

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY ,THE 18TH DAY OF SEPTEMBER 2018 / 27TH BHADRA, 1940

WP(C) .No. 3973 of 2018

PETITIONER :

K.G.UNNIKRISHNAN
PROPRIETOR, THRISSUR DENTAL DEPOT, DISTRIBUTORS AND
STOCKISTS, 28, SAKTHAN TAMPURAM BUS STAND
SHOPPINGCOMPLEX, THRISSUR - 680 001.

BY ADV. SRI.M.UNNIKRISHNA MENON

RESPONDENTS :

1 ASSISTANT STATE TAX OFFICER
SUQAD NO. III, SGST DEPARTMENT, THIRUVANANTHAPURAM AT
NEYYATINKARA, PIN - 695 121.

2 STATE OF KERALA
DEPARTMENT OF TAXES, THIRUVANANTHAPURAM-
695001, REPRESENTED BY ITS SECRETARY.

BY ADV. GOVERNMENT PLEADER

OTHER PRESENT :

M M JASMINE GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18.09.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a dealer under the Kerala Value Added Tax Act (KVAT Act), migrated to the regime of Goods and Services Tax Act (GST Act). While he was transporting orthopedic implants, the consignment was detained. Faced with proceedings under Section 129 of the GST Act, the petitioner filed this writ petition.

2. This Court through an interim order dated 06.02.2018 directed the authorities to adjudicate the issue of detention under Section 129 of the Act, within three days.

3. As seen from the records, the authorities initially seem to have demanded about Rs.2,90,000/- for the interim custody of the detained goods, besides penalty of Rs.1,45,050/-. Now, under Ext.P8, the authorities have determined the tax and penalty to be Rs.60,440/- (GST-Rs.30,220/- + penalty-Rs.30,220/-).

4. The petitioner's counsel, nevertheless, contends that when the authorities detained the goods even the very authorities were unaware of the procedure to be adopted. He drew my attention to the Ext.P4 and contended that even the

notice was issued under the old format and, later, the GST counsel issued clarifications.

5. As per the petitioner's assertion, the authorities were unaware the procedure to be followed. The authorities, according to him, ought not have mechanically mulcted penalty on the petitioner. The Government Pleader, on the other hand, submits that the authorities have followed the procedure and passed the Ext.P8 order. If the petitioner has any grievance against it, he can file a statutory appeal under Section 107 of the Act.

4. Under these circumstances, without adverting to the merits of the matter, I hold that the petitioner can pay the demanded tax and penalty under protest, to get the goods released. Then, the petitioner can contest the penalty proceedings before the appellate forum.

With these observations, I dispose of the Writ Petition.

sd/-

DAMA SESHADRI NAIDU

JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1 TRUE COPY OF THE CERTIFICATE OF
REGISTRATION DATED 28/06/2017 ISSUED TO
THE PETITIONER BY THE 2ND RESPONDENT

EXHIBIT-P2 TRUE COPY OF THE INVOICE DATED 12/07/2017

EXHIBIT-P3 TRUE COPY OF THE INVOICE DATED 21/07/2017

EXHIBIT-P4 TRUE COPY OF THE NOTICE ISSUED BY THE 1ST
RESPONDENT TO THE PETITIONER DATED
02/11/2017

EXHIBIT-P5 TRUE COPY OF THE ADJUDICATION APPLICATION
FILED BY THE PETITIONER BEFORE THE 1ST
RESPONDENT DATED 04/01/2018

EXHIBIT-P6 TRUE COPY OF THE RTI APPLICATION FILED BY
THE PETITIONER TO THE 1ST
RESPONDENT/PUBLIC INFORMATION OFFICER
DATED 25/01/2018 DATED 08/12/2015

EXHIBIT-P7 TRUE COPY OF THE JUDGMENT IN W.P(C)
31328/2017 DATED 04/10/2017

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD