

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 31ST DAY OF JANUARY 2020 / 11TH MAGHA, 1941

WP(C).No.2713 OF 2020(L)

PETITIONER/S:

M. R. TRADERS
E. P. 12/204, MARKET ROAD, ERATTUPETTA, KOTTAYAM -
686121, REPRESENTED BY ITS MANAGING PARTNER SAVAD P.
M., S/O. P. K. MUHAMMEDKUTTY, AGED 32 YEARS, RESIDING
AT PUTHIYARACKAL HOUSE, ERATTUPETTA P. O., KOTTAYAM
DIST., PIN - 686 121.

BY ADVS.
SRI.KRISHNA PRASAD. S
SMT.ROHINI NAIR
SMT.SNEHA MANJOORAN

RESPONDENTS:

- 1 ASSISTANT STATE TAX OFFICER (INT) STATE GST
DEPARTMENT
SQUAD NO.III, MALAPPURAM AT KOTTAKKAL, 4TH FLOOR
PLAZA TOWER, SBT BUILDING, KOTTAKKAL - 676503.
- 2 DEPUTY COMMISSIONER OF STATE TAX
B2 BLOCK, CIVIL STATION, MALAPPURAM - 676505.
- 3 THE COMMISSIONER
KERALA STATE GST DEPARTMENT, 9TH FLOOR, TAX TOWER,
KILLPPALAM, KARAMANA P. O., THIRUVANANTHAPURAM, PIN -
695 001.
- 4 STATE OF KERALA
REPRESENTED BY THE GOVERNMENT SECRETARY, COMMERCIAL
TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695 001.

OTHER PRESENT:

SMT.M.M,JASMINE, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P.(C.) No.2713 of 2020

Dated this the 31st day of January, 2020

JUDGMENT

The case set up in this W.P.(C.) is as follows :

that the petitioner is a Partnership firm, registered under the Indian Partnership Act, 1932. The petitioner has GST registration in the State of Kerala as well as Karnataka. The GST registration allotted to the petitioner's firm in Karnataka is 29ABAFM7776Q1Z8 and GST number allotted in Kerala State is 32ABAFM7776Q1ZL. The firm is engaged in the business of Timber and Timber products. In the course of its business, the petitioner had generated tax invoice dated 25.1.2020 for supply of Timber Tali Rough Square Logs from M R Traders, Karnataka to Kerala. The petitioner had calculated and paid CGST @ 9% and SGST @9% which is reflected in the tax invoice. An E Way Bill No.151196575196 was generated to transport goods through a vehicle bearing Registration No.KA 19AC 5112 for on road transport, vehicle bearing Registration No.KA 19 AC 5112 for on road transport, according to which the value of toods is Rs.507859.02/- including GST. The petitioner had declared the goods through online while generating E Way Bill. The petitioner had recently started a branch of the Firm at Kizhissery, Malappuram and these goods were to be transported to

this branch. The petitioner Firm, had done everything their capacity to ensure that the details of the new branch is updated in the official site, however the same showed as 'processing.' therefore, when the E Way bill was generated, the petitioner was under the assumption that the Kizhissery address would have automatically appeared on the E Way bill and handed the same over to the driver of the transport vehicle after taking a printout. While being so, the 1st respondent seized the vehicle when the goods were being unloaded in the firm's premises at Kizhissery, Malappuram and the department issued Notice No.MOV 02 No/GST/93/19-20 dated 27.01.2020. The Notice was issued under Sec.129(3) of the Central Goods and Service Tax Act,2017 and the State/Union Territory Goods and Services Tax Act, 2017/under Section 20 of the Integrated Goods and Services Tax Act, 2017 seizure of the consignment that imposes extra tax and penalty for the release of the same, for the reason that the tax invoice and E Way bill are addressed to Erattupetta, Kottayam address and there is no document seen accompanied to unload the goods at Kizhissery. The petitioner is directed to appear before the 1st respondent on 05.02.2020 at 11 a.m. The petitioner firm had sent a reply to the 1st respondent, furnishing an explanation against the Notice for the wrongful confinement of the petitioner's consignment. In its explanation, the petitioner's firm has clarified the reason as to why there is no document seen accompanied to unload the goods at Kizhissery. As a matter of fact, there is no evasion of

tax from the part of petitioner and for a trivial clerical error the vehicle as well as the goods are detained stating that vehicle will be released only on payment of amount as per the demand notice. The seizure as well as the detention of the vehicle and goods is totally illegal. The 1st respondent does not have any authority to seize the vehicle and detain the same under the GST Act. The petitioner firm is facing inimitable losses as they have to pay demurrage and extra container charges on a per day basis. The petitioner has valid documents to show that there is no violation of the provisions of the Central Goods and Service Tax Act, 2017 Act and Rules. As a result of which it can be seen that the petitioner had no intention to evade the Tax.

2. The contentions urged by the petitioner in this case are as follows :

The notice issued to the petitioner by the 1st respondent is opposed to law and facts of the case, and materially irregular. There is no evasion of tax or suppression of material facts which led to the seizure of the vehicle and goods by the 1st respondent. The 1st respondent exercised the jurisdiction which is not vested in him. The intention of the 1st respondent is only to extract money from the petitioner by way imposing penalty and other charges. As the vehicle and goods were illegally seized, the pressure is exerted on the petitioner to make the payment and get the goods released. Now the goods are detained with the vehicle and owner of the vehicle is demanding huge amount of money as hire and waiting charges.

The petitioner had calculated and paid CGST @9% and SGST @9% which is reflected in the tax invoice. The petitioner had declared the goods through online while generating E Way bill. The petitioner had recently started a branch of the firm at Kizhissery, Malappuram and these goods were to be transported to his branch. The petitioner firm had done everything their capacity to ensure that the details of the new branch is updated in the official site, however the same showed as 'processing'. It was due to inexperience of trainee staff of the petitioner's firm. The delivery address was shown as M R Trades, Erattupetta, Kottayam instead of Kizhissery Malappuram.

The notice issued by the 1st respondent is vitiated and materially irregular. Though the procedures for inspection and seizure are clearly enumerated in section 67, 68 & 129 of the Act, the 1st respondent blatantly violated the same. The principle of natural justice has not been followed by the 1st respondent. The petitioner had submitted all the relevant documents before the 1st respondent. More over the 1st respondent has no authority to impose huge amount as penalty and other charges.

3. In the light of these averments and contentions, the petitioner has filed the instant W.P.(C.), with the following prayers :

- (i) *“Issue a writ in the nature of mandamus directing the 1st respondent to release the goods and the vehicle bearing Registration No.KA-19 AC 1512 detained, to the petitioner.*
- (ii) *Issue a writ of certiorari or other appropriate writ, order or direction quashing Exhibits P4 notice.*
- (iii) *Issue a writ of mandamus directing the 1st respondent to consider*

*Exhibit P5 and other relevant documents those may be produced at the time of hearing and pass fresh orders pursuant to exhibit P4 notice
(iv) issue such other writ, order or direction, as this Honourable Court deems fit and proper in the circumstances of the case.”*

Heard Sri.S. Krishna Prasad, learned counsel appearing for the petitioner and Smt. M.M.Jasmine, learned Government Pleader appearing for the respondents.

After having heard both sides and after going through the pleadings and materials on record, the following directions and orders are passed :

- (1) It is ordered that the vehicle and goods detained in pursuance of the impugned Ext.P4 order shall be immediately released by the 1st respondent to the petitioner on his furnishing bank guarantee for the amounts shown in Ext.P4.
- (2) Thereafter, the 1st respondent will duly take up the matter for finalisation of adjudication proceedings pursuant to Ext.P4 and shall afford adequate opportunity of being heard to the petitioner through their representative/counsel, if any and then will pass orders finalising such adjudication proceedings, without much delay, preferably within a period of 6 weeks from the date of production of the certified copy of this judgment.

While doing so, the 1st respondent shall taken take into consideration the vital contention urged by the petitioner that the so called error pointed out by the respondent for issuing Ext.P4 order, that the address shown in

the invoice is different from the address shown in the E Way bill etc. is only a clerical mistake and is not a serious mistake which should justify the detention and penalty proceedings and also the contentions raised by the petitioner on the basis of Ext.P2, etc.

With these observations and directions, the above Writ Petition (C) will stand finally disposed of.

Sd/-

ALEXANDER THOMAS, JUDGE.

SKS

APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | A TRUE PHOTOCOPY OF THE TAX INVOICE DATED
25.1.2020 FROM MR TRADERS, MANGALORE. |
| EXHIBIT P2 | A TRUE COPY OF THE E WAY BILL
NO.151196575196 DATED 25.1.2020. |
| EXHIBIT P3 | A TRUE PHOTOCOPY OF THE SCREENSHOT OF THE
WEBSITE DISPLAYING THE AMENDMENT BEING MADE
ON 21.1.2020. |
| EXHIBIT P4 | A TRUE PHOTOCOPY OF THE NOTICE DATED
27.1.2020 |
| EXHIBIT P5 | A TRUE PHOTOCOPY OF THE REPLY DATED
27.1.2020 SUBMITTED BEFORE THE 1ST
RESPONDENT. |