IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY,THE 19TH DAY OF SEPTEMBER 2018 / 28TH BHADRA, 1940

WP(C).No. 30007 of 2018

PETITIONER/S:

CHAITHANYA GRANITES AND MARBLES
34/119,A1-A2,N H BYEPASS ,EDAPPLY ,KOCHI-682024,
REPRESENTED BY ITS PROPRIETOR E.M.ABDUL SALAM.

BY ADV. SRI.S.ANIL KUMAR (TRIVANDRUM)

RESPONDENT/S:

1 THE ASST STATE TAX OFFICER
SQUAD NO 5,STATE GOODS AND SERVICES TAX DEPARTMENT
KASARAGOD-671121.

2 THE STATE TAX OFFICER
SQUAD NO.V, STATE GOODS AND SERVICES TAX DEPARTMENT,
KASARAGOD-671121.

3 THE STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

4 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, ROOM NO.46, NORTH BLOCK, NEW
DELHI-110 001.

OTHER PRESENT:

DR THUSHARA JAMES GP, SRI SREELALA N WARRIER SR SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.09.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a registered dealer under the KVAT Act, has later migrated to the regime of Goods and Services Tax Act. Recently, it purchased goods from a company in Maharashtra under Exts.P1 to P1(b) invoices. It generated Exts.P2 to P2(b) e-way bills and entrusted the goods to a parcel agency to be transported to Kerala.

2. When the goods reached Surathkal, Karnataka, first, the vehicle broke down and required repairs. Once the vehicle got repaired on 13.08.2018, as is evident from Ext.P4; the transporter wanted to resume the journey. But in the meanwhile, the State of Kerala was caught in an unprecedented flood. To reach Edapally, Ernakulam, the transporter had no motorable road because most roads, by then, were inundated—even breached. The transport thus took more than usual time to reach Edapally. By then, the e-way bill had expired.

3. In that background, the respondent authorities intercepted the vehicle at Kasaragod and detained the goods under Section 129 of the GST Act. Faced with the Ext.P7 order of detention, the petitioner submitted the Exts.P8 and P8(a) replies. Later, after failing in its effort to have the interim custody of the goods, the petitioner has filed this Writ Petition.

4. In response to the submissions made by the petitioner's counsel, the Government Pleader has submitted that the petitioner had ample time to have the

consignment transported to Edappally, on time. According to her, the vehicle was ready by 13.08.2018. And from Surathkal in Karnataka, it would not have taken the transporters so many days to reach Kerala—that is, beyond the time fixed in the e-way bill. She has also submitted that the flood situation deteriorated only beyond 18.08.2018. To testify to the flood situation, she asserts that the Government too has issued circulars in that regard.

5. The petitioner's counsel, in response, submits that there was no reason for the transporter to delay the consignment once it had a valid e-way bill. According to him, it is common knowledge that the floods prevented all sorts of conveyance and transport; the petitioner's goods were caught in those unprecedented floods.

6. Heard the learned counsel for the petitioner as also the learned Government Pleader.

7. The record bears out that the e-way bill generated on 01.08.2018 was valid up to 18.08.2018. Undeniably, the petitioner's vehicle, as seen from the Ext.P4, broke down at Surathkal in Karnataka and was ready only on 13.08.2018. If it had begun the journey the next day, by 15.08.2018; it must have been passing through Kerala the next day. But by 16.08.2018 the flood situation in Kerala worsened. Perhaps, the transporter must have played safe and waited for the roads to clear. And that did not immediately happen.

8. I reckon that the petitioner has every document to transport the goods safely, save the expiry of the time prescribed in the e-way bill. It is preposterous to contend

that the petitioner delayed the transport deliberately—for no purpose. Granted, I cannot find fault with the authorities in detaining the goods. But once the petitioner has explained the circumstances through Exts.P8 and P8(a), they ought to have taken a lenient view—rather a practical view, at that.

Under these circumstances, I dispose of the writ petition, holding that the respondents will release the goods after securing personal bond from the petitioner—that is, without insisting on the bank guarantee. This arrangement, I clarify, will not affect the adjudication under Section 129 of the Act.

Sd/-

DAMA SESHADRI NAIDU

JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	COPY OF INVOICE NO.81097-86188 DATED 31.7.2018.
EXHIBIT P1 A	COPY OF INVOICE NO.81097-86189 DATED 31.7.2018.
EXHIBIT P1 B	COPY OF INVOICE NO.81097-86190 DATED 31.7.2018
EXHIBIT P2	COPY OF THE E-WAY BVILL NO.281029612865 DATED 1.8.2018.
EXHIBIT P2 A	COPY OF THE E-WAY BILL NO.,241029611224 DATED 1.8.2018.
EXHIBIT P2 B	COPY OF THE E-WAY BILL NO.241029614348 DATED 1.8.2018.
EXHIBIT P3	COPY OF M/S. VIDUR LOGISTICS PVT. LTD. A COPY OF THE LORRY HIRE RECEIPT DATED 1.8.2018.
EXHIBIT P4	COPY OF BILL DATED 13.8.2018 ISSUED BY AMANTHRANA AUTO ENGG. WORKS.
EXHIBIT P5	COPY OF THE STATEMENT DATED 23.8.2018 OF THE DRIVER IN MOV-01.
EXHIBIT P6	COPY OF THE ORDER DATED 23.8.2018 OF THE IST RESPONDENT IN GST MOV-02.
EXHIBIT P7	COPY OF DETENTION ORDER DATED 26.8.2018 ISSUED BY THE RESPONDENT.
EXHIBIT P7 A	COPY OF NOTICE DATED 23.8.2018 ISSUED BY THE RESPONDENT U/S. 129(3) OF THE CGST/SGST ACT.
EXHIBIT P8	COPY OF REPLY DATED 28.8.2018.
EXHIBIT P8 A	COPY OF REPLY DATED 29.8.2018 FILED BY THE PETITIONER.

RESPONDENTS' EXHIBITS
NIL

// TRUE COPY // P.A. TO JUDGE
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