

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.V. BHATTI

TUESDAY, THE 20TH DAY OF AUGUST 2019 / 29TH SRAVANA, 1941

WP(C).No.22656 OF 2019(F)

PETITIONER:

SUBRAMONIAN VELAYUDHAN ACHARY  
PROPRIETOR, SUBRAMANIA INDUSTRIES, ARYANAGAR,  
ARYASALA, THIRUVANANTHAPURAM 695 009

BY ADV. SRI.V.DEVANANDA NARASIMHAM

RESPONDENTS:

- 1 THE ASSISTANT STATE TAX OFFICER  
SQUAD NO. 1, KERALA STATE GOODS AND SERVICE TAXES,  
THIRUVANANTHAPURAM 695 033
- 2 THE STATE TAX OFFICER,  
SQUAD NO. 1, KERALA STATE GOODS AND SERVICE TAXES,  
THIRUVANANTHAPURAM 695 033
- 3 THE COMMISSIONER OF STATE GSTD,  
KARAMANA-P.O, KILLIPALAM,  
THIRUVANANTHAPURAM 695 002
- 4 THE CENTRAL BOARD OF EXCISE AND CUSTOMS,  
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,  
GOVERNMENT OF INDIA, NEW DELHI 110 001

BY SMT. THUSHARA JAMES, GOVERNMENT PLEADER  
SRI. SREELAL N. WARRIER, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
20.08.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

The petitioner challenges Ext.P4 series notices issued by the 1<sup>st</sup> respondent as illegal and without jurisdiction. Ext.P4(b) is an order of detention made under Section 129 (1) of CGST Act, 2017 and Ext.P4(c) is a notice issued under Section 129 (3) of the Act. The petitioner contends that the subject matter of Ext.P4 series notices 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 Part B/E-Way Bill was also generated and produced for inspection. Therefore, the proceedings now initiated through Ext.P4 series notices 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.P4(c) and the authority does not have difficulty in releasing the detained goods forthwith.

3. By way of reply, Sri.V. Devananda Narasimham 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 conform 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.P4(c) and applies for release of goods by enclosing a copy of this order within two days from today. The 2<sup>nd</sup> respondent shall release the goods detained under Ext.P4(b) and subjected to enquiry in Ext.P4(c) 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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**

DCS

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

- EXHIBIT P1** TRUE COPY OF PRIMARY TAX INVOICE DIN 19201107 DATED 06-08-2019 ISSUED BY M/S. OJUS POWER AND TECHNOLOGIES PRIVATE LIMITED, HOSUR TO THE PETITIONER SPECIFYING SERIAL NO. DG 1904291022 OF 25 KVA-DG SET AND ADDRESS OF THE CONSIGNEE AS BATA, KARAMANA.
- EXHIBIT P2** TRUE COPY OF E-WAY BILL NO. 581125540300 DATED 06-08-2019 HAVING VALIDITY UP TO 13-08-19 GENERATED BY THE CONSIGNOR COMPANY M/S. OJUS POWER AND TECHNOLOGIES PRIVATE LIMITED, AGAINST EXBT-P1 TAX INVOICE
- EXHIBIT P3** TRUE COPY OF TAX INVOICE NO. 168 DATED 08-08-2019 ISSUED BY PETITIONER CORRESPONDING TO EXT-P1 PRIMARY INVOICE OF THE CONSIGNOR TO M/S. BATA INDIA LTD, KARAMANA AGAINST THEIR PURCHASE ORDER DATED 22-05-19
- EXHIBIT P4** TRUE COPY OF GST MOV-02 ORDER 08-08-2019 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P4 A** TRUE COPY OF GST MOV-04 PHYSICAL VERIFICATION REPORT DATED 08-08-19 ISSUED BY 1ST RESPONDENT TO THE PETITIONER
- EXHIBIT P4 B** TRUE COPY OF GST MOV-06 DETENTION ORDER DATED 08-08-2019 ISSUED U/S 129(1) OF THE KSGST ACT BY 1ST RESPONDENT TO THE PETITIONER
- EXHIBIT P4 C** TRUE COPY OF GST MOV-07 DEMAND NOTICE DATED 08-08-19 ISSUED U/S 129 (3) OF THE KSGST ACT BY 1ST RESPONDENT TO THE PETITIOENR.
- EXHIBIT P5** TRUE COPY OF THE REPRESENTATION CUM REPLY LETTER DATED 13-08-2019 SUBMITTED BEFORE THE 3RD RESPONDENT BY THE PETITIOENR
- EXHIBIT P6** TRUE COPY OF REPLY LETTER DATED 09-08-2019 ALONG WITH A COPY OF CIRCULAR ISSUED BY 4TH RESPONDENT BEARING NO. 64/38/2018-GST DATED 14-09-18 SUBMITTED BEFORE THE 1ST RESPONDENT
- EXHIBIT P7** TRUE COPY OF LETTER DATED 17-08-2019

SUBMITTED BEFORE THE 1ST RESPONDENT  
REQUESTING TO CONSIDER THE ALLEGATION  
AFRESH BASED ON EXBT-P1,P2 AND PROVISIONS  
CONTAINED IN CIRCULAR 3/18

EXHIBIT P8

TRUE COPY OF NOTIFICATION NO. 3/2018 DATED  
14-05-2018 ISSUED BY THE 3RD RESPONDENT  
UNDER RULE 138(14) (D) OF THE KSGST RULES,  
2017 SUBMITTED BEFORE 1ST RESPONDENT.