

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

THURSDAY, THE 11TH DAY OF JULY 2019 / 20TH ASHADHA, 1941

WP(C).No.19001 of 2019

PETITIONER:

RAJASTHAN MARBLES  
N.H.-49, KOLENCHERRY POST, KADAMATTOM-682 311,  
ERNAKULAM DISTRICT, REPRESENTED BY MR.BENNY K.PETER-  
PROPRIETOR.

BY ADVS.  
SRI.JOSEPH JERARD SAMSON RODRIGUES  
SRI.ROVIN RODRIGUES

RESPONDENT:

THE ASSISTANT STATE TAX OFFICER,  
STATE GST DEPARTMENT, INTELLIGENCE SQUAD NO.II, TAX  
COMPLEX, THEVARA, KOCHI-682 015, ERNAKULAM DISTRICT.

GP. SMT. M.M. JASMIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
11.07.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

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

3. By way of reply, Sri.Joseph Jerard Samson 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.P12 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.P11 and subjected to enquiry in Ext.P12 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**

Ac

## **APPENDIX**

### **PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE INVOICE NO.0316/19-20 DATED 20.06.2019 FOR RS.2,21,962/- ISSUED BY M/S. SUNGRACIA TILES PVT.LIMITED, GURAJAT.
- EXHIBIT P2 TRUE COPY OF THE INVOICE NO.473 DATED 20.06.2019 FOR RS.28,947/- ISSUED BY M/S. RADIANT CERAMIC, GUJARAT.
- EXHIBIT P3 TRUE COPY OF THE INVOICE NO.571 DATED 21.06.2019 FOR RS.1,77,871/- ISSUED BY M/S. WALLCERA TILES PVT.LTD. GUJARAT.
- EXHIBIT P4 TRUE COPY OF THE E-WAY BILL NO.60111332325 DATED 20.06.2019 GENERATED BY M/S. SUNGRECIA TILES PVT. LTD., GUJARAT WHICH IS VALID UP TO 15.07.2019.
- EXHIBIT P5 TRUE COPY OF THE E-WAY BILL NO.691113393200 DATED 20.06.2019 GENERATED BY M/S. RADIANT CERAMIC, GUJARAT WHICH IS VALID UP TO 13.07.2019.
- EXHIBIT P6 TRUE COPY OF THE E-WAY BILL NO.6411135622793 DATED 21.06.2019 GENERATED BY M/S. WALLCERA TILES PVT.LTD., GUJARAT WHICH IS VALID UP TO 14.07.2019.
- EXHIBIT P7 TRUE COPY OF THE BILL OF COASTAL GOODS BEARING NO.BCG 23126 DATED 24.06.2019, ISSUED BY THE SUPERINTENDENT, OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, KANDALA, GUJARAT.
- EXHIBIT P8 TRUE COPY OF THE SALE INVOICE NO.4419000856 DATED 30.06.2019 FOR RS.8,05,500/- ISSUED BY M/S. KAJARIA CERAMICS LTD., COCHIN TO THE PETITIONER.
- EXHIBIT P9 TRUE COPY OF THE SALE INVOICE NO.4419000857 DATED 30.06.2019 FOR RS.47,247/- ISSUED BY M/S. KAJARIA CERAMICS LTD., COCHIN TO THE PETITIONER.

- EXHIBIT P10 TRUE COPY OF THE EQUIPMENT INTERCHANGE REPORT BEARING NO.BAT E367 DATED 07.07.2019 AT 22.22 HRS., ISSUED BY M/S. D.P.WORLD, COCHIN INDIA GATEWAY TERMINAL PVT. LTD.
- EXHIBIT P11 TRUE COPY OF THE ORDER OF DETENTION DATED 07.07.2019 AT 10.33 P.M., ISSUED BY THE RESPONDENT.
- EXHIBIT P12 TRUE PHOTOCOPY OF THE SHOW CAUSE NOTICE DATED 07.07.2019 AT 10.33 P.M., ISSUED BY THE RESPONDENT.
- EXHIBIT P13 TRUE COPY OF THE E-WAY BILL BEARING NO.531118938418 DATED 08.07.2019 AT 10.32 P.M., GENERATED BY THE PETITIONER.
- EXHIBIT P14 TRUE COPY OF THE E-WAY BILL BEARING NO.511118939668 DATED 08.07.2019 AT 10.43 P.M., GENERATED BY THE PETITIONER.
- EXHIBIT P15 TRUE COPY OF THE REPLY LETTER DATED 09.07.2019 SUBMITTED BY THE PETITIONER TO THE RESPONDENT.

RESPONDENTS'S EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE