IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY ,THE 29TH DAY OF NOVEMBER 2018 / 8TH AGRAHAYANA, 1940

WP(C).No. 38747 of 2018

PETITIONER/S:

ASIANET DIGITAL NETWORK PRIVATE LTD., REGISTERED AND CORPORATE OFFICE 2A, 2ND FLOOR, CARNIVAL TECHNOPARK, TECHNOPARK, KAZHAKUTTOM, TRIVANDRUM - 695 581, REPRESENTED BY MR. ALEX JOSE PAIKADA, LEGAL EXECUTIVE.

BY ADV. SRI.SAJI VARGHESE

RESPONDENT/S:

1 THE ASSISTANT STATE TAX OFFICER, MOBILE SQUAD NO.2, KOLLAM, O/O THE ASSISTANT COMMISSIONER OF STATE TAXES, KERALA GST, ASRAMUM, KOLLAM - 691002.

2 THE STATE TAX OFFICER, O/O THE ASSISTANT COMMISSIONER OF STATE TAXES, KERALA GST, ASRAMUM, KOLLAM - 691002.

3 THE SUPERINTENDENT OF CENTAL EXCISE AND CENTRAL TAX, KAZHAKKOOTTAM RANGE, THIRUVANANTHAPURAM - 695 581.

OTHER PRESENT:

DR THUSHARA JAMES, GP. SRI SREELAL N, WARRIER, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

## JUDGMENT

The petitioner is a cable TV and Internet services provider. It purchased a few Set Top Boxes. When it was transporting those goods, the Assistant State Tax Officer ("ASTO") intercepted the conveyance on 14.11.2018 and detained them. The ASTO served the Ext.P5 notice, besides the Ext.P6 communication, setting out the discrepancy. In turn, the petitioner gave its Ext.P7 explanation and invited the Ext.P8 order. Assailing that order, the petitioner has filed this writ petition.

2. The detention undisputed, we may refer to the discrepancy the ASTO has pointed out justifying the detention. The authority has found a mismatch between the delivery challan and the e-way bill. The value of goods noted in the e-way bill is Rs.10,04,888/-, whereas in the delivery challan, it is 3,20,000/-.

3. The petitioner's defence, as now urged through its counsel,

is that the e-way bill has correctly reflected the value of the goods. But in the delivery challan, the set-top boxes were shown in two lots. The first lot comprises 200 boxes, and the value was shown as Rs.3,20,000/-. Though the petitioner mentioned the second lot as 600 boxes, the value was shown as zero because of, what the learned counsel terms, a computer error. Once the e-way bill has shown the correct amount and even the delivery challan shown the quantity, according to him, it is preposterous for anyone to presume that there is any suppression.

4. The petitioner's counsel has also contended that the petitioner had been transferring the stock from one point of its business to another, for its use. Therefore, he is not liable to pay any tax. Thus, by the same reckoning, Section 129 does not apply.

5. In response, the learned Government Pleader submits that the defence now the petitioner has put forward is a matter to be advanced before the State Tax officer. At any rate, if the petitioner wants an interim release of the goods, it ought to comply with Section 129(1)(a) of the GST Act.

6. Under these circumstances, I hold that the Department's demand on the petitioner to comply with Section 129(1)(a) cannot be faulted. At any rate, the Department's insisting on both the penalty and tax covering all the set-top boxes cannot be sustained. To be specific, the petitioner has already shown in the delivery challan 200 set-top boxes and mentioned its value as well. So for the remaining boxes, that is 600, the cost was not reflected. Subject to further adjudication of the issue before the State Tax Officer, the petitioner could provide a bank guarantee and personal bond under Section 129(1)(a) for the amount to be confined to the 600 set-top boxes.

With these observations, I dispose of the writ petition.

**Sd/-**

**DAMA SESHADRI NAIDU**

**JUDGE**

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# APPENDIX

**PETITIONER'S/S EXHIBITS:**

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| **EXHIBIT P1** | **TRUE COPY OF THE INVOICE NUMBER KCR/2018-19/0139 DATED 07.11.2018.** |
| **EXHIBIT P2** | **TRUE COPY OF THE INVOICE NO. KCR/2018-19/0141 DATED 13.11.2018.** |
| **EXHIBIT P3** | **TRUE COPY OF THE E WAY BILL NO. 512066872418 DATED 13.11.2018.** |
| **EXHIBIT P4** | **TRUE COPY OF THE DELIVERY CHALLN NO. GTN/18-19/KER/02022/A DATED 13.11.2018.** |
| **EXHIBIT P5** | **TRUE COPY OF THE SHOW CAUSE NO. SCN MB2-76/18-19 DATED 14.11.2018 ISSUED BY THE FIRST RESPONDENT.** |
| **EXHIBIT P6** | **TRUE COPY OF THE ALLEGED DISCREPANCY NOTICE NO.SCN-MB2-76/18-19 DATED 14.11.2018.** |
| **EXHIBIT P7** | **TRUE COPY OF THE REPLY NO. AT/ACTS/TAX-2/2018 DATED 19.11.2018 FILED BY THE PETITIONER.** |
| **EXHIBIT P8** | **TRUE COPY OF THE ORDER NO. SCN-MB2-76/18-19 DATED 22.11.2018 PASSED BY THE FIRST RESPONDENT.** |