IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 09TH DAY OF APRIL 2019/19TH CHAITHRA, 1941

W.P(C).No.18370 OF 2018

PETITIONER:

M/S. JOSCO BULLION TRADERS PVT LTD
CENTRAL JUNCTION, 894 AND 895,K.K. ROAD,
KOTTAYAM- 686 001
REPRESENTED BY ITS GENERAL MANAGER MR.SABU THOMAS

BY ADVS.SRI.A.KUMAR
SMT.G.MINI(1748)
SRI.P.J.ANILKUMAR
SRI.P.S.SREE PRASAD

RESPONDENTS:

1 THE COMMISSIONER
STATE GOODS AND SERVICES TAX DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001

2 THE JOINT COMMISSIONER
STATE GOODS AND SERVICES TAX DEPARTMENT,
THIRUVANANTHAPURAM- 695 001

3 DEPUT COMMISSIONER-INTELLIGENCE
STATE GOODS AND SERVICES TAX DEPARTMENT,
ERNAKULAM- 682 016

4 STATE TAX OFFICER
STATE GOODS AND SERVICES TAX DEPARTMENT,KERALA,
SQUAD NO 4, ERNAKULAM AT EDAPALLY- 682 024

5 STATE TAX OFFICER
STATE GOODS AND SERVICES TAX DEPARTEMENT,
INTELLIGENCE SQUAD NO II,
MATTANCHERRY AT KARUKUTTY- 683 576

6 Q MAX ASSARY HALLMARKS
RP TOWER, PALLIKULAM RD, THRISSUR- 680 001
REPRESENTED BY ITS MANAGING PARTNER,
MRS. PENGY PARAMBIL JOSE SHINY

BY SRI.C.E.UNNIKRISHNAN, GOVERNMENT PLEADER
SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.SAJU.K.PERUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09.04.2019, ALONG WITH W.P(C).NO.18286/2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 09TH DAY OF APRIL 2019/19TH CHAITHRA, 1941

W.P(C).No.18286 OF 2018

PETITIONER:

THE JOSCO FASHION JEWELLERS
T.C 37/956,HNC BUILDINGS,EAST FORT,
THIRUVANANTHAPURAM-695023,
REPRESENTED BY ITS PROPRIETRIX SMT.P.P.ALPHONSA.

BY ADVS.SRI.A.KUMAR
SMT.G.MINI(1748)
SRI.P.J.ANILKUMAR
SRI.P.S.SREE PRASAD

RESPONDENTS:

1 THE COMMISSIONER,
STATE GOODS AND SERVICE TAX DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2 THE JOINT COMMISSIONER
STATE GOODS AND SERVICES TAX
DEPARTMENT,THIRUVANANTHAPURAM-695001.

3 DEPUTY COMMISSIONER-INTELLIGENCE
STATE GOODS AND SERVICES TAX DEPARTMENT,
ERNAKULAM-682016.

4 STATE TAX OFFICER
STATE GOODS AND SERVICES TAX DEPARTMENT,KERALA,
SQUAD NO.4,ERNAKULAM AT EDAPALLY-682024.

5 STATE TAX OFFICER
STATE GOODS AND SERVICES TAX DEPARTMENT,
INTELLIGENCE SQUAD NO.II,MATTANCHERRY AT
KARUKUTTY-683576.

6 Q MAX ASSAY HALLMARKS
RP TOWER,PALLIKULAM RD,THRISSUR-680001,
REPRESENTED BY ITS MANAGING PARTNER,
MRS.PENGY PARAMBIL JOSE SHINY.

BY SRI.C.E.UNNIKRISHNAN, GOVERNMENT PLEADER
SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.SAJU.K.PERUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09.04.2019, ALONG WITH W.P(C).NO.18370/2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

As both these writ petitions involve a common issue, they are taken up together for consideration and disposed by this common judgment. For the sake of convenience, the reference to facts and exhibits is from W.P.(C).No.18370/2018.

2. The petitioners in both the writ petitions are sister concerns engaged in the trade of gold jewellery under the brand name “Josco”. It is not in dispute that the petitioners are registered dealers under the State Goods and Services Tax Act, 2017 [hereinafter referred to as the “SGST Act”]. The issue involved in these writ petitions arises pursuant to an entrustment of gold jewellery by the petitioners with the 6th respondent – Q Max Assay & Hallmarks, a partnership firm engaged in the service of hallmarking of gold jewellery for various customers. It would appear that the petitioners had entrusted gold jewellery [14538.40 gms + 5348 gms] with the 6th respondent, under cover of Ext.P4 delivery chellan and Exts.P15 and P18 issue vouchers [Ext.P15 issue voucher in W.P.(C).No.18370/2018 and Ext.P18 issue voucher in W.P.(C).No.18286/2018] for the purposes of hallmarking of the jewellery. The entrustment, as evidenced by Ext.P4 delivery chellan and Exts.P15 and P18 issue vouchers, was on 3.5.2018, on

which date, there was an inspection at the premises of the 6th respondent hallmarker by the authorities under the SGST Act. The shop inspection reports prepared at the premises of the 6th respondent hallmarker, while giving details of the materials seized from the premises, also records the delivery chellan and issue vouchers, under cover of which, the gold jewellery belonging to the petitioners was entrusted with the hallmarker. Thereafter, the respondent authorities under the SGST Act issued Exts.P8 and P8(a) seizure orders and Exts.P9 and P9(a) prohibition orders in respect of the gold jewellery seized from the premises of the 6th respondent hallmarker. The petitioners in these writ petitions impugned the said seizure orders and prohibitory orders issued by the respondent authorities under the SGST Act, *inter alia* on the contention that inasmuch as the gold belonging to them, and covered by Ext.P4 delivery chellan and Exts.P15 and P18 issue vouchers, were seized from the premises of the 6th respondent hallmarker, with whom the goods were entrusted by the petitioners only for the purposes of getting them hallmarked, there was no justification for the continued seizure of the gold ornaments so entrusted, since, the proceedings against the 6th respondent hallmarker could only be in respect of alleged attempts at evasion of tax by the 6th respondent hallmarker, and other offences incidental thereto. The relief sought for in the writ petitions is therefore to quash Exts.P8 and P8(a) seizure orders and Exts.P9 and P9(a) prohibition orders, insofar as they relate to the quantity of gold jewellery entrusted by the petitioners to the 6th respondent, and covered by Ext.P4 delivery chellan and Exts.P15 and P18 issue vouchers.

3. Counter affidavits and statements have been filed on behalf of the respondent authorities under the SGST Act. Therein, the stand taken by the respondents is essentially that the power to seize goods is available under Section 67 of the SGST Act, and the seizure of goods is justified, whenever a proper officer, pursuant to an inspection carried out in terms of the SGST Act, has reasons to believe that any goods liable to confiscation or any documents or books or things, which are useful for or relevant to any proceedings under the Act, are secreted in any place. It is, in purported exercise of the power under Section 67(2) that the respondents state that they have seized the gold ornaments entrusted by the petitioners to the 6th respondent. As against the 6th respondent, the allegation is that he was not maintaining any valid documents or records to show the stock of goods in his premises, and therefore, there was a possibility that he was evading tax payable under the SGST Act. It is also pointed out by the learned Government Pleader Sri.C.E.Unnikrishnan that the 6th respondent was entrusted with gold jewellery by many clients, and during the pendency of these proceedings, pursuant to interim orders passed in favour of many of the said persons, the 6th respondent has released the gold ornaments entrusted by the said

clients against bank guarantees furnished by the said persons. It is pointed out that, in terms of Section 67(6) of the SGST Act, the goods belonging to the petitioners and seized from the premises of the 6th respondent, can also be released on a provisional basis subject to the petitioners furnishing security in such manner, and such quantum as may be prescribed, or on payment of the applicable tax, interest and penalty, as the case may be.

4. I have heard Sri.A.Kumar, the learned counsel appearing for the petitioners in both these writ petitions, Sri.C.E.Unnikrishnan, the learned counsel for the respondent authorities under the SGST Act. I have also heard Sri.S.Anilkumar, the learned counsel for the 6th respondent in both these writ petitions.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the seizure of the gold ornaments entrusted by the petitioners in both these writ petitions with the 6th respondent was consequent to a search of the premises of the 6th respondent conducted by the authorities under the SGST Act, who suspected that there was a possible evasion of tax by the 6th respondent. The shop inspection reports prepared by the respondents at the time of search of the premises of the 6th respondent, clearly refers to the delivery chellan Nos.TJFJ/RGD/TCR 494 and JBJPL/RGD/TCR 806 and

Exts.P15 and P18 issue vouchers, both dated 3.5.2018, under cover of which, the petitioners had entrusted the quantity of 14538.40 gms + 5348 gms to the 6th respondent, for the purposes of hallmarking. While it is not in dispute that the shop inspection reports were drawn up in connection with proceedings initiated against the 6th respondent for offences in connection with a possible attempt at evasion of tax, it is pertinent to note that the allegations regarding evasion of tax under the SGST Act, against the 6th respondent, can only be with reference to, and in the context of, the business activity of the 6th respondent. As already noted, the 6th respondent is a person, who is registered under the SGST Act, in connection with the business of hallmarking. The tax liability under the SGST Act, against the 6th respondent, would ordinarily be in respect of his liability to tax on services performed by him on gold jewellery entrusted to him by various customers. The proceedings initiated under the SGST Act against the 6th respondent must therefore be for recovery of any tax from him or for the imposition of any penalty in connection with any offence committed by him in that context. What is significant to note is that, in any proceedings against the 6th respondent, the respondent authorities under the SGST Act, cannot ultimately confiscate the gold seized from the 6th respondent, more so, when it cannot be disputed that the gold jewellery seized from the 6th respondent belongs to the petitioners, and the entrustment of the same is evidenced by the delivery chellans and issue vouchers, which are statutory documents prescribed under the SGST Act. No doubt, the seizure of the gold jewellery from the premises of the 6th respondent, may be justified in accordance with Section 67 of the SGST Act, for the purposes of enabling the authorities under the SGST Act to compute the ultimate liability of the 6th respondent to tax and/or penalty under the SGST Act. Beyond that, however, the seizure of the gold jewellery, which belongs to the petitioners, and against whom no proceedings are initiated under the SGST Act, may not be justified. This is more so because, in the context of the present proceedings initiated against the 6th respondent, the goods entrusted to the 6th respondent by the petitioners herein, cannot be confiscated in terms of Section 130 of the SGST Act, since the confiscation under the said provision can only be in respect of supplies or receipt of any goods in contravention of any of the provisions of the Act, with an intent to evade payment of tax. There being no possibility of an evasion of tax in respect of the goods, by the 6th respondent since the goods themselves belong to the petitioners, I am of the view that the goods entrusted by the petitioners, with the 6th respondent, and covered by the delivery chellan and issue vouchers aforementioned, cannot be the subject matter of a confiscation order under Section 130 passed in relation to the 6th respondent.

6. Taking note of the plea of the learned Government Pleader Sri.C.E.Unnikrishnan that the Department may be

permitted to retain the seized goods for the purposes of completing the enquiry against the 6th respondent in terms of the provisions of the SGST Act, I dispose these writ petitions, by directing that the respondent authorities under the SGST Act shall complete the proceedings against the 6th respondent, within an outer time frame of one month from the date of receipt of a copy of this judgment. I further make it clear that, on the expiry of the said period of one month, and irrespective of whether the proceedings against the 6th respondent are completed or not, the gold jewellery covered by the delivery chellans and issue vouchers referred above [14538.40 gms + 5348 gms] shall be released to the petitioners herein. To facilitate such release, Exts.P8 and P8(a) seizure orders and Exts.P9 and P9(a) prohibition orders, insofar as it relates to the gold jewellery entrusted by the petitioners herein to the 6th respondent, shall stand quashed.

The writ petitions are disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/10/4/19

APPENDIX OF WP(C) 18370/2018

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE GST REGISTRATION CERTIFICATE `
EXHIBIT P2	TRUE COPY OF THE GST REGISTRATION CERTIFICATE OF THE 6TH RESPONDENT
EXHIBIT P3	THE BUREAU OF INDIAN STANDARDS CERTIFICATE ISSUED TO THE 6TH RESPONDENT
EXHIBIT P4	TRUE COPY OF THE DELIVERY CHALLAN NO JBTPL/RGD/TCR-806 DATED 3.5.18
EXHIBIT P5	TRUE COPY OF THE ISSUE VOUCHER
EXHIBIT P6	TRUE COPY OF THE SHOP INSPECTION REPORT SIR NO.87858 DATED 3.5.2018
EXHIBIT P7	TRUE COPY OF THE SHOP INSPECTION REPORT SIR NO 97056 DATED 3.5.18
EXHIBIT P8	TRUE COPY OF THE ORDER OF SEIZURE IN RESPECT OF SIR NO 87858 DATED 3.5.2018
EXHIBIT P8(A)	TRUE COPY OF THE ORDER OF SEIZURE IN RESPECT OF SIR NO 97056 DATED 3.5.2018
EXHIBIT P9	TRUE COPY OF THE ORDER OF PROHIBITION IN RESPECT OF SIR NO 87858 DATED 3.5.2018
EXHIBIT P9(A)	TRUE COPY OF THE ORDER OF PROHIBITION IN RESPECT OF SIR NO 97056 DATED 3.5.2018
EXHIBIT P10	TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED 4.5.18
EXHIBIT P11	TRUE COPY OF THE NOTIFICATION 3/2018- CENTRAL TAX DATED 23.1.18
EXHIBIT P12	TRUE COPY OF MAHAZAR PREPARED DURING THE SHOP INSPECTION.
EXHIBIT P12(A)	TRUE COPY OF MAHAZAR.
EXHIBIT P13	TRUE COPY OF RECOVERY RECEIPTS DATED 3.5.2018.
EXHIBIT P13(A)	TRUE COPY OF RECOVERY RECEIPTS.

EXHIBIT P14	TRUE COPY OF THE INVOICE ISSUED BY THE 6TH RESPONDENT.
EXHIBIT P15	TRUE COPY OF ISSUE VOUCHER IN SUPPORT OF EXHIBIT P4 DOCUMENT.

RESPONDENTS EXHIBITS:

ANNEXURE R2(A)	TRUE COPY OF THE AUTHORIZATION BEARING NO.CA-JCI/2017-18(9)/24/4/2018 (REV) IN FORM GSTINS-1.
ANNEXURE R2(B)	TRUE COPY OF THE AUTHORIZATION BEARING NO.CA-JCI/2017-18(10)/24/4/2018 (REV) IN FORM GSTINS-1.
ANNEXURE R2(C)	TRUE COPY OF THE JUDGMENT DATED 4.6.2018 IN W.P.(C).NO.15710 OF 2018.
ANNEXURE -I	TRUE COPY OF THE LETTER SENT BY THE DEPUTY COMMISSIONER (INTELLIGENCE) STATE GST DEPARTMENT, ERNAKULAM DATED 23.8.2018.
ANNEXURE - 1	TRUE COPY OF THE OFFICE COPY OF NOTICE DATED 23.8.2018 OF THE ADVOCATE COMMISSIONER.
ANNEXURE - 2	TRUE COPY OF THE OFFICE COPY OF NOTICE DATED 23.8.2018 ADDRESSED BY ADVOCATE COMMISSIONER TO RESPONDENT NOS.1 TO 5, ALONG WITH SPEED POST RECEIPTS.
ANNEXURE - 3	TRUE COPIES OF THE EMAIL DATED 27.8.2018 FROM THE 3RD RESPONDENT TO THE ADVOCATE COMMISSIONER ALONG WITH THE LETTER ATTACHED THEREWITH DATED 23.8.2018.
ANNEXURE - 1	TRUE COPY OF THE OFFICE COPY OF LETTER DATED 12.9.2018 ADDRESSED BY ADVOCATE COMMISSIONER TO THE ADVOCATES FOR PARTIES.
ANNEXURE - 2	TRUE COPY OF THE WORK MEMO FURNISHED TO ADVOCATE COMMISSIONER BY THE ADVOCATE FOR THE PETITIONER.

ANNEXURE - 3	TRUE COPY OF THE WORK MEMO FURNISHED TO ADVOCATE COMMISSIONER BY THE 3RD RESPONDENT.
ANNEXURE - 4	PHOTOGRAPHS OF THE LOCKER IN UNIT - 1 AND THE PAPER STUCK OVER THE KEYHOLE.
ANNEXURE - 5	PHOTOGRAPHS OF THE LOCKER AFTER OPENING IT.
ANNEXURE - 6	PHOTOGRAPHS FOR THE ARTICLES SAID TO BE SEIZED FROM UNIT - I.
ANNEXURE - 7	PHOTOGRAPHS FOR THE ARTICLES SAID TO BE SEIZED FROM UNIT - 2.
ANNEXURE - 8	PHOTOGRAPHS FOR THE ARTICLES FOUND IN BLACK BAG.
ANNEXURE - 9	PHOTOGRAPH TAKEN AFTER KEEPING ALL THE ARTICLES BACK IN THE LOCKER.
ANNEXURE - 10	MEMO SIGNED BY THE ADVOCATE COMMISSIONER AND OTHER PARTIES.
EXT.R6-A	COPY OF LETTER SENT BY THE 6TH RESPONDENT DATED 3.8.2018 ADDRESSED TO THE 3RD RESPONDENT.

//TRUE COPY//

P.S. TO JUDGE

APPENDIX OF W.P(C).NO.18286/2018

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE GST REGISTRATION CERTIFICATE
EXHIBIT P2	TRUE COPY OF THE GST REGISTRATION CERTIFICATE OF THE 6THE RESPONDENT
EXHIBIT P3	THE BUREAU OF INDIAN STANDARDS CERTIFICATE ISSUED TO THE 6TH RESPONDENT
EXHIBIT P4	TRUE COPY OF THE DELIVERY CHALLAN NO.TJFJ/RGD/TCR-494 DATED 03.05.18
EXHIBIT P5	TRUE COPY OF THE ISSUE VOUCHER
EXHIBIT P6	TRUE COPY OF THE SHOP INSPECTION REPORT SIR NO.87858 DATED 03.05.18
EXHIBIT P7	TRUE COPY OF THE SHOP INSPECTION REPORT SIR N.97056 DATED 03.05.18
EXHIBIT P8	TRUE COPY OF THE ORDER OF SEIZURE IN RESPECT OF SIR NO.87858 DATED 03.05.2018
EXHIBIT P8(A)	TRUE COPY OF THE ORDER OF SEIZURE IN RESPECT SIR NO.97056 DATED 03.05.2018
EXHIBIT P9	TRUE COPY OF THE ORDER OF SEIZURE IN RESPECT SIR NO.97056 DATED 03.05.2018
EXHIBIT P9(A)	TRUE COPY OF THE ORDER OF PROHIBITION IN RESPECT OF AND SIR NO.97056 DATED 03.05.2018
EXHIBIT P10	TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED 04.05.18
EXHIBIT P11	TRUE COPY OF THE NOTIFICATION 3/2018- CENTRAL TAX DATED 23.1.18
EXHIBIT P12	TRUE COPY OF MAHAZAR.
EXHIBIT P12(A)	TRUE COPY OF MAHAZAR.
EXHIBIT P13	TRUE COPY OF RECOVERY RECEIPTS.
EXHIBIT P13(A)	TRUE COPY OF RECOVERY RECEIPTS.

EXHIBIT P14	TRUE COPY OF THE INVOICE ISSUED BY THE 6TH RESPONDENT.
EXHIBIT P15	TRUE COPY OF THE STATEMENT FILED BY THE JOINT COMMISSIONER IN WRIT PETITION ©.NO.18370/2018.
EXHIBIT P16	TRUE COPY OF THE DELIVERY CHALLAN AND ISSUE VOUCHER DATED 1.5.2018 ISSUED TO CGR COCHIN ASSAY.
EXHIBIT P17	TRUE COPY OF THE INVOICE DATED 1.5.2018.
EXHIBIT P18	ISSUE VOUCHER DATED 3.5.2018.

RESPONDENTS EXHIBITS:

ANNEXURE-R3(A)	TRUE COPY OF THE MASS PETITION RECEIVED FROM INDIAN ASSOCIATION OF HALL MARKING CENTRES.
ANNEXURE-R3(B)	THE REQUEST FURNISHED BY M/S.ANANDHAM CEMS AND DIAMONDS.
ANNEXURE-R3(C)	THE REQUEST FURNISHED BY M/S.NEW NAKSHATHRA JEWELLERS.
ANNEXURE-R3(D)	THE REQUEST FURNISHED BY M/S.NGD JEWELS.
ANNEXURE-R3(E)	THE REQUEST FURNISHED BY M/S.NAVEEN.
ANNEXURE-R3(F)	THE REQUEST FURNISHED BY M/S.HYATH GOLD AND DIAMONDS.
ANNEXURE-R3(G)	THE REQUEST FURNISHED BY M/S.HYATH GOLD AND DIAMONDS.LLP.
ANNEXURE-R3(H)	THE REQUEST FURNISHED BY M/S.PEARL JEWELLERY.
ANNEXURE-R3(I)	THE REQUEST FURNISHED BY M/S.MONJANS JEWELLERY.
ANNEXURE-R3(J)	THE REQUEST FURNISHED BY M/S.JIJU GOLD.
ANNEXURE-R3(K)	THE OWNERSHIP CERTIFICATE PRODUCED BY M/S.KERALA MANUFACTURERS JEWELLERY PVT. LTD.
ANNEXURE-R3(L)	THE OWNERSHIP CERTIFICATE PRODUCED BY M/S.CHAKKALAKKAL JEWELLERY.
ANNEXURE-R3(M)	THE INVOICE FURNISHED BY M/S.Q MAX ASSAY AND HALLMARKS THRISSUR, CLAIMING THE OWNERSHIP OF 66.59 GMS OF BULLION.

ANNEXURE R2(A)	TRUE COPY OF THE AUTHORIZATION BEARING NO.CA-JCI/2017-18(9)/24/4/2018 (REV) IN FORM GSTINS-1.
ANNEXURE R2(B)	TRUE COPY OF THE AUTHORIZATION BEARING NO.CA-JCI/2017-18(10)/24/4/2018 (REV) IN FORM GSTINS-1.
ANNEXURE R2(C)	TRUE COPY OF THE JUDGMENT DATED 4.6.2018 IN W.P.(C).NO.15710 OF 2018.

//TRUE COPY//

P.S. TO JUDGE