

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 27TH DAY OF OCTOBER 2017/5TH KARTHIKA, 1939

WP(C).No. 33818 of 2017 (B)

PETITIONER :

SRI. SHAJI GREGORY G.S.,S/O LATE J GREGORY,
CHIRAKUZHMELEVEEDU,
NEDUMCAUD, KARAMANA P.O,
THIRUVANANTHAPURAM - 695 002.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM

RESPONDENT(S):

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY (TAXES),
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE INTELLIGENCE OFFICER,
SQUAD NO.1, COMMERCIAL TAXES,
THIRUVANANTHAPURAM-695 002.

R1 & R2 BY SENIOR GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-10-2017, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

WP(C).No. 33818 of 2017 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE BUILDING PERMIT NO. NE1/BA/151/2016
DATED 23/5/2016 GRANTED BY THE CORPORATION OF
THIRUVANANTHAPURAM.
- EXHIBIT P2 TRUE COPY OF THE BUILDING PLAN.
- EXHIBIT P3 TRUE COPY OF THE BILL NO. 826 DATED 7/10/2017 ISSUED BY THE
ROYAL GRANITES, THIRUVANANTHAPURAM ROAD, THOTTIYODE
JUNCTION, NAGERCOIL.
- EXHIBIT P4 TRUE COPY OF THE NOTICE NO. GST 02/2017-18 DATED 7/10/2017
ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.S.TO JUDGE

sts

K. Vinod Chandran, J

W.P.(C).No.33818 of 2017-B

Dated this the 27th day of October, 2017

JUDGMENT

The petitioner is aggrieved with the detention of goods at Exhibit P4. The goods are granite purchased by the petitioner from Tamil Nadu and transported to Karamana at Thiruvananthapuram. The petitioner submits that the transport is effected for the purpose of building a residential house; the permit of which is produced at Exhibit P1 and the plan at Exhibit P2. The detention, as is seen from Exhibit P4, was for the reason that the notice issued is that of the Value Added Tax period and also of undervaluation. The quantity as seen from Exhibit P3 and on physical verification was different, is also a contention raised. The notice demanded CGST and SGST for the value of goods, as assessed by the Intelligence Officer who detained the goods.

2. The learned Counsel for the petitioner submits that being an inter-State transport, only IGST is leviable and that has been levied as is seen from Exhibit P3. The contention of the petitioner is that a faulty notice was issued by the dealer at Tamil

WP(C) No.33818 of 2017 - 2 -

Nadu. The petitioner also submits that the goods transported are not for re-sale, but for own house construction.

3. The learned Government Pleader specifically points to Rule 138 of the Kerala Goods and Services Tax Rules, 2017, which prescribes the documents to be carried with a intra-State transport. The learned Government Pleader also refers to the judgment in W.A.No.1802 of 2017.

4. As specifically pointed out by the petitioner, the Writ Appeal judgment is with respect to an intra-State transport, for which the document accompanying the goods also have been prescribed under the Kerala GST Rules. However, with respect to an inter-State transport, there are no documents prescribed by the Central Government. In this context, apposite would be the judgment of a learned Single Judge of this Court in W.P.(C) No.31328 of 2017 dated 04.10.2017; paragraph 3 of which is extracted hereunder:

“3. To a pointed query as to the power of the State Government to detain goods for alleged non compliance with the requirement of carrying the prescribed documents under the IGST Act, which is the basis for the detention in Ext.P5 notice impugned in the writ petition, the learned Government

Pleader would take me through the provisions of the IGST Act, CGST Act and SGST Act and in particular, the provisions of Section 4 and Section 20 of the IGST Act and Section 6 of the CGST Act read with Rule 138 of the CGST Rules as amended by notification No.27/2017 - Central Tax for the purposes of pointing out that, although the power to prescribe the documents that are to accompany the transportation of goods in the course of interstate trade is conferred on the Central Government, the Central Government has, till date, not notified the documents that have to be carried by a transporter of the goods in the course of interstate movement. Under the said circumstances, and finding that neither the State Legislature nor the State Government would have the power to make laws/rules to govern interstate movements of goods in the course of trade, and for the purposes of levy of tax, I am of the view that detention in Ext.P5, for the sole reason that the transportation was not accompanied by the prescribed documents under the IGST Act/CGST Act/CGST Rules, cannot be legally sustained. I therefore, allow the writ petition by making the interim order absolute”.

5. In the circumstance of the Central Government having still not prescribed any document, *prima facie* there can be no detention of goods on that count. However, the adjudication proceedings would be continued and in the meanwhile the goods

WP(C) No.33818 of 2017

- 4 -

shall be released to the petitioner on execution of simple bond without sureties. The petitioner and the dealer at Exhibit P3 would be issued with notice before the adjudication proceedings are proceeded with. The Intelligence Officer would also be entitled to ensure the verification of the construction of the house at the site as seen from Exhibit P1 by the Assessing Officer who has jurisdiction over the area in which the construction is being carried out. The Intelligence Officer would also be entitled to inform the Assessing Officer of the selling dealer of the defects as noticed in the invoice, for which proceedings could be taken against the selling dealer by their Assessing Officer.

The writ petition is disposed of, directing the respondents to release the goods on execution of simple bond without sureties.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]