IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

MONDAY, THE 10TH DAY OF FEBRUARY 2020 / 21ST MAGHA, 1941

WP(C).No.2323 OF 2020(M)

PETITIONER:

LARSEN AND TOUBRO LIMITED
SKYBRIGHT BUILDING, M.G.ROAD,
RAVIPURAM JUNCTION, KOCHI-682016,
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR.RAJU V.IYER.

BY ADVS.
SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD
SHRI.ABRAHAM JOB
SRI.AJAY V.ANAND

RESPONDENTS:

1 THE COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPT.
TAX TOWERS, KARAMANA P.O., KILLIPALAM,
THIRUVANANTHAPURAM- 695002.

2 ASSISTANT STATE TAX OFFICER,
SQUAD NO.1, ASSISTANT COMMISSIONER (INTELLIGENCE),
KERALA SGST DEPARTMENT, PALAKKAD-678001.

OTHER PRESENT:

GP DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner, a Public Limited Company engaged in the execution of work contract with Cochin Shipyard, has approached this Court challenging the proceedings initiated under Section 129(3) of the Central Goods Service Tax Act, 2017 (hereinafter referred to as 'CGST Act', for short). Exts.P4, P4(a) and P4(b) notices were issued on the premise that the already purchased cranes working in Orissa were entrusted to the transporter - M/s.Zinka Logistics Solutions Pvt.Ltd for transportation to Kochi and in that respect, three separate delivery chalans were issued vide Exts.P2 and P2(a) and P2(b).

2. Sri.A.Kumar, learned counsel appearing on behalf of the petitioner submits that as per the requirement of law, the petitioner generated e-way bills with the Part A details in accordance with Rule 138 of the Central Goods Service Tax Rules, 2015

(hereinafter referred to as 'the Rules', for short). Pursuing the aforementioned provisions of sub rule 1 of Rule 138 of the Rules, it is a mandatory obligation upon a transporter to also fill the information in Part A of the Form GST e-way bill-01(electronically). For the reasons that the transporter did not fill up that form, in other words, did not comply with the requirement of law in discharging the obligation, three trailers/vehicles while in the jurisdiction of Kochi were intercepted and retained by the Kochi Authorities. It is further submitted that the alleged detention could not have been done under the provisions of Section 129 of the Act, in view of Ext.P7 circular dated 22.11.2017 issued by the Ministry of Finance whereby in respect of the other items, including the cranes in the instant case has been referred to be exempted from the applicability of IGST in the absence of any 'supply'. It is just like that if the owner of a crane is transporting his goods from one

State to another State, on account of the availability of the work. He contends that at the best, it could be a case of minor penalty as envisaged under Section 122 of the Act. Though instant case, the violation of Section 129 (3) and (6) for the consequential initiation of confiscation proceedings after expiry of fourteen days have not been assailed, but the fact of the matter is that the goods of such nature would not be eligible for any tax or penalty. In this regard, Exts.P5 and P6 replies in response to the impugned notices have already been filed, but there is no adjudication even by the Commissioner i.e., higher officer, though submitted Ext.P9 representation dated 24.01.2020 also.

3. He further submits that the matter at any stage is required to be crushed out for the purpose of eligibility to tax or penal/ty.

4. It is submitted by the learned counsel

appearing on behalf of the Revenue, who particularly relied upon the provisions of Section 129(1) of the CGST Act starting with the non obstante clause, that whenever there is violation of any provisions of the Act, the detention or seizure and release of the goods will be subjected to terms and conditions which are inevitable, even including the confiscation proceedings under Section 130 and thus urged this Court for dismissal of the writ petition.

5. Having heard the learned counsel for the parties on the aforelines, I am of the prima facie view that the controversy involved in the present case assailing the impugned notices cannot be adjudicated at this stage of the matter, particularly when the petitioner has already submitted reply. The aforementioned reply is not a routine reply but backed by relevant provisions and circulars as mentioned above, which in my view, is required to be

considered dispassionately and in a pragmatic manner. I would not be commenting any further on the merits of the matter as it may have a far reaching effect in respect of any adjudication.

6. For the sake of brevity, the relevant provisions of the circular Ext.P7 is extracted herein below:

> “The issue of IGST exemption on inter-state movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the Central Goods and Services Tax Act, 2017, carrying goods or passengers or both; or for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] was examined and a circular 1/1/2017-IGST dated 7.7.2017, was issued clarifying that such inter-state movement shall be treated “neither as a supply of goods nor supply of service” and therefore would not be leviable to IGST.
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> 2. The issue pertaining to inter-state movement of rigs, tools and spares, and allmods on wheels[like cranes] was discussed in GST Council's meeting held on 10th November, 2017 and the Council recommended that the circular 1/1/2017-IGST shall

> mutatis mutandis apply to inter-state movement of such goods, and except in cases where movement of such goods is for further supply of the same goods, such inter-state movement shall be treated 'neither as a supply of goods or supply of service', and consequently no IGST would be applicable on such movements.
>
> 3. In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case may be, is leviable on repairs and maintenance done for such goods.
>
> 4. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow."

It is being clarified that in the kind of a transaction referred to therein and involved in the present case, there is no question of any supply and thus applicability of the GST would, in such circumstances, be not as already observed without being examined by the authorities who issued the notices and the appellate authorities if any.

7. For the time being, I command the petitioner to submit a bank guarantee in terms of the

provisions of Section 129 of the CGST Act for release of the vehicle. However, that would be without prejudice and subject to the outcome of the decision to be taken by the adjudicating authority.

In case the petitioner furnishes the bank guarantee within a period of one week, the seized trailers along with the goods would be released in accordance with law. This writ petition stands disposed of.

Sd/-

AMIT RAWAL

JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE GST REGISTRATION CERTIFICATE.**
EXHIBIT P2	**TRUE COPY OF THE DELIVERY CHALLAN WITH DC NO.LE/LE190340/PDC/19/0000002/1**
EXHIBIT P2(A)	**TRUE COPY OF THE DELIVERY CHALLAN WITH DC NO.LE/LE190340/PDC/19/0000002/2.**
EXHIBIT P2(B)	**TRUE COPY OF THE DELIVERY CHALLAN WITH DC NO.LE/LE190340/PDC/19/0000002/3.**
EXHIBIT P3	**TRUE COPY OF THE E-WAY BILL WITH UNIQUE NO.8410 8228 0726.**
EXHIBIT P3(A)	**TRUE COPY OF THE E-WAY BILL WITH UNIQUE NO.8510 8228 0815.**
EXHIBIT P3(B)	**TRUE COPY OF THE E-WAY BILL WITH UNIQUE NO.8710 8228 0882.**
EXHIBIT P4	**TRUE COPY OF GST MOV-07 ISSUED UNDER SECTION 129(3) OF THE CGST ACT FOR THE E-WAY BILL WITH UNIQUE NO.8410 8228 0726.**
EXHIBIT P4(A)	**TRUE COPY OF GST MOV-07 ISSUED UNDER SECTION 129(3) OF THE CGST ACT FOR THE E-WAY BILL WITH UNIQUE NO.8510 8228 0815.**
EXHIBIT P4(B)	**TRUE COPY OF GST MOV-07 ISSUED UNDER SECTION 129(3) OF THE CGST ACT FOR THE E-WAY BILL WITH UNIQUE NO.8710 8228 0882.**
EXHIBIT P5	**TRUE COPY OF THE TRANSPORTERS REPLY DATED 13.01.2020.**
EXHIBIT P6	**TRUE COPY OF THE PETITIONER'S REPLY DATED 20.01.2020.**
EXHIBIT P7	**TRUE COPY OF THE CIRCULAR DATED 22.11.2017.**

EXHIBIT P8	**TRUE COPY OF THE REPLY OF THE 2ND RESPONDENT DATED 20.01.2020.**
EXHIBIT P9	**TRUE COPY OF REPRESENTATION MADE TO THE 1ST RESPONDENT DATED 24.01.2020.**

//TRUE COPY//
PA TO JUDGE