

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 19TH DAY OF FEBRUARY 2020 / 30TH MAGHA, 1941

WP(C).No.4731 OF 2020(N)

PETITIONER:

FAWAS ASSOCIATED AGENCIES,
XXIII/404 A,405,FAWAS BUILDING,M.C.ROAD,
OPPOSITE AYYAPPAN TEMPLE,
WEST NADA,PERUMBAVOOR,683542,
REPRESENTED BY IT'S PROPRIETOR SRI.K.P.MOOSA.

BY ADVS.

SRI.AJI V.DEV

SRI.ALAN PRIYADARSHI DEV

SHRI.KIRAN RAMACHANDRAN NAIR

RESPONDENTS:

- 1 THE ASSISTANT STATE TAX OFFICER,
SQUAD NO.I,KERALA STATE GOODS AND SERVICE TAX
DEPARTMENT,MATTANCHERRY AT MINI CIVIL STATION,
ALUVA-683101.
- 2 THE STATE TAX OFFICER,
SQUAD NO.I,KERALA STATE GOODS AND SERVICE TAX
DEPARTMENT,MATTANCHERRY AT MINI CIVIL STAITON,
ALUVA-683101.
- 3 THE DEPUTY COMMISSIONER(APPEALS),
KERALA STATE GOODS AND SERVICE TAX DEPARTMENT,
TAX COMPLEX,THEVARA,
PERUMANOOR.P.O,ERNAKULAM-686015.
- 4 THE ASSISTANT COMMISSIONER,
KERALA STATE GOODS AND SERVICE TAX DEPARTMENT,
SPECIAL CIRCLE,MINI CIVIL STATION,PERUMBAVOOR-683542.
- 5 THE STATE OF KERALA,
REPRESENTED BY IT'S SECRETARY TO TAXES,
SECRETARIAT,THIRUVANANTHAPURAM-695001.
- 6 THE BRANCH MANAGER,
BANK OF INDIA,DARSHANAM CHAMBERS,
M.C.ROAD,PERUMBAVOOR-683542.

OTHER PRESENT:

SRI J HARIKUMAR SC
DR THUSHARA JAMES GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The sole question involved in this case is whether Ext.P4 dated 28.09.2018 demanding tax and penalty from the petitioner on account of detention of the vehicle and the goods can be construed to be an adjudication order as per the provisions of Section 129(5) of the CGST Act 2017 & Kerala State GST Act, 2017 (for short, 'the Act') or not. In order to answer the aforementioned question the facts in brief are factualised as under:

Petitioner being a registered dealer under the Central Goods and Service Tax Act, 2017 while transporting two consignments of TMT steel in a Goods Vehicle from Perumbavoor to Muvattupuzha supported by invoices Exts.P1 & P1(a) and Exts.P2 & P2(a) e-way bills were detained on 27.09.2018 alleging that the e-way bills were not valid as the

number of the vehicle in Part-B of the e-way bills was not entered.

2. Learned counsel for the petitioner submits that considering the notice and particularly the opening line of the same to be as an order, the petitioner preferred an appeal under Section 107 of the aforementioned Act, where the limitation is three months, but condonable is only one month. That appeal is dismissed vide Ext.P8 dated 14.08.2019 received on 13.11.2019 as the notice was not appealable. Ext.P9 adjudication order dated 21.11.2018 was passed, pending the appeal and therefore, is not maintainable.

3. Learned counsel appearing on behalf of the State submits that appeal could have been filed only against Ext.P9 and not against Ext.P4.

4. Learned counsel for the petitioner

submits that the only prayer in the present writ petition is for restoration of the appeal granting liberty to them.

5. Having heard the counsel for the parties and perused the paper book, I am of the view that this is a fit case where interference under Article 226 of the Constitution of India is warranted. Section 129 of the Act reads as under:

“129 Detention, seizure and release of goods and conveyances in transit.

129.(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, —

(a) on payment of the applicable tax and penalty

equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order

for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.”

6. On a plain and simple reading of the provisions of the Act, sub-section (3) of Section 129 envisages that the proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a)

or clause (b) or clause (c) and on payment of the amount referred to in sub-section (1) all the proceedings in respect of notice specified in sub-section (3) shall be again to be concluded. The expression 'order' used in sub-section (3) can in common wording can construed to be an order. The litigants do not have the acumen of legalities of the order particularly when the word 'order' is reflected in sub-section (3).

7. The appeal was filed on 11.10.2018 and the adjudication order dated 21.11.2018 was issued during the pendency of the appeal. The appeal could have been rectified by an amendment appropriately to be against the adjudication order. The authorities ought not to have adopted a rigid approach and rejected the appeal as not maintainable. At the best request of the petitioner could have been construed in the manner for the amendment of the

appeal, challenging the adjudication order in order to overcome the maintainability of the appeal.

8. For the reason aforementioned, the impugned order Ext.P8 dated 14.08.2019 received on 13.11.2019 is set aside. Appeal is restored granting liberty to the petitioner to challenge the order dated 21.11.2018 (Ext.P9) in accordance with law.

This writ petition is disposed of accordingly.

Sd/-

AMIT RAWAL

JUDGE

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

- EXHIBIT P1 A TRUE COPY OF THE INVOICE NO.B/B-668
DATED:27.09.2018 ISSUED BY THE
PETITIONER
- EXHIBIT P1 (A) A TRUE COPY OF THE INVOICE NO.B/B-669
DATED:27.09.2018 ISSUED BY THE
PETITIONER
- EXHIBIT P2 A TRUE COPY OF THE E-WAY BILL
NO.571057342897 DATED:27.09.2018
ISSUED BY THE PETITIONER
- EXHIBIT P2 (A) A TRUE COPY OF THE E-WAY BILL
NO.5710573435764 DATED:27-09-2018
ISSUED BY THE PETITIONER
- EXHIBIT P3 A TRUE COPY OF THE FORM GST MOV-01
DATED:27-09-2018
- EXHIBIT P3 (A) A TRUE COPY OF THE FORM GST MOV-02
DATED:27-09-2018
- EXHIBIT P3 (B) A TRUE COPY OF THE FORM GST MOV-04
DATED:27-09-2018
- EXHIBIT P3 (C) A TRUE COPY OF THE FORM GST MOV-06
DATED:27-09-2018
- EXHIBIT P3 (D) A TRUE COPY OF THE FORM GST MOV-07
DATED:27-09-2018
- EXHIBIT P4 A TRUE COPY OF THE ORDER PASSED IN GST
MOV-09 DATED:28.09.2018
- EXHIBIT P5 A TRUE COPY OF THE ORDER PASSED IN GST
MOV-08 (SIMPLE BOUND) DATED:28.09.2018
- EXHIBIT P5 (A) A TRUE COPY OF THE BANK GUARNTTEE
FURNISHED DATED:28.09.2018
- EXHIBIT P6 A TRUE COPY OF THE FORM GST MOV-05
(RELAESE ORDER) DATED:29.09.2018

- EXHIBIT P7** **A TRUE COPY OF THE STATUTORY APPEAL
FILED DATED:08-10-2018 AGAINST EXT.P4**
- EXHIBIT P8** **A TRUE COPY OF THE APPELLATE ORDER
PASSED DATED:14.08.2019,RECEIVED ON
13-11-2019**
- EXHIBIT P9** **A TRUE COPY OF THE ADJUDICATION ORDER
PASSED BY THE 2ND RESPONDENT DATED:21-
11-2018**
- EXHIBIT P10** **A TRUE COPY OF THE REQUEST LETTER
FILED BY THE PETITIONER SEEKING
ADJOURNMENT OF ADJUDICATION BEFORE THE
2ND RESPONDENT DATED:20.11.2018**
- EXHIBIT P11** **A TRUE COPY OF THE LETTER ISSUED BY
THE 2ND RESPONDENT TO THE 6TH
RESPONDENT BANK DATED:13.02.2020.**

//TRUE COPY//
PA TO JUDGE