

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.V. BHATTI

MONDAY, THE 01ST DAY OF JULY 2019 / 10TH ASHADHA, 1941

WP(C).No.17527 of 2019

PETITIONER

M/S.CALICUT CERAMICS
EAST VELLIMADUKUNNU, KOZHIKODE-673006, REPRESENTED BY
ITS MANAGING PARTNER BOBBY JOSE T.

BY ADVS.SMT.M.K.HAJARA
SRI.C.RAMACHANDRAN

RESPONDENTS :

- 1 THE ASSISTANT STATE TAX OFFICER
MOBILE SQUAD NO- III, S.G.S.T. DEPARTMENT,
KOZHIKODE.673006.
- 2 THE STATE TAX OFFICER,
SQUAD NO-III,S.G.S.T.DEPARTMENT, KOZHIKODE, 673006.
- 3 THE COMMISSIONER OF STATE TAX,
STATE GOODS AND SERVICE TAXES, TAX TOWER,
KILLIPPALAM, KARAMANA-P.O., THIRUVANANTHAPURAM-
695002.

BY G.P. DR. THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01.07.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

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

3. By way of reply, Smt. M. K. Hajara 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.P4(d) 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.P4(c) and subjected to enquiry in Ext.P4(d) within twelve hours from the date and time of receipt of bank guarantee. The bank guarantee shall be kept valid for one month 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 his 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 one month.

Sd/-

S . V . BHATTI

JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED TO THE PETITIONER UNDER THE GST LAW
- EXHIBIT P2 A TRUE COPY OF THE INVOICE NUMBER OGL/19-20/653 DATED 04-06-2019 ACCOMPANIED THE CONSIGNMENT
- EXHIBIT P2 A A TRUE COPY OF THE PURCHASE ORDER DATED 30-05-2019 ACCOMPANIED THE CONSIGNMENT
- EXHIBIT P3 A TRUE COPY OF THE E-WAY BILL NO. 6811 0947 5126 DATED 04-06-2019 GENERATED FOR TRANSPORTATION OF GOODS FROM GADHODA, GUJARATH TO VELLIMADUKUNNU, CALICUT
- EXHIBIT P3 A A TRUE COPY OF THE E-WAY BILL NO. 7910 7785 6525 DATED 18-06-2019 GENERATED FOR TRANSPORTATION OF GOODS FROM GADHODA, GUJARATH TO VELLIMADUKUNNU, CALICUT
- EXHIBIT P4 TRUE COPY OF THE NOTICE ISSUED IN FORM GST MOV -01
- EXHIBIT P4 A TRUE COPY OF THE NOTICE ISSUED IN FORM GST MOV -02
- EXHIBIT P4 B TRUE COPY OF THE NOTICE ISSUED IN FORM GST MOV -04
- EXHIBIT P4 C TRUE COPY OF THE NOTICE ISSUED IN FORM GST MOV -06
- EXHIBIT P4 D TRUE COPY OF THE NOTICE ISSUED IN FORM GST MOV -07
- EXHIBIT P5 A TRUE COPY OF THE LATEST RETURN FILED BY THE PETITIONER
- EXHIBIT P6 A TRUE COPY OF THE LETTER DATED 24-06-2019 FILED BY THE PETITIONER (LOGISTICS) BEFORE THE RESPONDENTS
- EXHIBIT P6 A A TRUE COPY OF THE LETTER DATED 24-06-2019 FILED BY THE PETITIONER (CONSIGNEE) BEFORE THE RESPONDENTS