

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 04TH DAY OF FEBRUARY 2020 / 15TH MAGHA, 1941

WP(C).No.1918 OF 2020(L)

PETITIONER/S:

BON CARGOS PRIVATE LIMITED,
PERINGAPPURAM, NH 66, MYLAKKAD, KOTTIYAM, KOLLAM
-691571. REPRESENTED BY ITS GENERAL MANAGER, MR.MANOJ
KUMAR R.

BY ADVS.
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE,
(DEPARTMENT OF REVENUE) NORTH BLOCK, NEW DELHI-
110001.
- 2 ASSISTANT STATE TAX OFFICER,
MOBILE SQUAD NO.II, STATE GOODS AND SERVICES TAX
DEPT., KERALA, THIRUVANANTHAPURAM-695002.
- 3 THE DEPUTY COMMISSIONER(INTELLIGENCE)
KERALA STATE GST DEPARTMENT, TAX TOWERS, KARAMANA,
THIRUVANANTHAPURAM-695002.

R1 BY SRI.S.BIJU, CGC

OTHER PRESENT:

SMT.M.M.JASMINE, GOVT.PLEADER, SRI.P.VIJAYAKUMAR,
ASGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P.(C.) No. 1918 of 2020

Dated this the 4th day of February, 2020

JUDGMENT

The prayers in the above W.P.(C.) are as follows :

- (i) *“call for the records leading to Exhibits P2, P3, P4 and P5 issued by the 2nd respondent, and quash the same by the issuance of a writ of certiorari or such other order or direction.*
- (ii) *Declare that action of the 2nd respondent in continuing with the detention of the vehicle of the petitioner and goods carried therein, consignment value per invoice of which, is below Rs.50,000/- as being illegal, arbitrary, unfair, unreasonable and contrary to the statutory scheme*
- (iii) *grant such other and incidental reliefs as this Hon'ble Court may deem just and necessary on the facts and circumstances of this case.*
- (iv) *Allow this Writ petition (Civil) with costs to the petitioner. “*

2. Heard Sri.M.Gopikrishnan Nambiar, learned counsel appearing for the petitioner and Smt.M.M.Jasmine, learned Government Pleader appearing for the respondents.

3. The case set up in the W.P.(C.) is as follows :

That the petitioner is a Goods Transport Agency (GTA) registered under the GST Acts. On 10.01.2020, the conveyance/vehicle of the petitioner which was entrusted with the transportation of electrical good from M/s. G M Impex Pvt. Ltd. (Consignor) to M/s. Flower Electricals & Agencies, Attingal (the Consignee) was intercepted by the 2nd respondent. Pursuant to an inspection, the vehicle and the goods contained therein were detained by the 2nd respondent on the ground that Part B of the E-way

bill that facilitates transportation of goods, was not updated, by the petitioner. The specific case of the petitioner is that the value of goods (which are distinct and having separate HSN numbers) as per invoices is less than Rs.50,000/- and therefore, there is no requirement of generation of E-way bills, going by Rule 138 of the CGST Rules, 2017. The 2nd respondent has proceeded to impose a fine and a penalty on the petition totaling up to Rs.20,274/- upon the payment of which only, the conveyance and the goods would be released.

4. That the action of the 2nd respondent is wholly arbitrary since Rule 138 of the CGST, Rules clearly prescribes that a transporter/GTA is required to update Part B of the E-Way bill only in the event that value of each individual consignment is above Rs.50,000/-. On the facts of the case, four invoices were raised by the Consignor of which only one was worth more than Rs.50,000/- on account of which, the petitioner duly updated Part B of the E-Way Bill for this particular invoice. However the remaining consignments were under the Rs.50,000/- threshold and hence, there was no legal obligation on the petitioner, whatsoever, to update Part B of these invoices. Consignments are to be considered individually and not as a sum of all the goods carried in a conveyance and therefore, the detention of the Petitioner's vehicles and goods as also the arbitrary imposition of tax and penalty are unsustainable in the eyes of law.

5. The main contentions urged by the petitioner are as follows :

(a) That the petitioner is challenging the continued detainment of its conveyance and the goods contained therein by the 2nd respondent.

(b) That the petitioner is also challenging the arbitrary imposition of tax and penalty by the 2nd respondent for want of Part B of the E-Way bill.

(c) That Part B of E-Way Bill in FORM GST EWB-01 is only required to be updated by a GTA if the value of each consignment is worth more than 50,000/-

(d) where the value of each consignment is below such amount, the petitioner cannot be held liable for not updating Part B since the statute imposes no such condition.

(e) The issuance of separate invoices are owing to the fact that the goods are of four distinct specifications for which one common invoice cannot be raised. Further, separate E-Way Bills with four distinct Part A's were raised by the consignor. The transporter is required to raise Part B only to the corresponding Part A, value designation in which is more than Rs.50,000/-

(f) That the Act does not make any prescription that where the Consignor, the Consignee and the date of invoices are the same, one common invoice/E-Way Bill has to be raised. The goods here are distinct.

(g) That since there has been no statutory breach on the part of the petitioner, the conveyance and the goods may be released and the

imposition of tax and liability, quashed.

6. It is urged by learned counsel appearing for the petitioner that the consignor supplied electric goods in different HSN code, and therefore, raised four separate invoices to the consignee. These invoices were numbered as MD14112/12-20, MD14116/19-20, MD14134/19-20 and MD14139/19-20 dated 09.01.2020 respectively. The petitioner was engaged to transport such electrical goods from the Consignor to the Consignee. As per the Rule 138 of the CGST Rules, 2017, the generation of E-way bills is to ensure smooth facilitation of transportation of goods, wherein the consignment value exceeds Rs.50,000/-. The consignor generated four E-Way Bills dated 09.01.2020 and numbered as 5311 5989 1857, 5911 5989 1206, 5711 5989 0364 and 5411 5989 6053, for transportation of such goods. The value of goods as per invoices amounted to Rs.8036/- 37,552/-, 71,379/- and 10,726/- respectively. It is submitted that part A of such E-Way bill in FORM GST EWB-01 is to be raised by the Consignor, in accordance with Chapter XVI, Rule 138 of the Central Goods and Service Tax Rules, 2017. Rule 138(3) and the proviso thereunder, specifies that at his option, the registered person or transporter may generate and carry the E-Way Bill, even if the value of the consignment is less than Rs.50,000/-.

7. The specifications of the goods pertaining to each said invoices, its values and status has been given as a tabular column in para 4 on page 3

of the memorandum of W.P.(C.) which reads as follows :

<u>INVOICE NO.</u>	<u>TYPE OF GOOD</u>	<u>HSN NO.</u>	<u>VALUE OF INVOICE</u>	<u>E-WAY BILL STATUS</u>
MD14112/12-20	Flush Mounting Metal Gang box	8538	Rs.8,036.00	Part A updated
MD14116/19-20	13AMP international Socket-Electric Grey	8536	Rs.37,552.00	Part A updated
MD14134/19-20	2 Way Switch-Glossy White	8536	Rs.71,379.00	Part A+ Part B updated
MD14139/19-20	Wavio Wood Walnut	8538	Rs.10,726.00	Part A updated

8. The main contention urged by the petitioner is that the requirement for updating part B of the e-way bill is required only in a case where the value of the consignment concerned is above Rs. 50,000/- and that in a case where the value of the consignment is upto Rs.50,000/- or below that, then the requirement of updating part-A and part-B of the E-Way bill is not mandatory and compulsory and is only optional at the instance of the party concerned. It is pointed out that only the value of Sl.No.3 of the consignment is more than Rs.50,000/- , its value being Rs.71,379/- and for that consignment, indisputably, the petitioner has updated both part A and part B of the E-way bill and in the case of all the other three consignments, the respective value of each such consignment is well below the threshold limit of Rs.50,000/- and the consignor has indeed updated part A of the E-Way bill but transporter has not furnished part-B of the E-Way bill. Further that, grounds for detaining goods as noted by the 2nd respondent in the impugned Ext. P5 proceedings is as follows :

“The consignor issued multiple invoices to the consignee to avoid generate e-way bill and evade tax. The consignor issued 3 invoices to the consignee on the same date is 09.01.2020”.

9. Hence it is a deliberate attempt to escape from generating e-way bill. It is urged that the abovesaid grounds noted by the 2nd respondent in the impugned Ext.P5 detention order is without any legal or material basis, inasmuch as the statutory obligation of the consignor concerned to generate part A and for the transporter to generate part B of the E-way bill comes into play only in a case, where the value of the consignment exceeds Rs. 50,000/- . Further, it is pointed out that it is very crucial to note that all the abovesaid 3 consignments, the value of which is below Rs. 50,000/-, consists of different commodities of the goods concerned and it is not of the same nature and therefore there cannot be any suspicion about the conduct of the consignor in not generating E-way bill for the separate consignments, which consists separate items of goods, the value of each which is below Rs.50,000/-. Further the counsel for the petitioner would also place reliance on the stand of the taxation department as shown in their official web portal, which is extracted on page 2 of Ext.P7 as a question and answer thereto (see page No.26 of the paper book of this W.P. (C.)) and the same reads as follows :

*If the value of the goods carried in a single conveyance is more than 50,000/- though value of all or some of the individual consignments is below Rs.50,000/- does transporter need to generate e-way bill for all such smaller consignments ?
As Rule 138(7) will be notified from a future date, hence till the notification for that effect comes, transporter needs not generate e-way bill for consignments having value less than Rs.50,000/- even if the value of the goods carried in single*

conveyance is more than Rs.50,000/- till the said sub-rule is notified.”

10. It is pointed out that the said stand of the department is substantially fully in favour of the petitioner, inasmuch as it is made clear that till Rule 138(7) is notified to be brought in force, the transporter need not generate e-way bills for consignments having value less than Rs.50,000/-, even if the value of the goods carried in a single conveyance is more than Rs.50,000/- .

11. Per contra, Smt.M.M.Jasmine, learned Government Pleader would argue that the said aspect born from page 2 of Ext.P7 may not be relevant inasmuch as the provisions contained in Rule 138(7) will not cover the facts of this case, since what is envisaged in that sub-rule is inter state supply, whereas in the instant case, it is admittedly intra state supply.

12. Further, the learned Government Pleader would argue that by virtue of the mandatory force of sub-rule (1) of Rule 138, the obligation to generate the part A and part B of the e-way bill is fastened on every registered persons, who cause of movement of goods of consignment, the value of which exceeds Rs.50,000/- etc. and that the mandatory sweep of that provision cannot be permitted to be diluted by an act of the consignor in having separate consignments, the value of each of which is being below Rs.50,000/- and in a case, where the aggregate value of such consignments causes threshold of Rs. 50,000/-. In such a case, the authorities concerned are right in taking the abovesaid impugned stand as

reflected in the impugned Ext.P5 detention order.

13. After hearing both sides and after careful evaluation of the facts and circumstances of this case, it is seen that the value of the tax and penalty demanded as per impugned Ext.P5 order is only Rs.20,274/- and the adjudication proceedings in pursuance to the impugned Ext.P5 detention order has not been finalised as of now in accordance with the law. True that some of the abovesaid contentions urged by the petitioner more particularly, the contention based on page 2 of Ext.P7 would really deserve serious consideration at the hands of the authorities while finalizing the adjudication proceedings in pursuance to Ext.P5 detention order. This Court is of the view that taking note of the nature of the course of action now projected before this Court, the case is only at the stage of detention of the goods and the vehicle concerned and therefore, this Court is of the considered view that the abovesaid rival contentions raised by both sides need not be resolved by this Court at this stage of the matter.

14. Accordingly, it is ordered that the 2nd respondent shall forthwith release the goods and vehicle detained pursuant to the impugned Ext.P5 detention order to the petitioner on the latter furnishing bank guarantee for the value of the amount of Rs.20,274/- as shown in the impugned Ext.P5 detention order. Thereafter, the 2nd respondent will immediately take steps to ensure that the adjudication proceedings in pursuance to Ext.P5 detention order are finalized in accordance with law and in that

regard, the 2nd respondent shall issue notice of hearing to the petitioner and will permit the petitioner to submit written submissions in the matter and will thereafter afford reasonable opportunity of being heard to the petitioner and will pass orders finalizing the adjudication proceedings in pursuance to the Ext.P5 detention order, without much delay, preferably within a period of 4 weeks from the date of production of a certified copy of this judgment.

15. Before finalizing the said proceedings, the 2nd respondent should meticulously and effectively consider the various contentions urged by the petitioner and then pass orders finalizing the adjudication proceedings as aforestated.

With these observations and directions, the above W.P.(C.) will stand disposed of.

Sd/-

**ALEXANDER THOMAS,
JUDGE**

SKS

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF E-WAY BILL NO. 531159891857
DATED 09.01.2020.
- EXHIBIT P1 (A) A TRUE COPY OF E-WAY BILL NO. 591159891206
DATED 09.01.2020.
- EXHIBIT P1 (B) A TRUE COPY OF E-WAY BILL NO. 571159890364
DATED 09.01.2020
- EXHIBIT P1 (C) A TRUE COPY OF E-WAY BILL NO. 541159896053
DATED 09.01.2020.
- EXHIBIT P2 A TRUE COPY OF THE ORDER FOR PHYSICAL
VERIFICATION/INSPECTION, DATED 10.01.2020
ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF THE PHYSICAL VERIFICATION
REPORT DATED 14.01.2020 ISSUED BY THE 2ND
RESPONDENT.
- EXHIBIT P4 A TRUE COPY OF THE ORDER OF DETENTION DATED
14.01.2020 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P5 A TRUE COPY OF NOTICE DATED 14.01.2020
ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P6 A TRUE COPY OF LETTER DATED 15.01.2020
ADDRESSED TO THE 3RD RESPONDENT.
- EXHIBIT P7 A TRUE COPY OF THE RELEVANT EXTRACTS OF THE
FAQS ON THE GST PORTAL OF THE GOVERNMENT OF
KERALA, AS UPDATED ON 24.03.2018.