

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 30TH DAY OF AUGUST 2017/8TH BHADRA, 1939

WA.No. 1802 of 2017
IN WP(C).28154/2017

AGAINST THE JUDGMENT IN WP(C) 28154/2017 of HIGH COURT OF KERALA
DATED 25-08-2017

APPELLANTS/RESPONDENTS:

1. THE COMMERCIAL TAX OFFICER,
SGST SECOND CIRCLE, PERUMBAVOOR,
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM DISTRICT. PIN - 683 542.
2. THE INTELLIGENCE INSPECTOR, SQUAD-III,
DEPARTMENT OF COMMERCIAL TAXES,
POOTHOLE, THRISSUR, PIN - 680 004.

BY SR. GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

RESPONDENT/PETITIONER:

MADHU.M.B., PROPRIETOR,
HARITHA ENTERPRISES, XVII/230-F,
ARACKAPPADY, VENGOAL, PIN - 683 556,
ERNAKULAM DISTRICT.

BY SRI.R.MURALEEDHARAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
30-08-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ANTONY DOMINIC,
&
DAMA SESHADRI NAIDU, JJ.**

W. A. No.1802 of 2017

Dated this the 30th day of August, 2017

JUDGMENT

Antony Dominic, J.

This appeal is filed by the respondents in W.P.(C) No.28154 of 2017.

2. We heard the learned Government Pleader for the appellants and the learned counsel appearing for the respondent/writ petitioner.

3. The respondent herein, a dealer registered under the KVAT Act and migrated to CGST Act, had purchased a consignment of plywoods from a manufacturer at Perumbavoor, and was transporting the same. The goods were detained by the appellants and Ext.P5 notice under Section 129(3) of the Central/State Goods and Services Tax Act, 2017 was issued. The notice contains the irregularities

which led to the detention and the irregularity, in substance, is that there were no nexus between the documents accompanied and the actual goods under transport. It was challenging Ext.P5, the writ petition was filed. By the judgment under appeal, the writ petition was disposed of directing the second appellant to make a fresh assessment computing the value of the goods and the tax payable under the CGST Act and SGST Ordinance together with penalty. It was also ordered that on payment of 50% of such demand along with execution of a simple bond, the goods shall be released. It is this judgment which is challenged before us.

4. On hearing the rival submissions made at the Bar, we find that Section 129 of the CGST Act and SGST ordinance provides for detention, seizure and release of goods and conveyances in transit. The amounts payable on the passing of the final order are those specified in sub-section 1. Sub-section 5 provides that on payment of the amount referred to in sub-section 1, all proceedings in

respect of the notice specified in sub-section 3 shall be deemed to be concluded. The statute also make provisions for release of the goods pending passing of the order under sub-section 1. Section 129(2) provides that, the provisions of Section 67(6) shall apply for detention and seizure of goods and conveyances. Section 67(6) provides that, the goods seized shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be. Rule 140 provides that, the seized goods may be released on a provisional basis upon execution of a bond for the value of goods in FORM GST INS-04 and furnishing of a security in the form of a Bank Guarantee equivalent to the amount of applicable tax, interest and penalty payable.

5. The above statutory provisions, therefore, provide a mechanism for adjudication following detention of goods

including for the provisional release thereof pending adjudication. When the statute itself provides for such a mechanism, a deviation therefrom cannot be ordered. If that be so, the provisional release in the manner as is ordered in the judgment under appeal cannot be sustained.

6. However, taking note of the provisions of Rule 140 (2) obliging a dealer to produce the goods as and when demanded, and considering the inconvenience and prejudice that is likely to be caused on account of the delay, we need hardly emphasise the necessity for an expeditious adjudication even in cases goods are released provisionally. However, in this case, it is unnecessary for us to deal with that issue at greater length as the Government Pleader himself has agreed that the adjudication will be completed, within one week.

7. In such circumstances, we set aside the judgment under appeal and direct that the respondent shall produce a copy of this judgment before the second appellant, who

thereupon, will issue necessary notice and conduct physical verification in the presence of the respondent and complete adjudication, at any rate, within one week.

8. We also give liberty to the petitioner to comply with Rule 140(1) and get provisional release on that basis.

Writ appeal is disposed of accordingly.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**DAMA SESHADRI NAIDU
JUDGE**

kns/-

//TRUE COPY//

P.S. TO JUDGE