### IN THE HIGH COURT OF KERALA AT ERNAKULAM

#### PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 31ST DAY OF JANUARY 2020 / 11TH MAGHA, 1941

WP(C).No.1141 OF 2020(P)

#### PETITIONER:

UMIYA ENTERPRISE, INDRADHANUSH APARTMENT, SHOP NO 7.8.9, T.D.ROAD, ERNAKULAM, KOCHI-682 035, (REPRESENTED BY PARTNER, PANKAJ. G. PATEL).

BY ADVS.

SRI.K.N.SREEKUMARAN

SRI.P.J.ANILKUMAR (A-1768)

SRI.N.SANTHOSHKUMAR

#### RESPONDENTS:

- ASSISTANT STATE TAX OFFICER, STATE GOODS AND SERVICE TAX DEPARTMENT, SQUAD NO IV, PALAKKAD-678 001.
- 2 STATE TAX OFFICER, STATE GOODS AND SERVICES TAX DEPARTMENT, SQUAD NO IV, PALAKKAD-678 001.

## OTHER PRESENT:

DR. THUSHARA JAMES, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

# **ALEXANDER THOMAS, J.**

W.P.(C)No.1141 of 2020

Dated this the  $31^{\text{st}}$  day of January, 2020

## **JUDGMENT**

The prayers in the above Writ Petition (Civil) are as follows:-

- "(i) issue a Writ of Certiorari, or any other appropriate writ, order or direction as this Hon'ble Court deems fit and proper in the circumstances of the case, calling for the records leading to the issue of Ext.P6 order and Ext.P7 notice and to quash them; (ii) issue a writ of mandamus or other appropriate writ, orders or directions, directing the 1<sup>st</sup> respondent to release the goods to the petitioner without collecting any tax or penalty or security under S.129(1)(c);"
- 2. Sri. K.N. Sreekumaran, learned counsel appearing for the petitioner and Dr. Thushara James, learned Government Pleader appearing for the respondents.
- 3. The case projected in this Writ Petition (Civil) are as follows:- The petitioner is a dealer in plywood, particle boards and allied items registered under the CGST & KGST Acts on migration to the GST regime with effect from 1.7.2017. In the regular course of business, petitioner's main supplier M/s. Rukmoni Boards Pvt. Ltd, Chennai despatched plywood under cover of valid invoice and E-Way bill on 10.1.2020 to the petitioner. The 1<sup>st</sup> respondent intercepted the conveyance containing the consignment invoking the provisions in Sec.129 alleging the defects that no IGST is seen collected in the tax

invoice which amounts to contravention of Sec.5(1) of the IGST Act read with Rule 46(e) & (m) of the CGST Rules. The petitioner was called upon to show cause as to why an amount of tax Rs.1,20,985/and the same amount as penalty under the IGST Act should not be It is pointed out that the alleged contravention of the provisions is not at all a valid reason for suspecting the genuineness of the consignment. The supplier of goods is a registered dealer in Tamil Nadu holding valid GST registration. In Ext.P-1 invoice the element of tax happened to be wrongly shown as CGST and SGST @ 9% as against IGST of 18%. This is an inadvertent mistake committed by the new Accountant of the supplier. But in Ext-P2 E-way Bill the tax has been correctly declared as IGST Rs.1,20,985/-. E-Way Bill issued under Rule 138 of the GST Rules generated on line is the fundamental document proving the correctness of the goods transported. clerical error in the invoice will not prejudice the Revenue in any manner and the returns will automatically set right such trifling errors in documentation. However, the E-Way bill having been correctly generated, any adverse presumption of tax evasion is wholly out of context and untenable. It is also submitted that as per the provisions in Sec.126 of the GST Act dealing with the general disciplines related to penal proceedings are not to be initiated for minor breaches of tax regulations or procedural requirements, omission or mistake in documentation. Despite filing convincing explanation, the 1st respondent is not inclined to release the goods without payment of tax

and penalty. In the light of these averments and contentions, the petitioner has filed the instant Writ Petition (Civil) with the aforementioned prayers.

Sri. K.N. Sreekumaran, learned counsel appearing for the 4. petitioner would strongly urge that though in Ext.P1 invoice, the element of tax happened to be wrongly shown as CGST and SGST @ 9% as against IGST @ 18% involved in this transaction, the same was only an inadvertent mistake committed by the new Accountant of the supplier in Tamil Nadu. But, that the heart of the matter is that in Ext.P2 E-Way bill the tax has been correctly and properly declared as IGST Rs.1,20,985/-, which is at the rate of 18% and that the E-Way bill issued under Rule 138 of the GST Rules generated on line is the fundamental and basic document proving the correctness of the goods transported and the *bonafides* in the transaction. Further that merely there are clerical errors in the invoice can be the basis for the respondents to even remotely suspect any element of tax evasion in the present transaction and that the clerical error in the invoice will not in any manner prejudice the Revenue and the returns will automatically set right such trifling errors in documentation. It is again thus reiterated the learned counsel appearing for the petitioner that the E-Way bill having been correctly generated, any adverse presumption of tax evasion is wholly misplaced and untenable and that the core of the legal principles flowing from the provisions contained in Section 126 of the GST Act, which deals with general disciplines related to penal

proceedings, is that such proceedings are not to be initiated for minor breaches of tax regulations or procedural requirements, omission or mistake in documentation and that the said legal principle could be befittingly applied to the facts of this case for the simple reason that the fundamental and basic document, which is the E-Way bill issued under 138 of the GST Rules, has correctly shown that the IGST tax at the rate of 18% and that the due tax amount of Rs. 1,20,985/- is also shown and the said amount fully reflect 18% of the taxable value in the present transaction. Further, Sri. K.N. Sreekumaran, learned counsel appearing for the petitioner would pertinently take this Court's attention to Ex.P2 E-Way bill given on page No.11 of the paper book of the writ petition, wherein, in coloumn No.3 as against taxable amount, the figures are shown as Rs.5,80,018.76 and Rs.92,120.80, thus totalling to Rs.6,72,139.56/-. It is further pointed out that the figures given immediately under the table appended to serial No.3 of Ext.P2, the said total taxable amount is thus shown as Rs.6,72,139.56 and the tax amount is correctly shown as IGST amount of Rs.1,20,985.12, which is nothing but 18% of the above said total taxable amount of Rs.6,72,139.56. Accordingly, it is urged by Sri. K.N. Sreekumaran, learned counsel appearing for the petitioner that Ext.P2 which is the basic documentary transaction would clearly show that the IGST tax amount has been correctly and properly shown therein etc.

5. An argument was raised on the side of the respondents that the tax and penalty has been demanded as per the impugned

Ext.P7 order as otherwise there will be loss of tax revenue to the State of Kerala. In that regard, the petitioner has also made the following contentions:- It is pointed out that the supply in this case is covered by the provisions in Sec. 7 of the IGST Act 2017. As per sub-sec. 1 of Sec. 7 where the locations of the supplier and the place of supply are in two different States the supply shall be treated as a supply of goods in the course of interstate trade or commerce. Sec.5(1) of the IGST Act provides for levy of tax called IGST on all interstate supplies and collected in such manner as prescribed. In the matters relating to registration, accounts and records, returns, payment of tax, assessment etc. under the IGST Act the provisions of Central Goods and Services Tax Act shall mutatis mutandis apply as specifically stated in Sec.20 of the IGST Act. Sec.9 of the CGST Act deals with the levy and collection of tax and Sec.12 deals with time of supply of goods. As per Sec.12 (1) the liability to pay tax on goods shall arise at the time of supply as determined in accordance with the provisions of the section. These provisions would go to show that the liability to pay tax on the interstate supply of goods u/s7 of the IGST Act would arise at the time of supply of the goods by the supplier on raising Ext-P1 invoice and Ext-P2 E-Way bill. Sec.37 of the CGST Act provides that every registered person shall furnish electronically the returns showing the outward supply of goods as prescribed in Rule 59 of the CGST Rules. Sec.39 provides for furnishing returns electronically showing the inward and outward supply of goods, input tax credit

availed, tax payable etc. in accordance with Rule 61 of the CGST Rules by filing return in Form 3B on or before the 20th day of the succeeding month. These provisions will clearly go to show that the supplier M/s.Rukmoni Boards P. Ltd., Tamil Nadue is liable to collect and pay the tax involved in the interstate supply of goods covered by Ext-P1 invoice and Ext-P2 E-Way bill. The above supplier being a registered taxable person in Tamil Nadu State, the IGST involved in the sale has to be paid over before the GST Autorities having jurisdiction on it in Tamil Nadu. The provisions in the GST Acts and Rules being explicitly clear, the apprehension of the respondent that the State of Kerala is prejudiced by the wrong description of tax in the invoice is out of context. It is also pointed out that the petitioner is permitted to claim the tax collected by the supplier only if it is properly declared in their return of tax by payment online. If proper payment of tax by the supplier by filing return is not made, the petitioner will be disabled from claiming any input tax credit. In such a context petitioner will stand to lose, for petitioner will have to pay the entire tax on the sales without getting any credit for the input tax. For this reason also the suspicion of contravention of Sec.129 of the GST Act and the consequent attempt at evasion of tax would lack any factual and legal That the petitioner is a taxable person discharging its tax teeth. liability by filing true and correct returns and payment of tax. The interstate supply of goods in question being entered in the KVATIS Portal by the supplier electronically through valid E-Way bill which

cannot be altered, any possibility of evasion of tax will not arise at all.

- After hearing both sides and after careful evaluation of the 6. facts and circumstances of the case, it is to be noted that the matter in relation to the detention of the goods as per the impugned Ext.P7 proceedings will have to be subjected to adjudication proceedings and only thereafter it can be finalised. Therefore, this Court need not make any final pronouncement on any of the above said issues. It is for the petitioner to raise all those contentions as and when he is given opportunity of hearing prior to the finalisation of the adjudication proceedings pursuant to the detention proceedings referred to in Ext.P7. However, this Court is constrained to say that, after hearing both sides, the petitioner has made out a strong case by which this Court is persuaded to accept the view that the goods and vehicle detained pursuant to Ext.P7 order could be released to the petitioner on the basis of simple bond and it need not be insisted that the petitioner will have to furnish a bank guarantee for the amounts demanded in Ext.P7 order.
- 7. On being queried, the respondents do not have any case that the petitioner concern has any previous adverse records of tax evasions of non-compliance of the tax laws. The above said contentions raised by the petitioner on the basis of Ext.P2 E-Way bill is substantially strong to persuade this Court that the goods could be released on condition that the petitioner executes a simple bond in that regard. Hence, it is ordered that the 1st respondent shall

immediately release the goods and vehicle detained pursuant to Ext.P7 order to the petitioner on the petitioner executing a simple bond in that regard. However, the 1st respondent will be at liberty to proceed further with the adjudication proceedings in relation to Ext.P7 order and for that purpose, notice of hearing may be given to the petitioner and the petitioner should be permitted to give detailed written submissions in the matter. It is pointed out by Sri. K.L. Sreekumaran, learned counsel appearing for the petitioner that the basic supplier is in Tamil Nadu and since the transaction was on 10.1.2020, the time limit for them to file the returns in that regard under the IGST Act is upto 20th of next month, which is in the instant case would be 20.02.2020. Further that steps will be taken by the petitioner to ascertain whether the local supplier in Tamil Nadu has filed the return in that regard in relation to the above said transaction etc. Therefore, it may be better for the 1st respondent to wait till 20.02.2020 before the opportunity of personal hearing is granted to the petitioner for finalisation of the adjudication proceedings pursuant to Ext.P10 order. The petitioner may take steps to ensure that the details are collected from the local supplier involved in this transaction, which is based in Tamil Nadu, to ascertain whether the said agency has duly filed their returns showing the above said transaction also etc. and if such details are also available, the petitioner may produce those materials also before the 1st respondent, as a matter of abundant caution to convince the 1st respondent that there is no loss of revenue involved in this case

etc. Thereafter, the 1<sup>st</sup> respondent will afford reasonable opportunity of being heard to the petitioner through authorised representative or counsel, if any and then will pass final orders in the adjudication proceedings finalsing the same, without much delay. The entire proceedings in that regard may be duly completed on or before 15.3.2020. In this regard, it is ordered that all the contentions raised by the petitioner herein and any of the contentions that may be raised by the petitioner before the 1<sup>st</sup> respondent should be duly adverted to and considered by the 1<sup>st</sup> respondent before he passes orders finalising the adjudication proceedings in that regard. The petitioner may produce the certified copy of this judgment along with the written submissions as aforestated before the 1<sup>st</sup> respondent.

8. Accordingly, it is ordered that the goods and vehicle detained pursuant to Ext.P7 shall be released forthwith by the 1<sup>st</sup> respondent to the petitioner, on his executing a simple bond and without insisting on the petitioner furnishing bank guarantee for the demanded value. Thereafter the 1<sup>st</sup> respondent will take necessary action to comply with the other directions for the finalisation of the adjudication proceedings pursuant to Ext.P-7, as aforestated.

With these observations and directions, the above Writ Petition will stand finally disposed of.

sd/-ALEXANDER THOMAS, JUDGE.

# **APPENDIX**

# PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE TAX INVOICE NO RPBL/1437/19-20 DATED 10.1.2020 ISSUED BY THE SUPPLIER M/S RUKMONI BOARDS PVT LTD CHENNAI.
EXHIBIT P2	TRUE COPY OF THE E-WAY BILL NO 511160140768 DATED 10.1.2020 ISSUED AGAINST EXT P-1.
EXHIBIT P3	TRUE COPY OF THE STATEMENT IN FORM GST MOV-01 DATED 13.1.2020 ISSUED THE 1ST RESPONDENT
EXHIBIT P4	TRUE COPY OF THE ORDER FOR PHYSICAL VERIFICATION IN FORM GST MOV-02 DATED 13.1.2020 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P5	TRUE COPY OF THE PHYSICAL VERIFICATION IN GST MOV-04 DATED 13.1.2020 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P6	TRUE COPY OF THE NOTICE IN FORM GST MOV-06 DATED13.1.2020 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P7	TRUE COPY OF THE NOTICE IN FORM GST MOV-07 NO GST/VC/MS-04/108/19-20 DATED 13.1.2020 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P8	TRUE COPY OF THE REPLY FILED BY THE SUPPLIER M/S RUKMONI BOARDS PVT LTD, CHENNAI