

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 21ST DAY OF AUGUST 2020 / 30TH SRAVANA, 1942

WP(C).No.17377 OF 2020(V)

PETITIONER/S:

ABCO TRADES (P) LTD.
7/467 R, ST ALPHONSA ARCADE, BHARANANGANAM, PALA,
KOTTAYAM-686 578 REPRESENTED BY ITS MANAGING DIRECTOR
SRI. ANTONY CHANDRABABU

BY ADVS.
SRI.AJI V.DEV
SRI.ALAN PRIYADARSHI DEV

RESPONDENT/S:

- 1 THE ASSISTANT STATE TAX OFFICER
SQUAD NO-III, STATE GOODS AND SERVICES TAX
DEPARTMENT, KOLLAM AT MINI CIVIL STATION,
KARUNAGAPPALLY-690 518.
- 2 THE STATE TAX OFFICER
SQUAD NO.III, STATE GOODS AND SERVICES TAX
DEPARTMENT, KOLLAM AT MINI CIVIL STATION,
KARUNAGAPPALLY-690 518.
- 3 THE SUPERINTENDENT OF CENTRAL EXCISE,
CENTRAL EXCISE RANGE OFFICE, OPPOSITE PRIVATE BUS
STAND, PALA-686 575.
- 4 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO TAXES, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 5 UNION OF INDIA
REPRESENTED BY SECRETARY, FINANCE DEPARTMENT DELHI
APARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT
OF INDIA, NORTH BLOCK, NEW DELHI-110 001.
- 6 GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER-II, JEEVAN BHARATHI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110 001
REPRESENTED BY ITS SECRETARY.

G.P.SRI.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P5(c) order of detention that was issued to it detaining a consignment of lubricant oil that was being transported at its instance. On a perusal of Ext.P5(c) detention order, it is seen that the objection of the 1st respondent is that the consignee was shown as an unregistered person in the e-way bill that accompanied the transportation of the goods. That apart, it is also pointed out that the petitioner had collected CGST and SGST in the delivery challan that was used for stock transfer of the goods thereby giving rise to a suspicion with regard to the nature of the transaction itself.

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

3. Learned counsel for the petitioner would submit that although the e-way bill showed the consignee as an unregistered person, the invoice that accompanied the transportation clearly referred to the GSTIN of the consignee and hence, the mere mention of the consignee as an unregistered person in the e-way bill cannot be of any significance. Secondly, it is stated that the mention of the tax applicable in the delivery challan was by mistake for it is evident that when the goods are stock transferred and not sold, there need not be a payment of tax at all.

Taking note of the said submission, I find that the reasons shown in Ext.P5(c) for detaining the consignment are not sufficient to attract the provisions of Section 129 of the GST Act. The detention in the instant case cannot, therefore, be seen as justified. I therefore allow the writ petition by directing the 1st respondent to immediately release the goods and the vehicle covered by Ext.P5(c)

detention notice, on the petitioner producing a copy of this judgment before the 1st respondent. The Government Pleader shall also communicate the gist of this judgment to the 1st respondent so as to enable the petitioner to effect an immediate clearance of the goods and the vehicle. The petitioner shall produce a copy of this judgment together with a copy of the writ petition before the 1st respondent for further action.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

sd

APPENDIX**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 A TRUE COPY OF THE RENT AGREEMENT EXECUTED ON 13.8.2020.
- EXHIBIT P2 A TRUE COPY OF THE ACKNOWLEDGEMENT OF THE APPLICATION FOR AMENEMENT OF REGISTRATION CERTIFICATE DATED:
- EXHIBIT P3 A TRUE COPY OF THE ORDER OF AMENDMENT DATED 17.8.2020 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P3 (A) A TRUE COPY OF THE AMENDED REGISTRATION CERTIFICATE ISSUED DATED 17.8.2020.
- EXHIBIT P4 A TRUE COPY OF THE DEIVERY CHELAN DATED 13.8.2020 ACCOMPANIED THE CONSIGNMENT.
- EXHIBIT P4 (A) A TRUE COPY OF THE E-WAY BILL DATED 13.8.2020 ACCOMPANIED THE CONSIGNMENT.
- EXHIBIT P5 A TRUE COPY OF THE NOTICE ISSUED IN FORM GST MOV -01 DATED 14.8.2020.
- EXHIBIT P5 (A) A TRUE COPY OF THE ORDER FOR PHYSICAL VERIFICATION OF THE CONVEYANCE IN FORM-GST MOV-02 DATED 14.8.2020.
- EXHIBIT P5 (B) A TRUE COPY OF THE PHYSICAL VERIFICATION REPORT ISSUED IN FORM-GST MOV-04 DATED 14.8.2020.
- EXHIBIT P5 (C) A TRUE COPY OF THE DETENTION ORDER, WITH A SEPERATE SHEET CONTAINING ALLEGATIONS ISSUED IN FORM -GST MOV-06 DATED 14.8.2020.
- EXHIBIT P5 (D) A TRUE COPY OF THE NOTICE DEMANDING TAX & PENALTY ISSUED IN FORM-GST MOV-07 DATED 14.8.2020.
- EXHIBIT P6 A COPY OF THE TEXT PAGE CONTAINING RULE 19 OF THE CGST RULES.
- EXHIBIT P7 A TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER DATED 17.8.2020.