IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 04TH DAY OF DECEMBER 2019 / 13TH AGRAHAYANA, 1941

WP(C).No.32848 OF 2019(E)

PETITIONER/S:

DAIWIK MOTORS
NEAR TOWN LIMIT, KADAPPAKADA KOLLAM, 691 008, REPRESENTED BY DEEPAK GOPINADHAN, GENERAL MANAGER.

BY ADV. SMT.BLOSSOM MATHEW

RESPONDENT/S:

1 THE ASSISTANT TAX OFFICER,
MOBILE SQUAD NO. 1 STATE GOODS AND SERVICE TAX DEPARTMENT, KOLLAM 691 002.

2 THE DEPUTY COMMISSIONER OF TATE TAX,
BAPPUJI NAGAR, ASRAMOM, KOLLAM 691 002.

3 THE ASSESSING AUTHORITY,
CENTRAL JURISDICTION, KOLLAM DIVISION. KOTTARAKARA RANGE, PULAMON, KOTTARAKARA 691 531.

BY GOVERNMENT PLEADER SMT.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04.12.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P5 notice and Ext.P7 determination order under Section 129 of the Central Goods and Service Tax (CGST) Act, detaining the goods and vehicle belonging to the petitioner, on the ground that, a verification of the documents that accompanied the goods showed that the consignor and consignee are two different entities with different GISTINs and the transaction in question was supposedly a stock transfer. The documentation is, therefore, found to be not in accordance with the prescription under the CGST Act and Rules. The learned counsel for the petitioner would submit that as per Rule 55 of the CG & ST Rules, an invoice need not be generated wherever there is a transportation of goods for reasons other than by way of supply. The learned counsel was however not able to point out as to why the particular transportation had to be viewed as one other than by way of supply. It is her contention that the transaction between the parties was not a sale since there was no transfer of ownership of the goods to the consignee. I find, however, that the definition of supply under Section 7 is not confined to transactions of sale but includes transfer for other purposes also. Under such circumstances, I do not find the detention to be unjustified. However, I permit the petitioner to obtain a release of the vehicle and the goods from the 1st respondent on furnishing a bank guarantee for the tax and penalty amount determined in Ext.P7 order. The 1st respondent shall thereafter refer the matter for adjudication in terms of the SGST Act and Rules. The petitioner shall produce a copy of the writ petition along with a copy of this judgment, before the 1st respondent, for further action.

The Writ Petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF DELIVERY CHALLAN NO. DMY/ST/0279/2019 DATED 16.11.2019.**
EXHIBIT P2	**TRUE COPY OF E-WAY BILL NO. 5411 4764 2947 DATED 16.11.2019.**
EXHIBIT P3	**TRUE COPY OF THE LETTER OF CONSENT FOR EXHIBITION OF 2 WHEELER DATED 01.04.2019 ISSUED BY NATIONAL AUTOMOBILES.**
EXHIBIT P3 A	**TRUE COPY OF REPLY LETTER OF DAIWIK MOTORS DATED 02.04.2019.**
EXHIBIT P4	**TRUE COPY OF FORM GST NOV-02 ORDER FOR PHYSICAL VERIFICATION INSPECTION OF THE CONVEYANCE, GOODS AND DOCUMENTS DATED 16.11.2019.**
EXHIBIT P5	**TRUE COPY OF THE FORM GST MOV 06 DETENTION ORDER DTD. 16.11.2019.**
EXHIBIT P6	**TRUE COPY OF THE FORM GST MOV 04 PHYSICAL VERIFICATION REPORT DTD. 16.11.2019.**
EXHIBIT P7	**TRUE COPY OF FORM GST MOV 07 DTD. 16.11.2019.**
EXHIBIT P8	**TRUE COPY OF DELIVERY CHALLAN NO. DMY/ST/0238/2019 DATED 11.10.2019.**
EXHIBIT P8 A	**TRUE COPY OF THE E WAY BILL NO. 541139898222 DATED 11.10.2019.**
EXHIBIT P8B(A)	**TRUE COPY OF TAX INVOICE DMY/YBC/B2C704/DATED 15.10.2019.**
EXHIBIT P8 B (B)	**TRUE COPY OF TAX INVOICE DMY/YBC/B2C705/DATED 15.10.2019.**
EXHIBIT P8B(C)	**TRUE COPY OF TAX INVOICE DMY/YBC/B2C729/DATED 28.10.2019.**
EXHIBIT P8B(D)	**TRUE COPY OF TAX INVOICE DMY/YBC/B2C737/DATED 31.10.2019.**
EXHIBIT P8B(E)	**TRUE COPY OF TAX INVOICE DMY/YBC/B2C734/DATED 31.10.2019.**

EXHIBIT P8B(F) **TRUE COPY OF TAX INVOICE DMY/YBC/B2C741/DATED 01.11.2019.**

EXHIBIT P8B(G) **TRUE COPY OF TAX INVOICE DMY/YBC/B2C756/DATED 01.11.2019.**

EXHIBIT P8 C **TRUE COPY OF VOUCHER REGISTER/SALES LEDGER OF THE PETITIONER FOR THE MONTH OF OCTOBER 2019.**

EXHIBIT P8D **TRUE COPY OF THE MONTHLY RETURN FORM GSTR 3B SUBMITTED BY THE PETITIONER FOR THE MONTH OF OCTOBER 2019.**

RESPONDENTS EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE