjudication at a later point of time. It is submitted that on payment of the amount under Section 129(1)(a), the entire proceedings should be treated as having concluded and the payment represents an acceptance of the fact that the discrepancies noted by the intercepting officer and leading to the initiation of proceedings under Section 129 were well founded. It is submitted that the provisions of Rule 142 of the CGST Rules deal with the situation where the person concerned seeks to continue with the proceedings by opting to provide a Bank guarantee under Section 129(1)(c), in which case the provisions of sub-section (5) of Section 129 do not apply and the proceedings cannot be treated as concluded. It is

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submitted that once payment is made under Section 129(1)(a), there is no way in which a summary of order/demand can be generated in Form DRC-07. The learned Senior Government Pleader also points out that the wordings of sub-rule (5) of Rule 142 clearly suggest that unless there is a demand for tax or interest or penalty, there cannot be a proceeding under DRC-07. It is also pointed out that Form DRC-07 also contemplates the setting out of the amount to be paid and also indicates that action will be taken if the amount shown therein is not paid by the person concerned. In other words, it is her contention that once a payment is made under Section 129 (1) (a) there cannot be a demand raised under DRC-07. The learned Senior Government Pleader submits that when a summary of order/demand is issued under DRC-07, the proper officer can, on being already satisfied that the demands have been paid, issue proceedings in Form DRC-08. However, it is fairly pointed out that Section 107 provides an opportunity to a person aggrieved to challenge any order or any proceedings issued under any provision of the Act and the wording of that Section does not really make a distinction between persons who opt to make a payment under Section 129(1)(a) and persons who opt to provide security as provided for, in Section 129(1)(c).

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5. I have considered the contentions raised. The relevant statutory provisions may be noticed. Sections 129 (1) (a), (3) and (5) of the CGST/SGST Acts, (as they stood prior to amendment w.e.f from 1.1.2022) read as under-

“(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;”

(b).....

(c)

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c)

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(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.”

The provisions of Section 129 of the CGST/SGST Acts provide for the detention, seizure and release of goods, conveyance and documents. It provides that when a person transports any goods or stores any goods while they are in transit in contravention of the provisions of the Act of the Rules made thereunder, such goods, documents and conveyance used as a means of transport shall be liable to detention or seizure and also provides for the procedure to be followed for release of goods following such detention or seizure. As already noticed, Section 129(1)(a) provides that where the person who suffers the order on detention makes payment of tax and penalty, the goods shall be released. Section 129(1)(c) gives an option to a person suffering an order of detention to provide security instead of making payment of tax and penalty as provided for in Section 129(1)(a). However, the provisions of sub-section (3) of Section 129 contemplate the issuance of a notice and the passing of an order. A reading of sub-section (3) suggests to me that whether the person

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suffering the detention chooses to make payment under Section 129(1)(a) or chooses to provide security in terms of Section 129(1)(c), the officer detailing or seizing the goods or conveyance has to issue a notice specifying the tax and penalty payable. Rule 142(5) of the CGST/SGST Rules provides as follows: -

“A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in Form GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.”

Clause (h) and (v) of the circular No.41/15/2018-GST dated 13.04.2018 read as follows: -

*“(h) Where the owner of the goods or any person authorized by him comes forward to make the payment of tax and penalty as applicable under clause (a) of sub-section(1) of Section 129 of the CGST Act, or where the owner of the goods does not come forward to make the payment of tax and penalty as applicable under clause (b) of sub-section(1) of the said Section, the proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules, release the goods and conveyance by an order in **FORM GST MOV-05**. Further,*

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*the order in **FORM GST MOV-09** shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger or the concerned person in accordance with the provisions of Section 49 of the CGST Act.*

*(v) A summary of every order in **FORM GST MOV-09** and **FORM GST MOV-11** shall be uploaded electronically in **FORM GST-DRC-07** on the common portal.”*

A reading of sub-section (3) of Section 129 of the CGST/SGST Acts, the provisions of Rule 142 referred to above and the provisions of the circular, cumulatively, compel me to hold that whether or not a person opts to make payment under section 129(1)(a) or to provide security under Section 129(1)(c), the responsibility of the officer to pass an order under sub-section (3) of Section 129 and to upload a summary of the order/demand in Form DRC-07 continues. The provisions of sub-section (5) or Section 129 which were pointed out by the learned Senior Government Pleader only contemplate that the procedure for **detention on seizure** of goods or documents or conveyances come to an end and it is always open to the person who suffers proceedings under 129 of the CGST/SGST Acts to challenge

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those proceedings if he feels that the demand has been illegally raised on him. This can be the only reasonable interpretation that can be placed on the provisions referred to above. Any other interpretation would clearly violate Article 265 of the Constitution of India. Further, Section 107 of the CGST Act is widely worded and provides that any person aggrieved by any decision, or order passed under the CGST/SGST Acts or Union Territory Goods and Services Tax Act, by an adjudicating authority, may appeal to such appellate authority as may be prescribed, within three months from the date on which such decision or order is communicated to such a person. It is obvious that the learned counsel for the petitioners in these cases is correct and contenting that whether or not a payment is made under Section 129(1)(a) or security is provided under Section 129 (1) (c), the person who is the subject matter of proceedings under section 129 of the CGST Act has the right to challenge those proceedings, culminating in an order under sub-section (3) of Section 129, before the duly constituted Appellate Authority under Section 107 of that Act. The fact that the culmination of proceedings in respect of a person who seeks to make payment of Tax and Penalty under Section 129(1)(a) does not result in the generation of a summary of an order

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under Form DRC-07 cannot result in the right of the person to file an appeal under Section 107 being deprived. The fact that the system does not generate a demand or that the system does not contemplate the filing of an appeal without a demand does not mean that the intention of the legislature was different.

In the light of the above finding, these writ petitions will stand allowed in terms of prayer (i) in both cases. The concerned among the respondents shall do the needful within one month from the date of receipt of a certified copy of this judgment. In order to prevent the recurrence of such issues, the Commissioner, Office of the State Goods & Services Tax Department, Thiruvananthapuram will issue an appropriate circular taking note of the aforesaid findings.

sd/-

GOPINATH P.
JUDGE

acd

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APPENDIX OF WP(C) 17463/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER OF DETENTION IN FORM GST MOV 06 ISSUED BY THE 1ST RESPONDENT WITH RESPECT TO VEHICLE BEARING REGISTRATION NO. KL 11 AV 3014 DATED NIL
- Exhibit P2 TRUE COPY OF THE NOTICE IN FORM GST MOV 07 ISSUED BY THE 1ST RESPONDENT WITH RESPECT TO VEHICLE BEARING REGISTRATION NO. KL 11 AV 3014 DATED NIL
- Exhibit P3 TRUE COPY OF THE ORDER OF DEMAND OF TAX AND PENALTY IN FORM GST MOV 09 DATED 9.9.2021
- Exhibit P4 TRUE COPY OF FORM GST DRC 03 DATED 9.9.2021
- Exhibit P5 TRUE COPY OF FORM GST MOV 05 ISSUED BY 1ST RESPONDENT DATED 9.9.2021
- Exhibit P6 TRUE COPY OF CIRCULAR NO. 41/15/2018-GST ISSUED BY DEPARTMENT OF REVENUE DATED 13.4.2018
- Exhibit P7 TRUE COPY THE REQUEST ISSUED BY THE PETITIONER TO THE JOINT COMMISSIONER (INTELLIGENCE), KOZHIKODE DATED 7.1.2022

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APPENDIX OF WP (C) 17454/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER OF DETENTION IN FORM GST MOV 06 ISSUED BY THE 1ST RESPONDENT WITH RESPECT TO VEHICLE BEARING REGISTRATION NO. KL 11 AK 2445 DATED NIL
- Exhibit P2 TRUE COPY OF THE NOTICE IN FORM GST MOV 07 ISSUED BY THE 1ST RESPONDENT WITH RESPECT TO VEHICLE BEARING REGISTRATION NO. KL 11 AK 2445 DATED NIL
- Exhibit P3 TRUE COPY OF THE ORDER OF DETENTION IN FORM GST MOV 06 ISSUED BY THE 1ST RESPONDENT WITH RESPECT TO VEHICLE BEARING REGISTRATION NO .KL 11 AT 2518 DATED NIL
- Exhibit P4 TRUE COPY OF THE NOTICE IN FORM GST MOV 07 ISSUED BY THE 1ST RESPONDENT WITH RESPECT TO VEHICLE BEARING REGISTRATION NO. KL 11 AT 2518 DATED NIL
- Exhibit P5 TRUE COPY OF THE ORDER OF DETENTION IN FORM GST MOV 06 ISSUED BY THE 2ND RESPONDENT WITH RESPECT TO VEHICLE BEARING REGISTRATION NO. KL 11 AK 2445 DATED NIL
- Exhibit P6 TRUE COPY OF THE NOTICE IN FORM GST MOV 07 ISSUED BY THE 2ND RESPONDENT WITH RESPECT TO VEHICLE BEARING REGISTRATION NO. KL 11 AK 2445 DATED NIL
- Exhibit P7 TRUE COPY OF THE ORDER OF DEMAND OF TAX AND PENALTY IN FORM GST MOV 09 DATED 31.3.2021
- Exhibit P8 TRUE COPY OF THE ORDER OF DEMAND OF TAX AND PENALTY IN FORM GST MOV 09 DATED 24.8.2021
- Exhibit P9 TRUE COPY OF THE ORDER OF DEMAND OF TAX AND PENALTY IN FORM GST MOV 09 DATED 30.8.2021
- Exhibit P10 TRUE COPY OF FORM GST DRC 03 DATED 31.3.2021

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Exhibit P11	TRUE COPY OF FORM GST DRC 03 DATED 24.8.2021
Exhibit P12	TRUE COPY OF FORM GST DRC 03 DATED 30.8.2021
Exhibit P13	TRUE COPY OF FORM GST MOV 05 ISSUED BY 1ST RESPONDENT DATED 31.3.2021
Exhibit P14	TRUE COPY OF FORM GST MOV 05 ISSUED BY 2ND RESPONDENT DATED 31.8.2021
Exhibit P15	TRUE COPY OF CIRCULAR NO. 41/15/2018- GST ISSUED BY DEPARTMENT OF REVENUE DATED 13.4.2018