IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 20TH DAY OF NOVEMBER 2017/29TH KARTHIKA, 1939

WP(C).No. 36413 of 2017 (B)

PETITIONER(S):

1. M/S. SAMEER MAT INDUSTRIES,
   18-100, MAIN ROAD, PAZHATHOTTAM, KANYAKUMARI,
   TAMIL NADU - 629 702,
   REPRESENTED BY ITS PROPRIETOR, MR. A.KALEEL RAHMAN.

2. M/S. KALEEL MAT INDUSTRIES,
   5/150, MUSLIM THERU, KANYAKUMARI, TAMIL NADU - 629 702,
   REPRESENTED BY ITS PROPRIETOR, MR. T.M. ABUBACKER.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM
SRI.RAJA KANNAN

RESPONDENT(S):

1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY (TAXES) GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM - 795 001.

2. THE ASSISTANT STATE TAX OFFICER,
   SQUAD NO. III, STATE GST DEPARTMENT,
   NEYYATINKARA, THIRUVANANTHAPURAM - 695 002.

3. FATHIMA STORE,
   CIVIL STATION ROAD, PATTAMBI - 679 003,
   REPRESENTED BY ITS PROPRIETOR
   (NAME NOT KNOWN TO THIS PETITIONER)

R1&R2 BY SENIOR GOVERNMENT PLEADER DR.THUSHARA JAMES
R3 BY ADV. SRI.BOBBY JOHN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-11-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.V.

WP(C).No. 36413 of 2017 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	THE TRUE COPY OF THE REGISTRATION CERTIFICATE BEARING DATE OF ISSUE 23.09.2017 IN RESPECT OF THE 1ST PETITIONER.
EXHIBIT P2	THE TRUE COPY OF THE REGISTRATION CERTIFICATE BEARING DATE OF ISSUE 23.09.2017 IN RESPECT OF THE 2ND PETITIONER.
EXHIBIT P3	THE TRUE COPY OF THE INVOICE NO. 158 DATED 06.11.2017 ISSUED TO THE 3RD RESPONDENT.
EXHIBIT P3(A)	THE TRUE COPY OF THE INVOICE NO. 159 DATED 06.11.2017 ISSUED TO THE 3RD RESPONDENT.
EXHIBIT P4	THE TRUE COPY OF THE INVOICE NO. 278 DATED 06.11.2017 ISSUED TO THE 3RD RESPONDENT.
EXHIBIT P5	THE TRUE COPY OF THE NOTICE NO. GST SCN - 22/2017-18 DATED 07.11.2017 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P6	THE TRUE COPY OF THE REPLY LETTER DATED 09.11.2017 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT.
EXHIBIT P6(A)	THE TRUE COPY OF THE REPLY LETTER DATED 09.11.2017 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT.
EXHIBIT P7	THE TRUE COPY OF THE POSTAL ACKNOWLEDGMENT RECEIPT DATED 10.11.2017.
EXHIBIT P8	THE TRUE COPY OF THE CLARIFICATION DATED 16.06.1987 ISSUED BY THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NEW DELHI REGARDING CLASSIFICATION OF PLASTIC MAT.

RESPONDENT(S)' EXHIBITS NIL

/TRUE COPY/

K.V. P.S.TO JUDGE

K.VINOD CHANDRAN, J.

W.P.(C)No.36413 of 2017

Dated this the 20th day of November, 2017

JUDGMENT

The petitioner the consignor of certain goods has approached this Court against the notice issued by the detaining authority under the CGST/SGST Act. After detention when verification was made, it was found that there was mis-classification as also under valuation. The mis-classification was in so far as the goods being described as falling under HSN Code 4601 as per the invoice. On verification of the goods transported, it was seen that it could only fall under HSN Code 3926. There was a rate difference in so far as HSN Code 4601 attracting tax @18% while HSN Code 3926 attracting tax @28%. Further ground was the mis-classification which the detaining authority assumed on the basis of the market value of the goods as known to him but not verified with any material. The detention notice also directed payment of CGST and SGST each @14% totaling 28% and the GST @5% for one other commodity as also a security deposit of an equal amount.

2. The essential contention taken up by the petitioner is that the goods were transported inter-State and neither CGST nor SGST was applicable to such goods. It is also contended that the HSN Code as disclosed in the invoice is the one used by the manufacturer. The petitioner having purchased the goods from the manufacturer at Delhi could not change the HSN Code in which event there would be a violation of the provisions of the tax statutes. It is further contended that the E-way Bill uploading procedure as provided in the Rules to the CGST which has been adopted under the IGST is not implemented as of now. The same is deferred till 31.12.2017. Hence to support the case of the inter-State transport the petitioner need accompany the goods only with an invoice which has been done in the present case.

3. The learned Government Pleader however submits that the release of goods be permitted only on the payment of the amounts demanded, especially since the petitioners-consignors are not dealers within the State. The authorities appointed under the IGST and the CGST/SGST are one and the same and it is the authorities of the State, who have been

empowered to implement the provisions of the goods and service tax enactments. It is also contended that the supply of goods with an invoice without proper description being made attracts penalty.

4. There is no doubt that the authorities appointed by the State have been empowered to implement the provisions of the enactments which regulates the inter-State as also the intra-State trade. However the specific power invoked in issuing the impugned notice is under the CGST/SGST which is applicable only to the intra-state movement of goods. Admittedly the petitioner has consigned the goods from Tamil Nadu and was transporting it to the 3rd respondent at Pattambi. The 3rd respondent also appears and submits that they are ready to accept the consignment. The issue of mis-classification and under valuation has to be gone into by the respective assessing officers and not by the detaining officer. In such circumstances, this Court is not inclined to permit the further detention of the goods. The petitioners shall be permitted release of the goods on the execution of simple bond without sureties as expeditiously as possible. The detaining

officer shall inform the assessing officer of the 3rd respondent who would be entitled to take appropriate proceedings at the time of assessment of the 3rd respondent. The assessing officer of the petitioners at Tamil Nadu would also be intimated, the details of whom shall be furnished by the petitioners before release of the goods.

5. With the above observations the writ petition is allowed making it clear that the petitioners and the 3rd respondent shall co-operate in the adjudication proceedings under the IGST Act. The notice shall be deemed to be one under the IGST Act. No observation on merits and the parties left to suffer their respective costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

skj