

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

MONDAY, THE 15TH DAY OF JULY 2019 / 24TH ASHADHA, 1941

WP(C).No.19284 of 2019

PETITIONER/S:

SANSKRUTI MOTORS,  
FLAT NO.1, GURUKRUPA APARTMENT, NEAR SAMARTH NAGARI,  
PLOT NO.J1-J2, SECTOR NO.3, SPINE ROADM INDRAYANI  
NAGAR, BHOSARI, PUNE - 411 039, REPRESENTED BY ITS  
PARTNER MR. NIKHIL RAMACHANDRA KALKUTE.

BY ADV. SRI.RAJESH NAMBIAR

RESPONDENT/S:

ASSISTANT STATE TAX OFFICER,  
SURVEILLANCE SQUAD NO.II, STATE GST DEPARTMENT,  
WAYANAD @ MUTHANGA, PIN - 673 522.

OTHER PRESENT:

GP. SMT. M.M. JASMIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
15.07.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**J U D G M E N T**

The petitioner challenges Exts.P4 and P5 notices issued by the respondent as illegal and without jurisdiction. Ext.P4 is an order of detention made under Section 129 (1) of CGST Act, 2017 and Ext.P5 is a show-cause notice issued under Section 129 (3) of the Act. The petitioner contends that the subject matter of Exts.P4 and P5 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.P4 and P5 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.P5 and the authority does not have difficulty in releasing the detained goods forthwith.

3. By way of reply, Sri.Rajesh Namiar 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.P5 and applies for release of goods by enclosing a copy of this order within two days from today. The respondent shall release the goods detained under Ext.P4 and subjected to enquiry in Ext.P5 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 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 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**

DG

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1                      TRUE COPY OF THE INVOICE DATED 29.06.2019.
- EXHIBIT P2                      TRUE COPY OF THE E-WAY BILL  
NO.531117754167.
- EXHIBIT P3                      TRUE COPY OF THE TEMPORARY CERTIFICATE OF  
REGISTRATION ISSUED BY THE R.T.O., HOSUR.
- EXHIBIT P4                      TRUE COPY OF THE ORDER OF DETENTION UNDER  
SECTION 129(1) OF THE CGST ACT DATED  
09.07.2019.
- EXHIBIT P5                      TRUE COPY OF THE SHOW CAUSE NOTICE DATED  
09.07.2019 UNDER SECTION 129(3) OF THE SGST  
ACT.