



2023:KER:47074

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 8TH DAY OF AUGUST 2023 / 17TH SRAVANA, 1945

WP(C) NO. 21086 OF 2023

PETITIONER:

SHINE JEWELLERY ,
AGED 56 YEARS
DOOR NO.V/255, MAIN ROAD, KOORKENCHERY CENTER,
THRISSUR, REPRESENTED BY ITS MANAGING PARTNER, SRI.
NIJU V S ., PIN - 680007

BY ADV TOMSON T.EMMANUEL

RESPONDENTS:

- 1 ENFORCEMENT OFFICER ,
ENFORCEMENT SQUAD, STATE GOODS & SERVICES TAX
DEPARTMENT, NEDUMGANDAM, IDUKKI., PIN - 685553
- 2 JOINT COMMISSIONER (INT. & ENFORCEMENT),
STATE GOODS & SERVICES TAX DEPARTMENT, EDAPPALLY,
COCHIN., PIN - 682024
- 3 COMMISSIONER OF STATE TAX ,
STATE GOODS & SERVICES TAX DEPARTMENT, TAX TOWER,
THIRUVANATHAPURAM., PIN - 695022
- 4 STATE OF KERALA,
STATE GOODS & SERVICES TAX DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM., PIN - 695001

OTHER PRESENT:

SR GP SMT THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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Dated this the 8th day of August,2023

J U D G M E N T

The writ petition is filed, *inter alia*, to direct the first respondent to pass a release order in Form GST MOV-05 and return the retained goods under Ext P1 demand notice, on accepting the modified demand in Ext P3 appellate order.

2. The brief relevant facts for the determination of the writ petition are thus:

- (i) The petitioner is a partnership firm and a registered dealer under the Kerala Goods and Services Tax Act and the Central Goods And Services Tax Act, 2017(*in short*, '*KGST/CGST Acts*) & Rules framed thereunder.
- (ii)The petitioner was checked by the Assistant Sales Tax Officer (Squad No.II, Thodupuzha). Even though the petitioner pointed out the availability of delivery challan, which was misplaced in the showroom, the proper officer



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passed Ext P1 order under Section 130 of the CGST Act, confiscating 609.040 gms of gold ornaments. In Ext P1, the proper officer has demanded the maximum fine (value of the goods) in lieu of confiscation, along with tax and penalty.

(iii) The petitioner challenged Ext P1 order before this Court by filing W.P.(C)19897/2021. By Ext P2 judgment, this Court relegated the petitioner to the First Appellate Authority.

(iv) In due adherence to Ext P2 judgment, the petitioner preferred a statutory appeal before the Joint Commissioner (Appeals), who by Ext P3 order partially allowed the appeal and directed the respondents to release the detained goods on payment of tax, penalty and modified fine in lieu of confiscation.

(v) The petitioner had submitted Ext P4 letter to the first respondent, *inter alia*, to pay the modified demand and for the release of the goods.



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- (vi) Although the petitioner is not full satisfied with Ext P3 order, as the second appellate authority is not constituted till date, the petitioner has expressed his willingness to comply with the modified demand in Ext P3 order because the petitioner is finding it difficult to carry on with its business.
- (vii) Yet, the first respondent has informed over phone that, without a permission from the second respondent, the gold cannot be released.
- (viii) The petitioner has learnt that this Court, by Ext P6 judgment, has held that the mere intention of the respondents to file an appeal is not a ground for not complying with the appellate authority order.
- (ix) Hence, an appropriate direction may be issued to the first respondent to pass a release order in Form GST MOV-05 and return the detained gold under Ext P1 demand, after accepting the modified demand in Ext P3 appellate order.



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3. Heard; Sri. Tomson T.Emmanuel, the learned counsel appearing for the petitioner and Smt. Thushara James, the learned Senior Government Pleader appearing for the respondents

4. Sri. Tomson T.Emmanuel reiterated the contentions in the writ petition. He placed reliance on Ext P6 judgment passed by this Court, to canvas the position that this Court has in an identical situation directed the respondents to return the bank guarantee to the petitioner, as the appellate order had attained finality. He also placed reliance on the decision of this Court in W.P.(C)No.18531/2023, wherein this Court had directed the gold articles seized under the Customs Act, 1962, to be released to the petitioner therein. According to the learned Counsel, since Ext P3 order passed by the Appellate Authority has attained finality, the respondents may be directed to release the goods



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subject to the condition of the petitioner complying with modified demand in Ext P3 order.

5. The learned Government Pleader opposed the writ petition by submitting that even though the petitioner has alleged that it had issued Ext P4 notice, the same has not been received by the second respondent. Moreover, the respondents have a further right of second Appeal to challenge Ext P3 order. it is only because the Tribunal has not been constituted and a circular has been issued extending the time period to file the second appeal, the petitioner is not entitled to get the gold released. Moreover, Ext P6 order has been stayed by this Court. Hence, the writ petition may be dismissed.

6. The respondents have seized the gold ornaments belonging to the petitioner and passed Ext



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P1 order on 06.09.2021 under Section 129 read with Section 130 of the CGST Act.

7. The petitioner had challenged Ext P1 order before this Court in W.P.(C)No.19897/2021, but this Court by Ext P2 judgment, relegated the petitioner to exhaust its statutory remedy.

8. Consequent to Ext P2 judgment, the petitioner preferred Appeal No. GSTA No.122/2021 before the Joint Commissioner (Appeals).

9. Admittedly, the appeal was partially allowed, by modifying the demand in Ext P1 and the petitioner has been directed to pay tax of Rs.90,444/-, penalty of Rs.90,444/- and the reduced amount of fine at Rs.5,42,664/-, thus totaling to an amount of Rs.7,23,552/-

10. The petitioner asserts that although Ext P3 order was passed as early as on 10.01.2023 and the



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petitioner making Ext Pr request before the first respondent on 02.02.2023, the second respondent has not released the goods and has refused to receive the modified demand from the petitioner.

11. The contention of the second respondent that he has not received Ext P4 request is untenable because as per the postal delivery form submitted by the learned counsel for the petitioner, it shows that Ext P4 order was delivered to the second respondent on 06.02.2023.

12. Section 112 of the CGST Act provides that any person aggrieved by an order passed under Section 107 or Section 108 of the Act has a remedy to file an appeal before the Appellate Tribunal. It may be true that the Appellate Tribunal has not been constituted till date. But, the fact remains that Ext P3 order was passed on 10.01.2023 and the respondents



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have not worked out their alternative remedies till date.

13. The attention of this Court has been drawn to Ext P5 order, wherein this Court in a case of identical nature directed the enforcement officer to release the goods to the petitioner.

14. On an overall consideration of the pleadings and materials on record, and taking note of the fact that Ext P3 order was passed as early as on 10.01.2023, and the respondents have not taken any steps to challenge Ext P3 order, I do not find any justifiable or cogent reason for the respondents to refuse to accept Ext P3 order. The request of the petitioner is reasonable and just. Thus, I am inclined to allow the writ petition.



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Resultantly, in exercise of the plenary powers of this Court under Article 226 of the Constitution of India, I order the writ petition as follows:

- (i) The first respondent is directed to release the goods covered by Ext P1 demand, by passing a release order in Form GST MOV-05, within a period of two weeks from the date of receipt of a certified copy of this judgment, after permitting the petitioner to remit the modified demand as per Ext P3 appellate order.
- (ii) The first respondent shall issue notice to the petitioner for the date of his appearance within the stipulated time period as ordered above, and release the goods as directed above.

Sd/-

C.S.DIAS,JUDGE

DST/08.08.23

//True copy//

P.A.To Judge



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APPENDIX

PETITIONER EXHIBITS

- EXHIBIT1 TRUE COPY OF ORDER DATED 06.09.2021, IN CONFISCATION OF 609.040 GRAMS OF GOLD ORNAMENTS, PASSED U/S.130 OF THE CGST/SGST ACTS, BY STATE TAX OFFICER(INT.), SQUAD NO.II, IDUKKI AT THODUPUZHA.
- EXHIBIT P2 TRUE COPY OF JUDGMENT DATED 24.11.2022 IN WP(C) NO.19897 OF 2021 PASSED BY THIS HON'BLE COURT IN FIXING TIME LIMIT FOR EARLY REDRESSAL OF THE MATTER.
- EXHIBIT P3 TRUE COPY OF APPELLATE ORDER NO.GSTA 122/2021 DATED 10.01.2023 PASSED BY JOINT COMMISSIONER (APPEALS), THRISSUR IN APPEAL FILED AGAINST EXT-P1 ORDER.
- EXHIBIT P4 TRUE COPY OF LETTER DATED 02.02.2023 SUBMITTED BEFORE 1ST RESPONDENT, FOR COMPLYING WITH EXT-P3 APPELLATE ORDER.
- EXHIBIT P5 TRUE COPY OF ORDER DATED 14.06.2023 AND PROCEEDINGS FOR RELEASE OF DETAINED GOODS, PASSED BY ENFORCEMENT OFFICER, ENFORCEMENT SQUAD, KANNUR, ON SIMILAR SET OF FACT.
- EXHIBIT P6 TRUE COPY OF JUDGMENT DATED 14.06.2023 IN WP(C) NO.8908 OF 2023 PASSED BY THIS HON'BLE COURT, ON SIMILAR SET OF FACT.

RESPONDENTS' EXHIBITS: NIL