



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 23<sup>RD</sup> DAY OF AUGUST 2023 / 1ST BHADRA, 1945

WP(C) NO. 10565 OF 2018

**PETITIONER/S:**

M/S. EVM PASSENGER CARS INDIA PVT. LTD.,  
NH BYEPASS, VENPALAVATTOM, ANAYARA,  
TRIVANDRUM 695 029, KERALA  
REPRESENTED BY IT'S MANAGING DIRECTOR MR. SABU JONHY.

BY ADV. SMT.K.LATHA

**RESPONDENT/S:**

- 1 STATE OF KERALA,  
REPRESENTED BY CHIEF SECRETARY,  
SECRETARIAT, THIRUVANANTHAPURAM-695 002.
- 2 THE ASSISTANT STATE TAX OFFICER,  
SQUAD NO.1, KERALA STATE GOODS AND SERVICE TAX  
DEPARTMENT, NEW PUBLIC OFFICE BUILDING, C-BLOCK,  
2ND FLOOR, THIRUVANANTHAPURAM 695 002.

BY ADV. SMT. RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
23.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



**DINESH KUMAR SINGH, J.**

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**W.P.(C) No.10565 of 2018**  
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Dated this the 23<sup>rd</sup> day of August, 2023

**JUDGMENT**

1. Heard Ms. Latha K., Learned Counsel for the petitioner and Ms. Reshmita Ramachandran, Learned Counsel for the respondents.
2. The present writ petition has been filed impugning Exhibit P9 penalty order passed under Section 129 of the Kerala Goods and Services Tax Act, 2017 read with Rule 138 and the Rules made thereunder.
3. The 2<sup>nd</sup> respondent while conducting vehicle checking at Anayara on 26.02.2018 intercepted the vehicle No.KL-19-A-5387 carrying spare parts and two barrels of engine oil while plying from Nettayam to Venpalavattom. On verification, it was found that no documents prescribed under Section 129 of the Kerala Goods and Services Tax Act, 2017 read with Rule 138 of the Rules made thereunder were accompanied with the consignment. The driver of the vehicle had deposed and furnished a statement that at the time of inspection he was not in possession of any valid documents for



transportation of the goods as prescribed under the statute.

4. suspecting evasion of tax, a Show Cause Notice was issued to the owner of the goods through the driver of the vehicle. The relevant portion of the notice is reads as under;

The vehicle along with goods was intercepted at Anayara while plying from Nettayam to Venpalavattom. The vehicle along with goods was brought to Public Office Complex, Palayam, Thiruvananthapuram and physically verified. Physical verification revealed that the vehicle was carrying 370 pieces of automobile spare parts and 2 barrels of engine oil. The goods under transport are not accompanied by any invoice or delivery chalan prescribed under the CGST/SGST Act and Rules made there under. Hence the value estimated Rs.8,00,000/- (Rupees Eight lakhs only) and penalty, CGST & SGST demanded.

5. In response to the notice, the owner of the goods M/s. EVM Passenger Cars India Pvt. Ltd., NH Bypass, Venpalavattom, Anayara P. O., Thiruvananthapuram filed reply. The content of the reply reads as under;

We are the dealers of Volkswagen vehicles manufactured by Volkswagen Group Sales India Pvt. Ltd., and our operation starts at the end of 2009-10 and it includes sale of vehicles, its parts



and after sales services. For the smooth running of business we normally lift parts from out Bangalore/Mumbai and Haryana Office. Last time we lifted some Parts from our Bangalore Office and they have consigned some goods through the transporter M/s. Om Logistics Ltd., and unloaded the same to their Trivandrum Nettayam Office with all relevant documents but the local transporter arranged by them to our Trivandrum showroom have not kept the bills and other relevant supporting documents on the way and the Departmental Officials intercepted the vehicle and given a notice to the Transporter. As a huge tax payer and with all relevant documents submitted to your office on yesterday and the subsequent conversation with AC (Intelligence) and DC (Intelligence), we were able to prove the genuinity of the transaction and it was confirmed by the DC Intelligence that can be released if online E-way bill of the entire invoices raised on the consignment .

The details of invoices are given below for your kind verification.

Invoice No	Date	Amount	E-Way Bill No.
87141174	23.02.2018	5740.38	131020813377
87141285	23.02.2018	23641.36	161020907426
27141278	23.02.2018	244661.8	111020907418
87141244	23.02.2018	255848.3	111020850592
Grand Total		529891.92	



Considering the above and a huge tax payer category we request you to kindly release the consignment at the earliest without further proceedings.

6. Pending adjudication of the Show Cause Notice, the petitioner/dealer has filed W.P.(C) No.7877 of 2018 before this Court. This Court vide Judgment dated 12.03.2018 disposed of the writ petition directing the adjudication authority to complete the adjudication of the Show Cause Notice under Section 129 of the Central Goods and Services Tax Act within seven days from the date of receipt of a copy of the Judgment.

7. The adjudicating authority, on examination of the statement furnished by the dealer along with copy of the Judgment passed by this Court in W.P.(C) No.7877 of 2018 and after affording opportunity of hearing in compliance of the principles of natural justice, started the adjudication proceedings. The goods were again inspected in the presence of the authorised representatives of the dealer on 21.03.2018 at 11.30 hrs. As per the provisions of Section 129 of the Kerala Goods and Services Tax Act, 2017 read with Rule 138 of the Rules made thereunder it is mandatory that every transport of the goods shall be accompanied with valid documents as prescribed and any act in contravention of the



provisions would be liable for detention or seizure of goods and it would be released only on payment of applicable tax and penalty.

8. There is no dispute that the driver of the vehicle and person in charge of the goods at the time of interception did not produced any statutory documents pertaining to the transportation of the goods and the driver deposed and furnished the statement to that effect.

9. In the absence of valid documents in possession of the person in charge of the goods would be treated as a willful act of evasion of tax. If the vehicle was not intercepted and goods were not verified, it would have lead to the leakage or evasion of the revenue by the dealer.

10. On receipt of the show cause notice the dealer produced copies of the e-way bills and claimed that transport of goods was genuine and properly covered by the statutory documents. However on verification of the e-way bills, contrary to the their claim it was revealed that the vehicle mentioned therein and the vehicle through which the goods were attempted to be transported were distinct. The adjudicating authority was of the opinion that the dealer had not been able to convincingly explain the reasons for the discrepancy. Instead, after receipt of the Show



Cause Notice it was contended by the dealer by fabricating a story that the local transporter failed to arrange the statutory requirements.

11. The taxing provisions have to be construed strictly. When the mandate of law is that the goods being transported must be accompanied with relevant statutory documents and if the goods are being transported without the relevant statutory documents, the consequences would follow.

12. The adjudicating authority has also held that after issuance of the Show Cause Notice there is no provision to accept the documents subsequently to prove genuineness of transport in case involving transport of goods without any statutory documents. The owners/dealers have to substantiate why the goods being transported did not accompanied the statutory documents. In view there of and considering the provisions of the Act was of the point that the dealer wilfully attempted to transport the goods without any documents and tried to evade the tax liability on the goods. The Show Cause Notice was adjudicated and the tax is single GST of Rs.1,20,000/- (Rupees One lakh twenty thousand only) with same amount of penalty and twice the assessed amount as penalty was imposed by the impugned order.



13. Considering the provisions of Section 129 of the Kerala Goods and Services Tax Act, 2017 read with Rule 138 of the Rules made thereunder and the facts of the case, I am of the opinion that the impugned order imposing the tax and penalty does not require any interference and therefore the writ petition fails and hereby dismissed.

**Sd/-  
DINESH KUMAR SINGH  
JUDGE**

Svn



**APPENDIX OF WP(C) 10565/2018****PETITIONER'S EXHIBITS**

- EXHIBIT P1 THE TRUE COPY OF THE INTERSTATE PURCHASE INVOICE NUMBERS 0087141174, 0087141285, 0087141278 AND 0087141244 ALL DATED 23-2-2018 ISSUED BY M/S. VOLKSWAGEN GROUP SALES INDIA PVT LTD, BANGALORE, KARNATAKA TO THE PETITIONER
- EXHIBIT P2 THE TRUE COPY OF THE E WAY BILL NO. 131020813377, 111020907418 AND 1610 2090 7426 DATED 23-2-2018 ISSUED BY THE PETITIONER
- EXHIBIT P3 THE TRUE COPY OF THE DETENTION NOTICE SCN NO. 43/2017-2018 DATED 26-2-2018 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER
- EXHIBIT P4 THE TRUE COPY OF THE REPLY DATED 28-2-2018 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT
- EXHIBIT P4A TRUE COPY OF THE REPLY DATED 1-3-18
- EXHIBIT P5 THE TRUE COPY OF THE JUDGMENT OF IN W.P(C) NO 7877 OF 2018 DATED 12TH DAY OF MARCH 2018
- EXHIBIT P6 THE TRUE COPY OF THE LETTER DATED 15-3-2018 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT
- EXHIBIT P7 THE TRUE COPY OF THE ORDER SCN NO 43/2017-2018 DATED 15-3-2018 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER
- EXHIBIT P8 THE TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO. 700 OF 2018 DATED 20TH MARCH 2018
- EXHIBIT P9 THE TRUE COPY OF THE ORDER NO.SCN/43/2017-2018 DATED 22-3-2018 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER UNDER SECTION 129 OF THE KERALA GOODS AND SERVICES TAX ACT 2017
- EXHIBIT P10 THE TRUE COPY OF THE HEARING NOTICE DATED 19.11.2019 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER



EXHIBIT P11 THE TRUE COPY OF THE AUTHORIZATION LETTER AND THE REPLY LETTER FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT

EXHIBIT P12 THE TRUE COPY OF THE LETTER DATED 18.04.2022 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT

EXHIBIT P13 THE TRUE COPY OF THE FORM GST DRC 07 DATED 13.05.2022

**2ND RESPONDENT'S EXHIBITS**

EXHIBIT R2(a) A TRUE COPY OF THE CHALAN DATED 13/05/2022

EXHIBIT-R2(b) A TRUE COPY OF THE STATEMENT DATED 26/02/2018

EXHIBIT-R2(c) A TRUE COPY OF HEARING NOTICE DATED 19/11/2019 WITH REFERENCE TO B.G.NO. 0089BG000042018 DATED 03/05/2019 SENT TO THE PETITIONER

EXHIBIT R2(d) A TRUE COPY OF THE REPLY DATED 02/12/2019 SUBMITTED BY THE PETITIONER TO THE SECOND RESPONDENT

EXHIBIT R2(E) A TRUE COPY OF THE COMMUNICATION DATED 08/04/2022 ADDRESSED TO THE MANAGER, SOUTH INDIAN BANK, CHALAI BRANCH, THIRUVANANTHAPURAM