IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 18TH DAY OF SEPTEMBER 2017/27TH BHADRA, 1939

WP(C).No. 29675 of 2017 (H)

PETITIONER:

DHANASWAROOPDAS
PROPRIETOR, M/S.MEGHA MARKETING,
CC 69/1738A, SEMETHERI MUKKU,
CHITTOOR ROAD, COCHIN 682 018, ERNAKULAM DISTRICT

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
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1. ASSISTANT STATE TAX OFFICER,
STATE GOODS & SERVICE TAX DEPARTMENT,
SQUAD NO. VI, FACILITATION CENTRE, ELOOR 683 501.

2. STATE TAX OFFICER,
STATE GOODS & SERVICE TAX DEPARTMENT,
SQUAD NO. VI, FACILITATION CENTRE, ELOOR 683 501.

3. STATE ASSISTANT COMMISSIONER,
STATE GOODS & SERVICE TAX DEPARTMENT,
SPECIAL CIRCLE -I, ERNAKULAM, COCHIN 682 015.

4. STATE COMMISSIONER OF GOODS AND SERVICE TAX,
STATE GOODS & SERVICE TAX DEPARTMENT,
TAX TOWER, KARAMANA PO, THIRUVANANTHAPURAM 695 033.

5. GOVERNMENT OF INDIA,
DEPARTMENT OF REVENUE,
CENTRAL BOARD OF EXCISE AND CUSTOMS,
NEW DELHI 110 001, REP. BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF FINANCE

R1 TO R4 BY GOVERNMENT PLEADER SRI. SHAMSUDHEEN.V.K.
R5 BY SREELAL N. WARRIER, SC,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-09-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sdr/-

WP(C).No. 29675 of 2017 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE TAX INVOICE NO. 27AC/17-18/016 DATED 24.8.2017 RAISED BY M/S.ATUL COMMODITIES PVT. LTD; MUMBAI, AFTER COLLECTING INTEGRATED GOODS AND SERVICE TAX

EXHIBIT P2 TRUE COPY OF E-CONSIGNMENT GST KER 1 ONLINE DECLARATION NO. 32071565338/2017-18/2300667 DATED 29.8.2017

EXHIBIT P3 TRUE COPY OF NOTICE NO. OR/VI/1/17-18 DATED 29.8.2017 ISSUED U/S. 129(3) OF THE STATE GOODS AND SERVICE TAX ACT, 2017 DEMANDING CGST, SGST AND PENALTY, WHICH WAS ISSUED TO PETITIONER, SUBSEQUENT TO KER 1 ONLINE DECLARATION IS PRODUCED BY PETITIONER, BEFORE 1ST RESPONDENT

EXHIBIT P4 TRUE COPY OF WRITTEN REPLY DATED 30.8.2017 SUBMITTED BY PETITIONER BEFORE 2ND RESPONDENT, AGAINST EXT.P3 NOTICE

EXHIBIT P5 TRUE COPY OF COMPLAINT DATED 12.9.2017 SENT BY E-MAIL TO 4TH RESPONDENT FOR ISSUANCE OF PROPER DIRECTION TO 1ST RESPONDENT FOR IMMEDIATE RELEASE OF GOODS DETAINED

EXHIBIT P5A TRUE COPY OF COMPLAINT DATED 12.9.2017 SENT BY E-MAIL TO CHAIRMAN OF GST COUNCIL, NEW DELHI

EXHIBIT P6 TRUE COPY OF RELEVANT PAGES OF NOTIFICATION NO. 15/17 - CENTRAL TAX DATED 1.7.2017 ISSUED BY 5TH RESPONDENT IN AMENDING CGST RULES

RESPONDENT(S)' EXHIBITS NIL

/TRUE COPY/

PA TO JUDGE

sdr/-

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.29675 Of 2017

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Dated this the 18th day of September, 2017

J U D G M E N T

The petitioner has approached this Court aggrieved by a detention, of goods that were being transported at his instance, by the authorities under the Central Goods and Services Tax Act (CGST) and State Goods and Services Tax Act (SGST). In the writ petition, it is the case of the petitioner that the detention as evidenced by Ext.P3 was on the ground that the consignment of goods that was being transported was not accompanied by the necessary declaration in Form KER I, which was mandated for supplies effected in the State. The learned counsel for the petitioner would submit that he had entrusted the goods to a transporter and the transporter was obliged to file a declaration in Form KER II, and inasmuch the respondents had not enabled the generation of a KER II declaration in the website, it was impossible for the transporter to download the KER II declaration electronically and it was under those circumstances that the detention was necessitated. It is his case that the petitioner cannot be prejudiced on account of a lapse on the part of the respondents in maintaining the necessary infrastructure for enabling assessees/transporters to download the necessary forms electronically.

2. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, and taking note of the specific submission of the learned Government Pleader, on instructions, that the adjudication process in connection with the detention can be completed within a week from today, and taking note of the judgment dated 30.08.2017 of the Division Bench of this Court in W.A.No.1802 of 2017, I direct the 1st respondent to complete the adjudication process in connection with the detention evidenced by Ext.P3 within a period of one week from the date of receipt of a copy of this judgment, after hearing the petitioner and after taking note of Ext.P4 reply submitted by the petitioner.

While adjudicating the matter, the 1st respondent shall also take note of the contention of the learned counsel for the petitioner that it was on account of the non-availability of Form KER II in the website that the transporter was disabled from producing the same at the time of transportation of the goods. He shall also consider the submission of the learned counsel for the petitioner that at the time of detention, the KER II declaration in manual Form was submitted at the check post, and further, that he had also submitted the online declaration in Form KER I in the KVATIS Website. The challenge in the writ petition against the vires of the statutory rules is left open for consideration in an appropriate case.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/18.09.17