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. 13858 of 2019

PETITIONER/S:

HAMZA TRADERS,
DOOR NO.XX/174, NEW BAZAR, ALAPPUZHA-688001, BY ITS PROPRIETOR SIYAD HAMZA.

BY ADV. SRI.A.KRISHNAN

RESPONDENT/S:

1 STATE OF KERALA,
REPRESENTED BY THE SECRETARY, STATE GOODS AND SERVICE TAX DEPARTMENT, THIRUVANANTHAPURAM, PIN-695001.

2 ASSISTANT STATE TAX OFFICER, SQUAD NO.MS-I,
STATE GOODS AND SERVICE TAX DEPARTMENT, PALAKKAD, KERALA-678001.

3 AIYSHA TRADERS,
DOOR NO.XX/164, NEW BAZAR, ALAPPUZHA-688001, BY ITS PROPRIETOR ANAS HAMZA.

OTHER PRESENT:

GP DR. THUSHARA 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 Ext.P3 notice issued under Section 129(3) of the Central Goods & Service Tax Act, 2017 as illegal and beyond the jurisdiction of the second respondent. The petitioner was transporting goods as per invoice dated 13.5.2019 (Ext.P2) and on 14.5.2019 the vehicle in which the goods were transported was intercepted by the second respondent and found a few omissions as recorded in Ext.P3 notice. The petitioner has given Ext.P4 reply to the second respondent. The second respondent by endorsing as follows

> "The contention of the dealer could not be accepted, since there is a violation of Rule 138 of CGST Rules, 2017 involved in it. And the section 126 could not be invoked in this case. Hence the contentions are rejected".

rejected the request of the petitioner for release of goods. Hence the writ petition.

2. The learned counsel for the petitioner contends that from the special facts and circumstances of this case, it cannot be contended that the goods have been transported without valid documents. According to him, the petitioner is in a position to submit the E-Bill

as well. Therefore, he prays for setting aside the Ext.P4 order.

3. Dr.Thushara James appearing for the respondents submits that from the internal evidence available on exhibits filed by the petitioner, it can be easily contended that the interception of vehicle is certainly beyond the place of detention covered by the invoice and that E-Bill was generated after the vehicle was intercepted and the defect found by the second respondent. 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.P3 and the authority does not have difficulty in releasing the detained goods forthwith.

4. By way of reply, Dr.Thushara James 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.

5. I have considered the rival submissions and perused the record. The writ petition is disposed of by this order.

6. 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.

7. The petitioner submits bank guarantee for the tax and penalty as shown in Ext.P3 and applies for release of goods by enclosing a copy of this order within two days from today. The second respondent shall release the goods detained under Ext.P3 and subjected to enquiry in Ext.P3 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 second 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 second 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.

The handwritten endorsement made on Ext.P4 is set aside and the second respondent considers the objection strictly in accordance with law, affords opportunity, passes order and communicates to the petitioner.

Sd/-

S.V.BHATTI

JUDGE

Css/

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF INVOICE DATED 13.05.2019 BY FACT.**
EXHIBIT P1(A)	**TRUE COPY OF INVOICE NO.112 DATED 13.05.2019 BY 3RD RESPONDENT TO PETITIONER.**
EXHIBIT P2	**TRUE COPY OF INVOICE NO.15 DATED 13.05.2019 BY PETITIONER TO M/S.M.A.STEELS PVT. LTD.**

EXHIBIT P2(A)	**TRUE COPY OF CORRECTED E-WAY BILL DATED 14.05.2019 BY THE PETITIONER.**
EXHIBIT P3	**TRUE COPY OF NOTICE DATED 13.05.2019 BY 2ND RESPONDENT.**
EXHIBIT P4	**TRUE COPY OF THE REPLY DATED 14.05.2019 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**