IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

THURSDAY, THE 01ST DAY OF AUGUST 2019 / 10TH SRAVANA, 1941

WP(C).No.20864 of 2019

PETITIONER:

RS DEVELOPMENT AND CONSTRUCTIONS
INDIA PRIVATE LTD, NEAR PIRIYANMOODU CHECK POST,
NEYYATTINKARA, TRIVANDRUM
REP. BY ITS AUTHORIZED PERSON SRI. GANA GANESAN,
S/O. MURUGAIAH, AGED 51 YEARS.

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS:

1 ASST.STATE TAX OFFICER
SQUAD NO. VIII, STATE GOODS AND SERVICE TAX
DEPARTMENT, PALAKKAD, KERALA 678 001

2 STATE TAX OFFICER,
SQUAD NO. VIII, STATE GOODS AND SERVICE TAX
DEPARTMENT, PALAKKAD, KERALA 678 001

3 STATE OF KERALA,
REP. BY SECRETARY TO GOVT, GOODS AND SERVICE TAX
DEPARTMENT, GOVT. SECRETARIAT, TRIVANDRUM 695 001

4 DEPUTY COMMISSIONER,
STATE GOODS AND SERVICE TAX DEPARTMENT, SGST
COMPLEX, PERUMANOOR P.O, ERNAKULAM 682 015

5 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE, ROOM NO. 46, NORTH
BLOCK, NEW DELHI 110 001

GP, DR. THUSHARA JAMES
ASGI, SRI.P.VIJAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.08.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner challenges Exts.P10, P11 and P12 notices issued by the 1st respondent as illegal and without jurisdiction. Ext.P9 is an order of detention made under Section 129 (1) of CGST Act, 2017, Ext.P5 is the order issued under Section 129(3) and Exts.P10, P11 and P12 are the notices issued under Section 129 (3) of the Act. The petitioner contends that the subject matter of Exts.P10, P11 and P12 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 Exts.P10, P11 and P12 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.P11 and the authority does not have difficulty in releasing the detained goods forthwith.

3. By way of reply, Sri.C.K.Sreejith 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.P11 and applies for release of goods by enclosing a copy of this order within two days from today. The 1st respondent shall release the goods detained under Ext.P9 and subjected to enquiry in Ext.P10 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 1st 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 1st 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

/True Copy/

NS

P.A. To Judge

APPENDIX

PETITIONER(S) EXHIBITS:

EXHIBIT P1	THE TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE GOVERNMENT OF INDIA IN FORM NO. GST REG-06 DT. 2/11/2017
EXHIBIT P2	THE TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE GOVERNMENT OF INDIA DT. 20/9/2017
EXHIBIT P3	THE TRUE COPY OF THE WORK CONTRACT ORDER/LETTER OF ACCEPTANCE DT.8/3/2019
EXHIBIT P4	THE TRUE COPY OF THE REGISTRATION CERTIFICATE & CERTIFICATE OF FITNESS OF THE CONSTRUCTION EQ VEHICLE HAVING REGISTRATION NO. KA 07/M 3460 ISSUED BY THE REGIONAL TRANSPORT OFFICER, REGIONAL TRANSPORT AUTHORITY, KOLLAM, KARNATAKA STATE
EXHIBIT P5	THE TRUE COPY OF THE NOTICE DT. 26/7/2019
EXHIBIT P6	THE TRUE COPY OF THE STATEMENT OF OWNER IN CHARGE OF THE CARRIAGE OF THE GOODS AND CONVEYANCE DT. 26/7/2019 AS VC-VIII/23/19-20 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P7	THE TRUE COPY OF THE ORDER FOR PHYSICAL VERIFICATION OF DOCUMENT IN FORM NO. GST MOV-02 DT. 26/7/19 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P8	THE TRUE COPY OF THE PHYSICAL VERIFICATION REPORT DT. 26/7/19 ISSUED BY THE 1ST RESPONDENT

EXHIBIT P9	**THE TRUE COPY OF THE FORM GST MOV-06 DT. 26/7/2019**
EXHIBIT P10	**THE TRUE COPY OF THE NOTICE ISSUED UNDER FORM NO. GST MOV-07 DT. 26/7/2019**
EXHIBIT P11	**THE TRUE COPY OF THE NOTICE DT. 26/7/2019 ISSUED BY THE 1ST RESPONDENT**
EXHIBIT P12	**THE TRUE COPY OF THE REVISED NOTICE DT. 27/7/19.**

RESPONDENT(S) EXHIBITS: NIL