IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

FRIDAY, THE 07TH DAY OF FEBRUARY 2020 / 18TH MAGHA, 1941

WP(C).No.3410 OF 2020(A)

PETITIONER/S:

BOBBY O.S.,
AGED 50 YEARS
MANAGING DIRECTOR, BOS NATURAL FLAVORS(P) LTD., BLOCK NO.32, KINFRA PARK, NELLAD P.O., MUVATTUPUZHA, ERNAKULAM DISTRICT-686 661.

BY ADVS.
SRI.SHAJI THOMAS
SRI.BINU PAUL
SRI.JEN JAISON

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY ITS COMMISSIONER, GOODS AND SERVICE TAX DEPARTMENT, THIRUVANANTHAPURAM-695 001.

2 ASSISTANT STATE TAX OFFICER,
SQUAD NO.V, MATTANCHERRY AT PERUMBAVOOR, KERALA GOODS AND SERVICE TAX DEPARTMENT, ERNAKULAM-683 542.

OTHER PRESENT:

GP M.M. JASMIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.V.BHATTI, J.

W.P.(C).No.3410 of 2020

Dated this the 7th day of February, 2020

JUDGMENT

The petitioner challenges Exts.P6 and P7 orders issued by the 2nd respondent as illegal and without jurisdiction. Ext.P6 is an order of detention made under Section 129 (1) of CGST Act, 2017 and Ext.P7 order of demand. The petitioner contends that the subject matter of Exts.P6 and P7 is fully compliant with all the requirements of the Act and the petitioner was in a position to demonstrate within the time given by the authorities that E-Way Bill was generated and produced for inspection. Therefore, the proceedings now initiated through Exts.P6 and P7 are not warranted and illegal.

2. The learned Government Pleader objects to the maintainability of the writ petition. Firstly, she contends that from the very admission made by the petitioner there is an omission or illegality in transportation of goods. The omission is that admittedly at the time of inspection or detention of goods the transporter could not produce all the documents required for establishing that the goods is under valid transit. The

detention order cannot and could not be treated as final, for according to her section 129 deals with and provides for not only detention but also for release of goods, subject to the petitioner complying with the mandate of Section 129 of the Act. According to her, the petitioner if insists for the release of goods, the petitioner can furnish the bank guarantee for the tax and penalty amount demanded through Ext.P7 and the authority does not have difficulty in releasing the detained goods forthwith.

3. By way of reply, Advocate Shaji Thomas submits that the petitioner since is confident that the transit of goods was strictly in accordance with the requirements of the law, the detention of goods is not warranted, the petitioner has no difficulty in furnishing the bank guarantee, but he states that the authority will not pass final orders in this behalf, resulting in the petitioner continuously keeping the bank guarantee alive. He further submits that the bank guarantee is also provided at substantial commission by the banker and for no reason the petitioner loses in the bargain.

4. I have considered the rival submissions and perused the record. The writ petition is disposed of by this order.

5. The issues raised are at preliminary stage and this

Court is not convinced to entertain the writ petition and adjudicate upon merits at this stage. To confirm to the scheme under the Act, the writ petition is disposed of by this order.

The petitioner submits bank guarantee for the tax and penalty as shown in Ext.P7 and applies for release of goods by enclosing a copy of this order within two days from today. The 2nd respondent shall release the goods detained under Ext.P6 and subjected to enquiry in Ext.P7 within twelve hours from the date and time of receipt of bank guarantee. The bank guarantee shall be kept valid for six weeks from today. The 2nd respondent shall complete the enquiry, afford fair and reasonable opportunity as envisaged under the Act to petitioner and pass and communicate this order within four weeks from today. The 2nd respondent, if fails to pass the order as directed by this Court the petitioner is not under obligation to keep the bank guarantee alive beyond six weeks.

Sd/-

S.V.BHATTI
JUDGE

Dxy

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE PHOTOCOPY OF THE TAX INVOICE NO.D19-20/742 DATED 31.01.2020 FOR SALE OF 2010 KGS OF CAPSICUM OLEORESIN.
EXHIBIT P2	TRUE PHOTOCOPY OF THE PART A SLIP (UNIQUE NO.5011 6462 3035) OF THE E-WAY BILL DATED 31.01.2020.
EXHIBIT P3	TRUE PHOTOCOPY OF THE E-WAY BILL NO.5011 6462 3035 DATED 31.01.2020 GENERATED BY THE TRANSPORTER JOYCO TRANSPORTS.
EXHIBIT P4	TRUE PHOTOCOPY OF THE TAX INVOICE NO.88/19-20 DATED 31.01.2020 ISSUED BY THE AUDI PHARMA INGREDIENTS.
EXHIBIT P5	TRUE PHOTOCOPY OF THE E-WAY BILL NO.5011 6461 5975 DATED 31.01.2020 GENERATED BY THE PETITIONERS CONSIGNEE NAMELY AUDI PHARMA INGREDIENTS.
EXHIBIT P6	TRUE PHOTOCOPY OF THE ORDER OF DETENTION DATED 1.01.2010 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P7	TRUE PHOTOCOPY OF THE ORDER OF DEMAND OF TAX DATED 31.01.2020 ISSUED BY THE 2ND RESPONDENT.