

Not carrying valid documents during transit will be considered a deliberate act of tax evasion

The Hon'ble Kerela High Court, in *M/s. EVM Passenger Cars India Pvt. Ltd. v. State of Kerela [WP(C) NO. 10565 OF 2018 dated August 23, 2023]* dismissed the petition filed against the order of the Adjudicating Authority and held that it is duty of the owners/dealers to substantiate why the goods during transportation did not accompanied by the documents as specified under GST law and in case the assessee is not able to substantiate, it would mean that assessee wilfully attempted to transport the goods without any documents and tried to evade the tax liability on the goods.

Facts:

The Assistant State Tax Officer, while conducting vehicle checking on February 26, 2018 intercepted the vehicle of M/s. EVM Passenger Cars India Pvt. Ltd. (“**the Petitioner**”) carrying spare parts and two barrels of engine oil while plying from one location to another location.

On verification, it was found that no documents prescribed under Section 129 KGST Act read with Rule 138 of the Rules made thereunder were accompanied with the consignment.

The driver of the vehicle 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.

Under the suspicion of evasion of tax, a Show Cause Notice was issued to the owner of the goods through the driver of the vehicle.

In response to the notice, the owner of the goods furnished the reply to said show cause notice.

Moreover, during the pendency of adjudication the Petitioner filed a writ before the Hon'ble Kerela High Court which was disposed by directing the adjudication authority to complete the adjudication of the SCN within seven days from the date of receipt of a copy of the Judgment.

The adjudicating authority, on examination of the statement furnished by the Petitioner and after affording opportunity of hearing, started the adjudication proceedings and goods were again inspected in the presence of the authorised representatives of the Petitioner on March 21, 2018.

The Adjudicating authority noted that, in the absence of valid documents in possession of the person in charge of the goods would be treated as a wilful act of evasion of tax because if the vehicle was not intercepted and goods were not verified, it would have led to the leakage or evasion of the revenue by the Petitioner.

The adjudicating authority vide Order 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.

In view thereof 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.

Aggrieved by the order passed by the Adjudicating Authority the Petitioner filed a writ before the Hon'ble Kerela High Court.

Issue:

Whether failure to carry valid documents during transit of goods would be treated as wilful act of tax evasion?

Held:

The Kerela High Court, in **WP(C) NO. 10565 OF 2018** held as under:

- Observed that, the adjudicating authority 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.

- Opined that, owners/dealers have to substantiate why the goods being transported did not accompanied the statutory documents.
- Noted that, the dealer wilfully attempted to transport the goods without any documents and tried to evade the tax liability on the goods.
- Held that, the impugned order imposing the tax and penalty does not require any interference and therefore the writ petition fails and hereby dismissed.

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