IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 23RD DAY OF JULY 2020/1ST SRAVANA, 1942

W.P(C).No.14969 OF 2020

PETITIONER:

DEVICES DISTRIBUTORS
DOOR NO.18/1145B, K T COMPLEX,
JAIL ROAD, PUTHIYARA, CALICUT - 673004
A PARTNERSHIP FIRM, REPRESENTED BY ITS PARTNER
- MR.AJISH P.F.

BY ADVS.SRI.JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.MATHEWS K.UTHUPPACHAN
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.P.G.CHANDAPILLAI ABRAHAM
SHRI.ALEXANDER JOSEPH MARKOS
SHRI.SHARAD JOSEPH KODANTHARA

RESPONDENTS:

1 THE ASSISTANT STATE TAX OFFICER
SQUAD NO.II, KERALA GST DEPARTMENT,
KOLLAM AT KOTTARAKKARA, PIN - 691 506.

2 COMMISSIONER OF STATE GST
KERALA STATE GST DEPARTMENT
THIRUVANANTHAPURAM - PIN 695 001.

3 ASSISTANT COMMISSIONER OF STATE TAX
SPECIAL CIRCLE, JAWAHAR NAGAR COLONY,
KOZHIKODE PIN 673006.

BY SMT.THUSHARA JAMES, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, who is a distributor of home appliances of various brands, has approached this Court aggrieved by Ext.P4 detention notice under the GST Act that was served on him while goods were being transported from Kottayam to Thiruvananthapuram at his instance. A perusal of Ext.P4 detention notice indicates that the objection of the respondent is essentially with regard to the invoices that accompanied the transportation of the goods. It was found that the tax invoices furnished, although carried serial numbers, they were not consecutive for the three invoices. In particular, it was noticed that while one invoice carried the serial number as 46000152. The other two invoices carried the serial numbers 53000029 and 53000030. The detaining authority, therefore, suspected that the invoices carrying the serial numbers in between the two sets of invoices indicated above might have been used for transportation of other goods that were not brought to the notice of the Department. Reference is also made in the detention notice to the 'Revised Invoice Rules, 2017, which, according to the learned Senior Counsel for the petitioner, has no relevance to the facts in the instant case.

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

3. Learned Government Pleader would refer to Rule 46(1)(b) of the GST Rules that specifies the requirement of a tax invoice containing a consecutive serial number not exceeding 16 characters in one or multiple series, containing alphabets or numerals or specific characters respectively, and any combination thereof, to point out that in the instant case, the tax invoices did not contain a combination of alphabets, numerals, and specific characters. It is contended, therefore, that insofar as the tax invoices that accompanied the goods did not conform to the requirement of R.46, the detention could not be seen as unjustified.

4. On a consideration of the rival submissions, I find that the power to detain a vehicle in the course of transit is specified in Section 129 of the GST Act, and applies inter alia to cases where any person transports goods in contravention of provisions of the Act or Rules. As per the Act and Rules, a person transporting goods is obliged to carry the documents that are mentioned in Section 68 of the GST Act, read with Rule 138 of the GST

Rules. Accordingly such a person is required to carry a copy of the tax invoice, together with a copy of the e-way bill, while transporting the goods either interstate or intrastate. The form of the invoice is specified in Section 31 of the CGST Act read with Rule 46 of the GST Rules. In the instant case, it is not in dispute that e-way bills did accompany the goods. It is also not in dispute that the transportation was covered by tax invoices. The objection of the respondents is only that the invoices did not bear continuous numbers and hence they suspect that the invoices bearing serial numbers that fell between the numbers on the invoices produced at the time of transportation, could have been used for transportation of other goods that had not been brought to the notice of the Department.

5. In my view, the entertainment of such a doubt by the authority cannot be a justification for detaining the goods in question, especially when they were admittedly accompanied by tax invoices as also e-way bills that clearly indicated the particulars that were required by Rule 46 of the GST Rules. It is also relevant to note that the doubt entertained by the respondents were, at any rate, in respect of goods that may have been transported under cover of the invoices that numerically fell between the numbers shown in the invoices that were carried along with the goods, and in that sense, pertained to goods other than those that were actually

detained. The detention in the instant case cannot be justified under Section 129 of the GST Act.

I therefore allow this writ petition and direct the respondents to forthwith release the goods detained by Ext.P4 notice, on the petitioner producing a copy of this judgment before them. The Government Pleader shall communicate the gist of the directions in this judgment to the respondents for enabling an expeditious release of the vehicle and the goods.

Sd/-
A.K.JAYASANKARAN NAMBIAR

JUDGE

Sd

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE LIST SHOWING THE SERIES NUMBERS OF INVOICES FOR THE PRESENT YEAR.

EXT.P2: TRUE COPY OF PRINTOUT OF THE ADVISORY OF THE CBIC WITH RESPECT TO TAX INVOICES AND OTHER INSTRUMENT AS OBTAINED FROM THE CBIC WEBSITE.

EXT.P3(A): TRUE COPY OF TAX INVOICE NO.46000152 DATED 15.7.2020 AND CORRESPONDING E-WAY BILL DATED 16.07.2020.

EXT.P3(B): TRUE COPY OF TAX INVOICE NO.53000029 DATED 15.7.2020 AND CORRESPONDING E-WAY BILL DATED 16.07.2020.

EXT.P3(C): TRUE COPY OF TAX INVOICE NO.53000030 DATED 15.7.2020 AND CORRESPONDING E-WAY BILL DATED 16.07.2020.

EXT.P4: TRUE COPY OF SCN-29/IO-II/20-21 DATED 16.07.2020 ISSUED BY THE 1ST RESPONDENT.

EXT.P5: TRUE COPY OF OBJECTION DATED 16.07.2020 FILED BY THE PETITIONER.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE