

**IN THE HIGH COURT OF MADHYA
PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 1st OF MAY, 2023

WRIT PETITION No. 20600 of 2020

BETWEEN:-

**M/S KIA MOTORS INDIA PRIVATE LTD.
AUTHORIZED SIGNATORY PRACHI TREHAN
AGED 29 ASST. MANAGER (LEGAL) SY. NO.
134-151 PENUKONDA DIST. ANANTAPUR
(ANDHRA PRADESH)**

.....PETITIONER

(BY SHRI HIMANSHU KHEMUKA - ADVOCATE)

AND

- THE STATE OF MADHYA PRADESH THR.
PRINCIPAL SECRETARY LAW AND**
- 1. LEGISLATIVE AFFAIRS VALLABH
BHAWAN BHOPAL (M.P.) (MADHYA
PRADESH)**
 - 2. COMMISSIONER (GST) STATE TAX
INDORE INDORE (MADHYA PRADESH)
APPELLATE AUTHORITY AND JOINT**
 - 3. COMMISSIONER STATE TAX BHOPAL
(MADHYA PRADESH)
STATE TAX OFFICER ANTI EVASION**
 - 4. BUREAU STATE TAX OFFICE BHOPAL
(MADHYA PRADESH)
THE UNION OF INDIA THROUGH ITS**
 - 5. SECRETARY MINISTRY OF FINANCE
NORTH BLOCK, NEW DELHI (DELHI)**

.....RESPONDENTS

**(BY SHRI A.D. BAJPAI - GOVT. ADVOCATE AND
SHRI PUSHPENDRA YADAV - ASSISTANT SOLICITOR GENERAL)**

.....
*This petition coming on for admission this day, JUSTICE
SHEEL NAGU passed the following:*

ORDER

This petition filed under Article 226 of the Constitution of India assails the order passed by Appellate Authority (Joint Commissioner, State Tax, Bhopal Division) on 23.12.2019 vide Annexure P-5, partly allowing the appeal of petitioner-assessee by reducing the tax levied from Rs.8,40,000/- to Rs.5,40,000/- and the corresponding penalty from Rs.8,40,000/- to Rs.5,40,000/- while setting aside the Cess of Rs.6,60,000/- and penalty of Rs.6,60,000/-.

2. The sole argument of petitioner is that the demo vehicle was transported in the State of Madhya Pradesh not for sale and therefore, was not exigible to GST.

3. Learned counsel for petitioner has taken this Court to the definition of the term “supply” vide Section 7 of GST Act to contend that bringing of demo vehicle into the State of Madhya Pradesh would not render the transaction exigible to GST since no financial consideration is involved in the absence of sale or purchase. Learned counsel has also drawn the attention of this Court to CBDT circular dated 07.07.2017 (Annexure P-6) and dated 22.11.2017 (Annexure P-7).

4. On the other hand, learned counsel for the respondent/State has relying upon the provisions of Section 129 of GST Act and Rule 138 of

GST Rules contends that movement of goods exceeding the value of Rs.50,000/-, even if they do not qualify the definition of supply become exigible to GST.

5. Section 129 of GST Act and Rule 138 of GST Rules are reproduced below for ready reference and convenience:

“Section 129 - Detention, seizure and release of goods and conveyances in transit.— (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 penalty equal to two 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) on payment penalty equal to the fifty per cent. of the value of the goods or two hundred percent. of the tax payable on such goods whichever is higher, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twentyfive thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) [***]

(3) *The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detaining or seizure specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).*

(4) *No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

(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.*

(6) *Where the person transporting any goods or the owner of the goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt copy of the order passed under sub-Section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section(3):*

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of [fifteen days]⁸⁹ may be reduced by the proper officer.

Rule 138 - *Information to be furnished prior to commencement of movement of goods and generation of e-way bill .-*

(1) *Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees —*

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal.

*Explanation 1. ****

*Explanation 2. ****

*(2) *****

*(2A) ****

*(3) *****

*Explanation 1. ****

*Explanation 2. ****

*(4) *****

*(5) *****

*(5A) ****

*(6) *****

*(7) *****

*(8) *****

*(9) *****

*(10) *****

*(11) *****

*(12) ******

(emphasis supplied)

5.1. Bare perusal of the relevant statutory rule i.e. Rule 138(1)(ii) makes it clear that the causing of movement of a goods exceeding the value of Rs.50,000/- even for the reasons other than supply, makes it incumbent upon the supplier to inform about the supply of goods in Form-A GST, EWB-01 electronically on the common portal alongwith other information as required.

6. It is not disputed at the Bar that no such information as mandatory in Rule 138(1) of GST Rules, was given by the petitioner supplier.

7. In view of the above, it is obvious that in the absence of information given, the entry of demo car into the State of Madhya Pradesh renders it exigible to GST.

8. This Court does not find any fault or jurisdictional error in the order of appellate authority dated 23.12.2019. Therefore, this writ petition stands **dismissed** sans cost.

(SHEEL NAGU)
JUDGE

(HIRDESH)
JUDGE