

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 13TH DAY OF OCTOBER 2020 / 21ST ASWINA, 1942

WP(C).No.21582 OF 2020(W)

PETITIONER/S:

ASHARAF ALI.K.H
S/O.HYDER, KUNNATH KALATHIL HOUSE, KUNNUMMELPOTTY
P.O., MALAPPURAM-679331.

BY ADVS.

SRI.P.N.DAMODARAN NAMBOODIRI
SHRI. HRITHWIK D. NAMBOOTHIRI

RESPONDENT/S:

- 1 THE ASSISTANT STATE TAX OFFICER
24 7 MOBILE SQUAD @ THAMARASSERY, STATE GST
DEPARTMENT, KOZHIKODE-673006.
- 2 THE ASSISTANT COMMISSIONER (INT.),
MOBILE SQUAD THAMARASSERY, STATE GST DEPARTMENT,
KOZHIKODE-673006.
- 3 THE JOINT COMMISSIONER (INT.),
STATE GST DEPARTMENT, KOZHIKODE-673006.

OTHER PRESENT:

GP: DR. THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.10.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P7 notice of detention served on him. In the writ petition, it is the case of the petitioner that in purported exercise of the powers under Section 129 of the Goods and Service Tax Act, ('the GST Act' for short), the respondents have detained a consignment of goods being transported at his instance, on the ground that there was a mis-classifications of the goods transported. It is his contention in the writ petition that the alleged mis-classification of the goods cannot be a reason for detaining the consignment under Section 129 of the GST Act.

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

3.On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find force in the contention of the learned counsel for the petitioner that the allegation of mis-classification of goods cannot warrant a detention of the goods under Section 129 of the GST Act. In my view, if the respondents feel that there has been a mis-classification of the goods, then it is for them to prepare a report based on the physical verification done by them, get the petitioner to sign on the same after recording his objections, if any, to the findings recorded therein, and thereafter forward a copy of the said report to the Assessing Officer of the

petitioner, who can consider the said report and objections at the time of finalising the assessment in relation to the petitioner. The detention of the goods in transit cannot be justified for the said reasons.

Accordingly, I quash Ext.P7 notice and direct the respondents to forthwith release the goods and the vehicle to the petitioner, after getting the petitioner's signature/ objections recorded on the report prepared by the respondents pursuant to the physical verification of the goods in question. The learned Government Pleader shall communicate the gist of this order to the respondents, so as to enable an expeditious clearance of the goods and the vehicle by the petitioner. The petitioner shall produce a copy of the writ petition together with a copy of this judgment, before the respondents, for further action.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE INVOICE BEARING NO.16 IN THE NAME OF M/S. KEY TEE MARBLES AND GRANITES DATED 5.10.2020 ISSUED BY M/S.SATHYA NARAYANA STONE CO., TANDUR, TELUNGANA.
- EXHIBIT P2 TRUE COPY OF THE INVOICE BEARING NO.17 IN THE NAME OF M/S.STONE WORLD G, DATED 5.10.2020 ISSUED BY M/S.SATHYA NARAYANA STONE CO., TANDUR, TELUNGANA.
- EXHIBIT P3 TRUE COPY OF THE STATEMENT OF DRIVER OF VEHICLE WITH GOODS IN FORM GST MOV-01 BEARING NO.OR/GST/VI/56/20-21 DATED 7.10.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE ORDER FOR PHYSICAL VERIFICATION IN FORM GST MOV-02 BEARING NO.OR/GST/VI/56/20-21 DATED 7.10.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE PHYSICAL VERIFICATION REPORT IN FORM GST MOV-04 BEARING NO.OR/GST/VI/56/20-21 DATED 7.10.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE ORDER OF DETENTION UNDER SECTION 129(1) OF GOODS AND SERVICES TAX ACT, 2017 IN FORM GST MOV.06 BEARING NO.OR/GST/VI/56/20-21 DATED 7.10.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE NOTICE UNDER SEC. 129(3) OF CENTRAL GOODS AND SERVICES TAX, 2017 IN FORM GST MOV-07 BEARING NO.OR/GST/VI/56/20-21 DATED 7.10.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P8 TRUE PHOTOGRAPH SHOWING THE NATURE OF STONE.
- EXHIBIT P9 TRUE COPY OF THE NOTIFICATION NO.19/2018 PUBLISHED BY MINISTRY OF FINANCE, GOVERNMENT OF INDIA 26.7.2018.

WP(C) .No.21582 OF 2020 (W)

5

EXHIBIT P10

TRUE COPY OF THE CATEGORY HSN 6802
DOWNLOADED FROM THE WEBSITE.