

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.V. BHATTI

WEDNESDAY, THE 22ND DAY OF MAY 2019 / 1ST JYAISHTA, 1941

WP(C).No. 14109 of 2019

PETITIONER:

SUBHAM FREIGHT CARRIERS INDIA PVT.LTD
7/272, KUNNAMEL HOUSE, MUPPATHADOM P.O.,
ALUVA, ERNAKULAM 683 110,
REPRESENTED BY B SRIDHAR, MANAGER AND AUTHORIZED
SIGNATORY.

BY ADVS.
SRI.P.S.SOMAN
SMT.T.RADHAMANY

RESPONDENTS:

- 1 ASSISTANT STATE TAX OFFICER
SURVEILLANCE SQUAD NO. 1, SGST DEPARTMENT, BENGARA
MANJESWAR, KASARAGODE 671 323.
- 2 THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
TAXES DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
- 3 THE COMMISSIONER OF STATE TAX,
STATE GOODS AND SERVICE TAX DEPARTMENT, TAX TOWER,
KARAMANA P.O.,
THIRUVANANTHAPURAM 695 002.

GP DR. THUSHRA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.05.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner challenges Exts.P11 and P12 notices issued by the 1st respondent as illegal and without jurisdiction. Ext.P11 is an order of detention made under Section 129 (1) of CGST 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

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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.P.S Soman Pulladan 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

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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.

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The 1st 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 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

JS

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APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE GST REGISTRATION CERTIFICATE OF THE PETITIONER
- EXHIBIT P2 TRUE COPY OF THE GST REGISTRATION OF THE CONSIGNEE M/S. HYBRID COATINGS, ALUVA.
- EXHIBIT P3 TRUE COPY OF THE INVOICE NO. 001000336 DATED 8.5.2019 ISSUED BY M/S. AMRIT POLYCHEM PVT. LTD., MUMBAI.
- EXHIBIT P4 TRUE COPY OF THE INVOICE NO. 005/000052 DATED 7.5.2019 ISSUED BY M/S. AMRIT POLYCHEM PVT. LTD., THANE
- EXHIBIT P5 TRUE COPY OF THE E-WAY BILL NO. 221104845106 DATED 9.5.2019 ACCOMPANIED WITH THE CONSIGNMENT AGAINST EXHIBIT P3 INVOICE.
- EXHIBIT P6 TRUE COPY OF THE E-WAY BILL NO. 221104846453 DATED 9.5.2019 ACCOMPANIED WITH THE CONSIGNMENT AGAINST EXHIBIT P4. INVOICE.
- EXHIBIT P7 TRUE COPY OF THE FORM GST MOV-01 STATEMENT NO. SCN 03/2019-20 DATED NIL ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P8 TRUE COPY OF THE FORM GST MOV-02 ORDER NO. SCN -03/2019-20 DATED NIL ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P9 TRUE COPY OF THE UPDATED E-WAY BILL NO. 221104845106 DATED 12.5.2019 UPLOADED AGAINST EXHIBIT P3 INVOICE.
- EXHIBIT P10 TRUE COPY OF THE UPDATED E-WAY BILL NO. 221104846453 DATED 12.5.2019 UPLOADED AGAINST EXHIBIT P4 INVOICE.

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- EXHIBIT P11 TRUE COPY OF THE FORM GST MOV-06 ORDER
NO. SCN-03/2019-20 DATED NIL ISSUED BY
THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P12 TRUE COPY OF THE FORM GST MOV-07 SHOW
CASUE NOTICE NO NIL DATED NIL ISSUED BY
THE 1STRESPODENT TO THE PETITIONER
- EXHIBIT P13 TRUE COPY OF THE WRITTEN OBJECTION
FIELD BY THE PETITIONER AGAINST EXHIBIT
P111 & P12 DATED 20.5.2019.