(2021) 01 KL CK 0134

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11 Of 2021

Shine Plast APPELLANT

Vs

Assistant State Tax Officer And Ors RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Central Goods And Services Tax Act, 2017 — Section 31, 129(1)

Citation : (2021) 01 KL CK 0134

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : A. Rajasimhan, Jobin Abraham, Vykhari K.U, Thushara James

Judgement

1. The petitioner says that they are the manufactures of "Roto Fabric Cloth Bags" for the consumption of the Kerala State Civil Supplies Corporation, but that when they tried to transport it on the strength of Ext.P1 - Tax Invoice and Ext.P2 - E-way bills, it has been detained by the respondent, alleging that the product is actually cotton bags and therefore, within the sweep of Section 31 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act' for short).

2. The petitioner, through their learned counsel, Sri.A.Rajasimhan, vehemently asserts that the respondent has detained the goods on a misconception, since the articles are "Roto Fabric Cloth Bag" and not cotton bags; and thus prays that the consignment be ordered to be released, after the respondent is directed to take a sample of the bags in their presence and acknowledgment.

3. Sri.Rajasimhan, added to the afore submissions by saying that the respondent could not have detained the vehicle under the provisions of Section 129 (1) of the Act, 2017, because there has been no contravention from his client's side and consequently, that the detention is illegal and unlawful.

4. However, in response, Smt.Thushara James, learned Government Pleader, submitted that, as is evident from Ext.P7, the Authorities have considered the nature of the articles and has found that the petitioner is attempting to transport

it on the strength of Ext.P1 - Tax Invoice and Ext.P2 - E-way bills, which show contrary to the claimed classification. She therefore, prayed that this writ petition be dismissed and the petitioner be directed to comply with the demand made against him through the impugned orders and notices.

5. When I consider the afore submissions, it is indubitable that, at this stage, it will not be proper or prudent for this Court to enter into the merits of the controversy, since it will involve assessment of factual aspects and issues which is possible only through a a proper enquiry, following due procedure as per law.

6. I am therefore, of the firm view that the petitioner must be given the latitude of having his articles released on the strength of sufficient security - which the petitioner accedes by way of a bank guarantee - on the further condition that the respondent completes the statutory adjudication within a time frame, after obtaining a sample of the bag in the presence and acknowledgment of the petitioner.

In the afore circumstances, I order this writ petition and direct the petitioner to furnish a bank guarantee, drawn on a Nationalized Bank, for the amount covered by Ext.P7; and if this is done within a period of one week from the date of receipt of a copy of this judgment, the respondent shall release the articles to the petitioner, after taking a sample of the bags in the presence and acknowledgment of the petitioner.

Needless to say, the adjudication based on the impugned orders and notices shall be completed by the competent Authority, after affording necessary opportunity of being heard to the petitioner - either physically or through videoconferencing - culminating in an appropriate order thereon, as expeditiously as is possible but not later than three weeks from the date of receipt of a copy of this judgment.

This writ petition is thus ordered.

