

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 21ST DAY OF NOVEMBER 2018 / 30TH KARTHIKA, 1940

WP(C).No. 31227 of 2018

PETITIONER:

CHELLAPERUMAL VAIKUNDASEKAR
PROPRIETOR, AYYA VAIKUNDA TRADERS, 24-83C
KESAVANPUTHUR, PUTHENTHURAI POST
KANYAKUMARI, TAMIL NADU-629501
HAVING BUSINESS AT NMC, 14/123E
PIRAYUMMOODU, NEYYATTINKARA
THIRUVANANTHAPURAM, KERALA-695121

BY ADVS.
SRI.K.M.FIROZ
AHAMED FAZIL
M.SHAJNA

RESPONDENTS:

- 1 ASSISTANT STATE TAX OFFICER
SQUAD NO. III, STATE GST DEPARTMENT, KERALA
THIRUVANANTHAPURAM AT NEYYATTINKARA-695121
- 2 JOINT COMMISSIONER OF STATE TAX-1
STAGE GST DEPARTMENT, THIRUVANANTHAPURAM-695001.
- 3 THE STATE OF KERALA, REPRESENTED BY CHIEF
SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 4 PRINCIPAL SECRETARY AND ADDITIONAL COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT, 9TH FLOOR
TAX TOWERS, KARAMANA.P.O, KILLIPPALAM
THIRUVANANTHAPURAM-695001.
- 5 UNION OF INDIA, REPRESENTED BY
REVENUE SECRETARY, DEPARTMENT OF REVENUE
MINISTRY OF FINANCE, GOVERNMENT
OF INDIA, NORTH BLOCK, NEW DELHI-110001.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a registered dealer in re-processed plastic mats, sent goods to Kerala. The vehicle and the goods were detained by the respondent authorities alleging misclassification in tax rate. Aggrieved, the petitioner filed this writ petition.

2. In the writ petition, the petitioner sought the following reliefs:

“(i) To call for the records leading to Exhibit P4 issued by the 1st respondent and to set aside the same by issuing a writ of certiorari or any other appropriate writ direction or order.

(ii) To direct the 1st respondent to release the goods and vehicle covered by Exhibit P4 issued by the 1st respondent unconditionally after retaining a sample of the goods detained by issuing a writ of mandamus or any other appropriate writ order or direction.

(iii) To declare that re-processed plastic mats (RP Mats or RP Plastic Mats for short) comes under HSN code No.4601 of Customs Tarriff Act, 1975.

(iv) To declare that Sections 129 and 130 of Kerala Goods and Service Tax Act, 2017 and Central Goods and Service Tax Act, 2017 and related provisions the Rules made relating to that are unreasonable, arbitrary, illegal and unconstitutional being violative of Articles 14 and 265 of the Constitution of India.

(v) To declare that Rule 138 of Kerala Goods and Service Tax Rules, 2017 and Central Goods and Service Tax Rules, 2017 are ultra vires Kerala Goods and Service Tax Act, 2017 and Central Goods and Service Tax Act, 2017 and unconstitutional.

(vi) To declare that Section 126(6) of the KSGST Act as well as CGST Act insofar as it overlooks the relevant circumstances and factors is arbitrary, unreasonable and unconstitutional.

(vii) To declare that Rule 140 of the Kerala Goods and Service Tax Rules, 2017 and Central Goods and Service Tax Rules, 2017 and Form GST INS-04 prescribed there under are unconstitutional, illegal and ultra vires the Kerala Goods and Service Tax Ordinance, 2017, Kerala Goods and Service Tax Act, 2017 and Central Goods and Service Tax Act, 2017.

(viii) To declare that Rule 140 of the Kerala Goods and Service Tax Rules, 2017 issued under Kerala Goods and Service Tax Ordinance, 2017, is not enforceable after the enactment of Kerala Goods and Service Tax Act, 2017 after the lapse of the Kerala Goods and Service Tax Ordinance, 2017.

(ix) To issue a direction to the respondents not to implement or not to insist on Rule 140 of the Kerala Goods and Service Tax Rules, 2017 and Central Goods and Service Tax Rules, 2017 and Form GST INS-04 prescribed there under and to keep in abeyance of the same by issuing a writ of mandamus or any other appropriate writ,

direction or order.”

3. The learned Division Bench of this Court in *Renji Lal Damodaran Vs. State Tax Officer*¹ has dealt with an identical issue.

4. Applying the ratio of that judgment, I direct the respondent authorities to release the petitioner's goods and vehicle on his "furnishing Bank Guarantee for tax and penalty found due and a bond for the value of goods in the form as prescribed under Rule 140(1) of the CGST Rules".

With the above direction I dispose of the writ petition.

Sd/-

**DAMA SESHADRI NAIDU
JUDGE**

¹ Judgment dated 6.8.18 in W.A.No.1640/2018

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY GOVERNMENT OF INDIA ON 17-7-2018 IN FAVOUR OF PETITIONER IN RESPECT OF THE BUSINESS OF THE PETITIONER IN KERALA.
- EXHIBIT P1 A A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY GOVERNMENT OF INDIA ON 2-8-2018 IN FAVOUR OF THE BUSINESS OF THE PETITIONER IN TAMIL NADU.
- EXHIBIT P2 TRUE COPY OF THE TAX INVOICE NUMBER 983 DATED 21-9-2013 ISSUED BY THE PETITIONER TO MUYTHEENKANNU AND SONS
- EXHIBIT P2 A TRUE COPY OF THE TAX INVOICE NUMBER 984 DATED 21-9-2018 ISSUED BY THE PETITIONER TO MODERN PLASTICS
- EXHIBIT P3 TRUE COPY OF THE E WAY BILL DATED 21-9-2018 GENERATED BY THE PETITIONER BEARING NUMBER 5310 5617 6646
- EXHIBIT P3 A TRUE COPY OF THE E WAY BILL DATED 21-9-2018 GENERATED BY THE PETITIONER BEARING NUMBER 5310 5617 7045
- EXHIBIT P4 TRUE COPY OF THE PROCEEDINGS IN FORM GST MOV-07 NOTICE DATED 22-9-2018,PHYSICAL VERIFICATION REPORT (GSTSCN-72/18-19 DATED 22-9-2018)AND FORM GST MOV-06 ORDER OF DETENTION DATED 23-9-2018 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS - NIL

// TRUE COPY //

P.A. TO JUDGE