

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.V. BHATTI

TUESDAY, THE 28TH DAY OF MAY 2019 / 7TH JYAISHTA, 1941

WP (C) .No. 14602 of 2019

PETITIONER:

EXIDE INDUSTRIES LIMITED,  
HALDIA, WEST BENGAL-721602,  
REPRESENTED BY ITS AUTHORIZED SIGNATORY JOSHY JOSEPH.

BY ADVS.  
SRI. RAJESH NAMBIAR  
SRI. N. R. SAJ

RESPONDENT:

ASSISTANT STATE TAX OFFICER,  
SURVEILLANCE SQUAD NO. 7, STATE GST DEPARTMENT,  
KOLLAM-691 309

GP DR. THUSHARA JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
28.05.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

The petitioner challenges Exts.P1 and P2 notices issued by the respondent as illegal and without jurisdiction. Ext.P1 is an order of detention made under Section 129 (1) of CGST Act, 2017 and Ext.P2 is a notice issued under Section 129 (3) of the Act. The petitioner contends that the subject matter of Exts.P1 and P2 is fully compliant with all the requirements of the Act but the petitioner was not in a position to demonstrate at the time of inspection or within the time given by the authorities about the correctness of contents of documents with reference to goods transported. Therefore, the proceedings now initiated through Exts.P1 and P2 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 the documents required for establishing that the goods are 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.P2 and the authority does not have difficulty in releasing the detained goods forthwith.

3. By way of reply, Sri.Rajesh Nambiar submits that the petitioner since is confident that the transit of goods was strictly in accordance with the requirements of 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 to respondents bank guarantee for the tax and penalty amount payable as per Ext.P2 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.P1 and subjected to detention in Ext.P2, 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, pass and communicate the order within four weeks from today. The respondent, if fails to pass the order as directed, i.e. within four weeks from today, by this Court; the petitioner is not under obligation to keep the bank guarantee alive beyond six weeks.

**Sd/-**

**S.V.BHATTI**

**JUDGE**

## APPENDIX

### PETITIONER'S/S EXHIBITS:

EXHIBIT P1                      TRUE COPY OF THE ORDER OF DETENTION  
UNDER SECTION 129(1) OF THE SGST ACT  
DATED 09.05.2019.

EXHIBIT P2                      TRUE COPY OF THE SHOW CAUSE NOTICE  
DATED 9.05.2019 UNDER SECTIN 129 (3) OF  
THE SGST ACT.

EXHIBIT P3                      TRUE COPY OF THE REPLY DATED  
10.05.2019.