

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 11TH DAY OF AUGUST 2020/20TH SRAVANA, 1942

W.P(C).No.16357 OF 2020

PETITIONER:

FAISLUDEEN P.M,
AGED 52 YEARS, PROPRIETOR, P.S. CEMENTS,
ARATTUPUZHA P.O., HARIPAD, ALAPPUZHA - 690515.

BY ADV. SRI.V.DEVANANDA NARASIMHAM

RESPONDENTS:

- 1 ASSISTANT STATE TAX OFFICER,
INTELLIGENCE SQUAD NO-II,
STATE GOODS & SERVICE TAX DEPARTMENT, PATHANAMTHITTA
AT THIRUVALLA - 689101.
- 2 STATE TAX OFFICER
INTELLIGENCE SQUAD NO-II, STATE GOODS & SERVICE TAX
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695001,
REPRESENTED BY SECRETARY TO GOVERNMENT.
- 3 STATE OF KERALA,
STATE GOODS & SERVICE TAX DEPARTMENT,
SERETARIAT, THIRUVANANTHAPURAM - 695 001,
REPRESENTED BY SECRETARY TO GOVERNMENT.
- 4 COMMISSIONER OF GOODS AND SERVICES TAX
GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS, GST POLICY WING, NEW DELHI - 110 001.

BY SRI.PAUL ABRAHAM VAKKANAL, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11.08.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

The petitioner has approached this Court challenging the detention notice issued to him (Ext.P5) under Section 129 of the GST Act. On a perusal of the detention notice, I find that the objection of the respondents was essentially that the consignment was not supported by the original invoice and there was variation detected in the goods transported from the description in the invoice. On a consideration of the reasons shown in Ext.P5, I am of the *prima facie* view that the detention cannot be said to be unjustified.

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

The learned counsel for the petitioner seeks permission to clear the goods on furnishing of a bank guarantee to cover the amounts demanded in Ext.P5. Taking note of the said submission, I dispose the writ petition by

directing the 1st respondent to permit the petitioner to clear the goods and the vehicle on furnishing a bank guarantee for the amount demanded in Ext.P5. Thereafter, the 1st respondent shall forward the files to the adjudicating authority for an adjudication of the dispute under Section 130 of the GST Act, which adjudication shall be completed only after hearing the petitioner, within a period of one month from the date of the files being forwarded to the 2nd respondent. 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 EXHIBITS:

EXT.P1: TRUE COPY OF TAX INVOICES NO.CC2255 DATED 06.08.20 RAISED BY M/S.COCHIN CEMENTS LTD, MEVELLOOR P.O., KOTTAYAM, CONSIGNOR TO THE PETITIONER AGAINST SALE OF 500 BAGS OF CEMENT COLLECTING 14% CGST & KSGST, DELIVERED AT 07-30 AM.

EXT.P2: TRUE COPY OF E-WAY BILL NO.5311 9361 7516 DATED 06-08-20 GENERATED AT 07-05 AM BY THE CONSIGNOR AGAINST EXT.P1 TAX INVOICE SPECIFYING VEHICLE NO:KL29K 9027 TO TRANSPORT FROM MEVELLOOR TO ARATTUPUZHA, HARIPAD.

EXT.P3: TRUE COPY OF SUPPLY TAX INVOICE 307 DATED 06-08-20 RAISED BY PETITIONER ON METAL PLAZA, VALLAMKULAM, THIRUVALLA TO DELIVER 200 BAGS OF CEMENT USING VEHICLE NO:KL29K 9027.

EXT.P3(A): TRUE COPY OF SUPPLY TAX INVOICE 308 DATED 06-08-20 RAISED BY PETITIONER ON A.M. TRADERS, PUNNAPRA, AMBALAPUZHA TO DELIVER 100 BAGS OF CEMENT USING VEHICLE NO:KL29K 9027.

EXT.P4: TRUE COPY OF E-WAY BILL NO: 5611 9361 8604 DATED 06.08.20 GENERATED AT 07.43 AM AGAINST EXT.P3 TAX INVOICE BY THE PETITIONER TO TRANSPORT & DELIVER 200 BAGS OF CEMENT FROM MEVELLOOR, KOTTAYAM TO VALLAMKULAM, THIRUVALLA USING VEHICLE NO:KL29K 9027.

EXT.P4(A): TRUE COPY OF E-WAY BILL NO:5911 9361 8319 DATED 06.08.20 GENERATED AT 07.38 AM AGAINST EXT.P3(A) TAX INVOICE BY THE PETITIONER TO TRANSPORT 100 BAGS OF CEMENT FROM MEVELLOOR, KOTTAYAM TO PUNNAPRA, AMBALAPUZHA USING VEHICLE NO: KL29K 9027.

EXT.P5: TRUE COPY OF NOTICES IN MOV-01 & 02 DATED 06-08-20 ISSUED AT 10.45 AM AND MOV-04, MOV-06 & MOV-07 ON 07.08.20 BY 1ST RESPONDENT, DEMANDING TAX AND PENALTY U/S 129 OF THE CGST AND KSGST ACTS, 2017 ALLEGING THAT NO ORIGINAL INVOICES ALONG WITH

CONSIGNMENT AND VARIATION OF 200 BAGS OF CEMENT ON PHYSICAL VERIFICATION.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE