

Penalty imposed on breach of terms and  
conditions do not mean agreeing to tolerate  
an act. ∴ No GST 1



W.P(C) Nos.2552 and 11912 of 2021

2024:KER:93540

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 12<sup>TH</sup> DAY OF DECEMBER 2024 / 21ST AGRAHAYANA, 1946

WP(C) NO.2552 OF 2021

PETITIONER:

M/S.ASWATHY GAS AGENCIES, PAYYANNUR,  
A PARTNERSHIP, REPRESENTED BY ITS MANAGING PARTNER,  
P.SAJITH, S/O P.V.UNNIKRISHNAN, AGED 41 YEARS,  
BUSINESS, RESIDING AT UPASANA P.O.EDAT,  
PIN-670 327, KANNUR DISTRICT.

BY ADVS.  
R.SURENDRAN  
KUM.S.MAYUKHA

RESPONDENTS:

- 1 INDIAN OIL CORPORATION LTD.,  
REPRESENTED BY THE CHIEF LPG MANAGER, INDIAN OIL  
CORPORATION LTD, KERALA STATE OFFICE,  
PANAMPILLY AVENUE, PANAMPILLY NAGAR P.O.,  
COCHIN-682 036.
- 2 THE CHIEF AREA MANAGER,  
INDANE AREA OFFICE, INDIAN OIL CORPORATION LTD,  
2ND FLOOR, PMK TOWER, CIVIL STATION P.O.WYNAD ROAD,  
KOZHIKODE-673 020.



W.P(C) Nos.2552 and 11912 of 2021

2024:KER:93540

3        S.DHANAPANDIAN, (APPELLANT AUTHORITY) ,  
CHIEF GENERAL MANAGER (LPG) , INDIAN OIL CORPORATION,  
KERALA STATE OFFICE, PANAMPILLY AVENUE,  
PANAMPILLY NAGAR P.O. , COCHIN-682 036.

BY ADVS.  
SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURYAN THOMAS  
SRI.PAULOSE C. ABRAHAM  
SRI.E.K.NANDAKUMAR,  
SMT.RAMOLA NAYANPALLY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28.10.2024,  
ALONG WITH WP(C).11912/2021, THE COURT ON 12.12.2024 DELIVERED THE  
FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 12<sup>TH</sup> DAY OF DECEMBER 2024 / 21ST AGRAHAYANA, 1946

WP(C) NO. 11912 OF 2021

PETITIONER:

K GEETHA, AGED 53 YEARS, W/O.SIVASANKARAN,  
BUSINESS, RESIDING AT THADATHARIKATHU HOUSE,  
VILLUMALA.P.O, KULATHUPUZHA  
KOLLAM, PIN - 691310.

BY ADV.R.SURENDRAN

RESPONDENTS:

- 1 INDIAN OIL CORPORATION LTD.,  
REPRESENTED BY THE CHIEF LPG MANAGER, INDIAN OIL  
CORPORATION LTD., KERALA STATE OFFICE, PANAMPILLY  
AVENUE, PANAMPILLY NAGAR.P.O., COCHIN-682036.
- 2 THE CHIEF AREA MANAGER, INDANE AREA OFFICE,  
INDIAN OIL CORPORATION LTD., PANAMPILLY AVENUE,  
PANAMPILLY NAGAR.P.O., COCHIN-682036.
- 3 S DHANAPANDIAN, (APPELLATE AUTHORITY), CHIEF GENERAL  
MANAGER (LPG), INDIAN OIL CORPORATION, KERALA STATE  
OFFICE, PANAMPILLY AVENUE, PANAMPILLY NAGAR.P.O.,  
COCHIN-682036.



W.P(C) Nos.2552 and 11912 of 2021

2024:KER:93540

BY ADVS.  
M.GOPIKRISHNAN NAMBIAR  
K.JOHN MATHAI  
JOSON MANAVALAN  
KURYAN THOMAS  
PAULOSE C. ABRAHAM  
RAJA KANNAN  
SRI.E.K.NANDAKUMAR,  
SMT.RAMOLA NAYANPALLY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28.10.2024,  
ALONG WITH WP(C).2552/2021, THE COURT ON 12.12.2024 DELIVERED THE  
FOLLOWING

**"C.R."****JUDGMENT**

These writ petitions are filed by distributors of LPG appointed by the 1<sup>st</sup> respondent herein challenging orders imposing penalty, appellate orders, as also the Marketing Discipline Guidelines, 2018 (hereinafter referred to as "MDG") under which the penalty is imposed.

2. By judgment dated 12.12.2024 in W.P(C) No.9331 of 2020 and con. cases, I have repelled the challenge against the MDG.

3. The petitioners have further challenged the imposition of penalty in these cases as confirmed by the appellate authority. In W.P(C) No.2552 of 2021, penalties were imposed by Ext.P10 order issued by the 2<sup>nd</sup> respondent with respect to a complaint raised by a consumer/customer alleging



non-attendance of a leakage complaint. The petitioner has raised a contention to the effect that there was no deliberate non-attendance of the complaint as alleged, that the complaint was received at its end only on 21.8.2020 by 4:33 pm, that the complaint was attended by the mechanic through a telephone call by 5:30 pm/5:45 pm etc. However, those contentions appear to have been properly adjudicated by the original authority and the appellate authority. In a writ jurisdiction, the appreciation of evidence in that regard cannot be carried out.

4. In W.P(C) No.11912 of 2021, the penalty is imposed by Ext.P5 order issued by the 2<sup>nd</sup> respondent. The allegation in Ext.P5 is with reference to certain LPG connections provided by the petitioner. It appears that the explanations offered have been examined in detail by the original authority while issuing Ext.P5 order. The appellate authority, while issuing Ext.P10, has also considered each and every contention raised by the



petitioner herein. The appreciation of evidence/contentions by the original/appellate authority cannot be found fault with.

5. The only other subsisting challenge arising for consideration in these writ petitions is as regards the demand of GST (Goods and Services Tax) by the impugned orders in these cases. In W.P(C) No.2552 of 2021, while issuing Ext.P10, an amount of Rs.28242.45 has been imposed as GST and it is sought to be recovered from the petitioner. In W.P(C) No.11912 of 2021, the respondent Corporation, while issuing Ext.P5, has sought to demand Rs.22,140/- towards GST.

6. Sri. Surendran, the learned counsel for the petitioners in these writ petitions would contend that the demand of GST as above was without any justification and arbitrary. He points out that there is no "supply of service" so as to demand GST from the petitioners. The learned senior counsel, Sri.Nandakumar, on the other hand, relies on the counter



affidavit filed as well as the Notification No.11/2017- CT(R) dated 28.6.2017 issued by the Ministry of Finance, Government of India, to support the demand for GST as above.

7. The goods and services tax is levied with reference to the provisions of the CGST Act, 2017/SGST Act, 2017 (for short, the 'Act'). The preamble to the afore Act would show that the Act was introduced to make provisions for the levy and collection of tax on the "supply of goods or services or both". Therefore, it is to be proved that there is either:

- i. Supply of goods
- ii. Supply of services
- iii. Supply of both

to demand GST. There cannot be any dispute that there is no supply of goods involved in the case at hand. The term "services" has been defined under Section 2(102) of the Act as under:





(102) —“services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

The provisions of Chapter III of the Act provide for levy and collection of tax. Section 7 provides the “scope of supply” as under:

“(1) For the purposes of this Act, the expression “supply” includes--

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment, or other valuable consideration.

Explanation.- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree



or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business; [and]

(c) the activities specified in Schedule I, made or agreed to be made without consideration;

([1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]”

Section 9(2) of the Act provides for the levy and collection of tax at such rates to be notified by the Government. The respondents rely on the notification issued under Section 9 as above—Notification No.11/2017-CT(R) dated 28.6.2017—to sustain the demand for GST.

8. Therefore, so as to demand GST, it is to be proved that there is “supply of goods/services” by the person collecting the



tax to the person from whom the tax is sought to be recovered. In the case at hand, it is the respondent Corporation who is claiming that there is "supply" of services to the petitioners herein. However, a perusal of the documents would show that no "supply of service" is effected by the respondent Corporation to the petitioners herein while imposing penalty by the impugned orders. Unless and until there is any such supply of goods/services, the question of demanding GST does not arise at all.

9. In this connection, reference may also have to be made to the provisions of Schedule II referred to in sub-section (1A) of Section 7 of the Act. The afore schedule to the extent relevant herein reads as under:

"SCHEDULE II [See section 7]

ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF  
GOODS OR SUPPLY OF SERVICES

.....

5. Supply of services



The following shall be treated as supply of services, namely:—

.....

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and ....”

Thus, under Serial No.5 of Schedule II, certain activities are to be treated as “supply of services”, one among them being the activity referred to under Clause (e). However, the provisions of Clause (e) of serial No.5 of Schedule II would get attracted only when a person is:

- i. Agreeing to the obligation to refrain from an act
- ii. Agreeing to the obligation to tolerate an act or a situation
- iii. Agreeing to the obligation to do an act

It is only the afore three situations that get attracted by virtue of the entries in Schedule II of the Act.

10. Here, there is no dispute that there is no such agreement between the petitioners and the respondent



Corporation. There is no case for the respondent Corporation that the petitioners and the respondent Corporation have entered into such an agreement/contract for a "consideration". Such an agreement cannot be presumed to exist between the parties also. Here, the amounts sought to be collected from the petitioners towards penalty are not towards tolerating an act/situation. Instead, the amounts sought to be recovered are for not following the terms of the agreement/MDG framed by the respondent corporation. In fact, the amounts are sought to be recovered as a deterrent against future breach of contract between the petitioners and the respondent Corporation. The amounts sought to be recovered are under no stretch of imagination being collected towards tolerating the violation of the terms of the MDG.

11. In such circumstances, I am of the opinion that the respondents are not entitled to collect GST from the petitioners



herein.

In the result, while confirming the findings in the impugned orders, it is declared that the respondent Corporation would not be entitled to collect tax under the provisions of the CGST Act 2017/SGST, Act 2017 from the petitioners herein. Subject to the afore declaration, these writ petitions would stand dismissed.

Sd/-

**HARISANKAR V MENON, JUDGE**

In

APPENDIX OF WP(C) 11912/2021

## PETITIONERS' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF LETTER OF INTENT DATED 15.02.2012 ISSUED BY THE SENIOR AREA MANAGER OF INDIAN OIL CORPORATION, PANAMPILLY NAGAR, COCHIN TO THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF INSPECTION NOTE DATED 22.06.2020 ISSUED BY MR.RAHUL M.S. MANAGER, LPG SALES OF KOLLAM LSA OF THE FIRST RESPONDENT TO THE PETITIONER.
- EXHIBIT P3 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 17.07.2020 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXHIBIT P4 TRUE COPY OF THE REPLY DATED 31.07.2020 SUBMITTED BY THE PETITIONER BEFORE THE 2<sup>ND</sup> RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE ORDER NO.CAO/D/135, DATED 14.10.2020 ISSUED BY THE SECOND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE APPEAL DATED 3.11.2020 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE LETTER DATED 19.04.2021 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.
- EXHIBIT P8 TRUE COPY OF THE LETTER DATED 26.04.2021 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE LETTER DATED 2.5.2021 OF THE PETITIONER CONTAINING THE EXPLANATION REGARDING THE MISMATCH, TOGETHER WITH THE RESOLUTION DATED 30.04.2021 RECEIVED FROM THE SECRETARY, KULATHUPUZHA GRAMA PANCHAYAT.



EXHIBIT P10 TRUE COPY OF THE ORDER DATED 11.05.2021 IN  
REF.NO.KESO/LPG/MDG APPEAL/KANNAN RGGLV, ISSUED  
BY THE THIRD RESPONDENT.

EXHIBIT P11 TRUE COPY OF THE MARKETING DISCIPLINE-2018  
PUBLISHED BY THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS:

EXHIBIT R1 (A) TRUE COPY OF THE DISTRIBUTORSHIP AGREEMENT  
DATED 20.06.2014 BETWEEN THE PETITIONER AND  
1ST RESPONDENT.

EXHIBIT R1 (B) TRUE COPY OF THE JUDGMENT DATED 10.01.2022  
PASSED IN LPA 24 OF 2021 AND CM APPL. 1843 OF  
2021 (STAY) BY THE DELHI HIGH COURT.

EXHIBIT R1 (C) TRUE COPY OF THE PRADHAN MANTRI UJJWALA  
YOJANA (PMUY) - SCHEME GUIDELINES DATED  
31.03.2016.

EXHIBIT R1 (D) TRUE COPY OF THE RELEVANT EXTRACT OF THE  
NOTIFICATION NO.11/2017 DATED 28.06.2017

EXHIBIT R1 (E) TRUE COPY OF THE GST INVOICE DATED 18.11.2020  
RAISED BY THE RESPONDENT CORPORATION FOR THE  
IMPOSED PENALTY





APPENDIX OF WP(C) 2552/2021

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1** TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 15.3.2011 ISSUED BY THE REGISTRAR OF FIRMS THIRUVANANTHAPURAM, IN RESPECT OF THE PETITIONER.
- EXHIBIT P2** TRUE COPY OF THE AGREEMENT DATED 21.2.2011, EXECUTED BETWEEN THE PETITIONER FIRM AND THE FIRST RESPONDENT.
- EXHIBIT P2 (A)** TRUE COPY OF THE AMENDATORY LETTER DATED 17.10.2011, ISSUED BY THE SECOND RESPONDENT ON BEHALF OF THE FIRST RESPONDENT.
- EXHIBIT P3** TRUE COPY OF THE UN-STARRED QUESTION NO.1179 ANSWERED BY THE MINISTER OF PETROLEUM AND NATURAL GAS IN THE LOK SABHA ON 24.7.2017.
- EXHIBIT P4** TRUE COPY OF THE E-MAIL COMMUNICATION SENT BY RAHUL KANAYI ON 22.8.2020 AT 00.45 HRS, TO SRI SUNIL MATHUR.
- EXHIBIT P5** TRUE COPY OF THE FULL SATISFACTION LETTER DATED 24.8.2020 ISSUED BY PRASANNA (CONSUMER NO 26355) TO THE PETITIONER
- EXHIBIT P6** TRUE COPY OF THE SERIES OF EMAIL COMMUNICATIONS BETWEEN THE SECOND RESPONDENT AND HIS SUBORDINATES AND THE LAST ONE DATED 2.9.2020



- EXHIBIT P7** TRUE COPY OF THE LETTER DATED 22.8.2020 SENT BY THE PETITIONER TO THE SECOND RESPONDENT.
- EXHIBIT P8** TRUE COPY OF THE SHOW CAUSE NOTICE DATED 1.9.2020 ISSUED BY THE CONDENSE RESPONDENT TO THE PETITIONER.
- EXHIBIT P9** TRUE COPY OF THE REPLY DATED 15.9.2020 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P10** TRUE COPY OF THE ORDER NO KAO/46/ASWATHY DATED 23.9.2020 ISSUED BY THE SECOND RESPONDENT.
- EXHIBIT P11** TRUE COPY OF THE MARKETING DISCIPLINE-2018 PUBLISHED BY THE FIRST RESPONDENT
- EXHIBIT P12** TRUE COPY OF THE APPEAL DATED 16.10.2020 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT
- EXHIBIT P13** TRUE COPY OF THE ORDER DATED 8.1.2021 IN REF.NO.KESO/LPG/MDG APPEAL/SWARTHY, ISSUED BY THE THIRD RESPONDENT

**RESPONDENTS' EXHIBITS:**

- EXHIBIT R1 (A)** TRUE COPY OF THE JUDGMENT DATED 10.01.2022 PASSED IN LPA 24/2021 & CM APPL. 1843/2021 (STAY) BY THE HONOURABLE DELHI HIGH COURT.



- EXHIBIT R1 (B)      TRUE COPY OF THE SHOW CAUSE NOTICE DATED  
11.04.2018 ISSUED TO THE PETITIONER**
- EXHIBIT R1 (C)      TRUE COPY OF THE SHOW CAUSE NOTICE DATED  
04.07.2018 ISSUED TO THE PETITIONER**
- EXHIBIT R1 (D)      TRUE COPY OF THE POLICY ON MARKET RETURN OF  
INDAN LPG CYLINDERS BY DISTRIBUTORS DATED  
29.01.2019**
- EXHIBIT R1 (E)      TRUE COPY OF THE RELEVANT PAGES OF THE LP GAS  
MANUAL**
- EXHIBIT R1 (F)      TRUE COPY OF THE SHOW CAUSE NOTICE DATED  
30.04.2019 ISSUED TO THE PETITIONER.**