

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY ,THE 16TH DAY OF OCTOBER 2018 / 24TH ASWINA, 1940

WA.No. 1907 of 2018

AGAINST THE ORDER/JUDGMENT IN WP(C) 30729/2018 of HIGH COURT

APPELLANT/S:

M/S. PANEL SOURCE LLP
UNIT NO.5, UNIQUE INDUSTRIAL PREMISES,
VEER SAVARKAR ROAD, PRABHADEVI, MUMBAI,
REPRESENTED BY ITS PARTNER SUJEET S SHETTY

BY ADV. SRI.S.ANIL KUMAR (TRIVANDRUM)

RESPONDENT/S:

- 1 THE ASSISTANT STATE TAX OFFICER
SQUAD NO. V, STATE GOODS AND SERVICES ,
TAX DEPARTMENT, KASARAGOD - 671121
- 2 THE STATE TAX OFFICER,
SQUAD NO.V, STATE GOODS AND SERVICES TAX DEPARTMENT,
KASARAGOD-671121
- 3 THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 4 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, ROOM NO.46, NORTH BLOCK, NEW
DELHI-110001.

OTHER PRESENT:

SRI N NAGARESH, ASGI
SRI MOHAMMED RAFIQ, SR GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16.10.2018, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

Vinod Chandran, J.

The Writ Appeal is filed against the judgment of the learned Single Judge. One of the reliefs sought for in the Writ Petition is to declare Rule 140 of the CGST/SGST Rules as violative of Article 301 of the Constitution. The specific stipulation, which the petitioner is aggrieved with is that the collection of security in the form of simple bond for the value of the goods and bank guarantee equivalent to the amount of applicable tax, interest and penalty, which is a mandatory condition for the release of the goods detained under Section 129(3) of the CGST Act, 2017.

2. The Writ Petition was filed when the vehicle was detained by the Inspecting Team for reason of Part-B of the e-way bill having not been uploaded. The learned Single Judge had dismissed the Writ Petition itself, in which there was a challenge against the Rule. We were of the opinion that the interim application had to be considered first and in the Writ Petition notice had to

be issued before the challenge to the Rule was considered. We, hence, directed the appellant to file a review before the learned Single Judge. The same has been filed and is pending before the learned Single Judge.

3. At this point, the learned Counsel appearing for the appellant submits that the appellant would withdraw the challenge against Rule 140 and only insists on consideration of the release of the vehicle. We record the submission of the learned Counsel on behalf of the appellant that the challenge against Rule 140 is not pressed. In such circumstances, we proceed to consider the issue of release of the vehicle.

Ext.P7 is the order of detention and Ext.P7(a) is the notice issued under Section 129(3) of the CGST Act. The defect found was that the intercepted vehicle was carrying an invalid e-way bill. The document was categorised as invalid for reason of Part-B of the bill having not been uploaded and not accompanying the goods. The learned Counsel for the appellant submits that Part-B was uploaded even before the notice and order, on

10.09.2018. We notice that the detention itself was on 09.09.2018 and the subsequent uploading of the Part-B would not efface the defect as pointed out by the Detaining Officer. In such circumstances, we find that the judgment of the learned Single Judge, insofar as refusing the release of the vehicle on the basis of the judgment in W.P.(C) No.26986/2018, produced as Annexure I, is perfectly in order. We, hence, direct that the vehicle with the goods be released to the appellant on furnishing a bank guarantee for tax and penalty found due and a simple bond without sureties for the value of the goods in the form as prescribed under Rule 140(1) of the CGST Rules. The Writ Appeal is disposed of. No order as to costs.

Sd/-

K.VINOD CHANDRAN

JUDGE

Sd/-

ASHOK MENON

JUDGE

WA 1907/2018

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APPENDIX

APPELLANT'S/S ANNEXURES:

ANNEXURE I

**TRUE COPY OF JUDGMENT DATED 9.08.2018 IN WPC
NO. 26986 OF 2018**