



2024:KER:69852

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 12TH DAY OF SEPTEMBER 2024 / 21ST BHADRA,
1946

WP(C) NO. 33378 OF 2022

PETITIONER:

MR. JERIN T.J.,
AGED 45 YEARS, S/O. JOSEPH,
THEKKINIATH HOUSE, PERINCHERY, THRISSUR,
PROPRIETOR OF BEST GOLD, 6/484, PERINCHERY,
CHERPU, PIN - 680 306.

BY ADV K.LATHA

RESPONDENTS:

- 1 THE STATE TAX OFFICER (INT.),
MOBILE SQUAD NO. II, KERALA STATE GST DEPARTMENT,
WAYNAD, @ SULTHAN BATHERY, PIN - 673 592.
- 2 JOINT COMMISSIONER (APPEALS),
STATE GOODS AND SERVICES DEPARTMENT, KOZHIKODE,
PIN - 673 006.

BY ADV. THUSHARA JAMES (SR GP)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12.09.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

This writ petition has been filed challenging the proceedings initiated against the petitioner under the provisions of Section 130 of the Central Goods and Services Tax/State Goods and Services Tax Act, 2017 (CGST/SGST Act) as also the order of the First Appellate Authority confirming those proceedings. The petitioner has filed this writ petition on account of the fact that the petitioner is unable to file a second appeal before the Tribunal in terms of the provisions contained in Section 112 of the CGST/SGST Act.

2. When this matter is taken up for consideration today, it is the submission of the learned counsel appearing for the petitioner that the gold which is the stock-in-trade of the petitioner is under the custody of the department. It is submitted that this Court, in almost similar circumstances, had directed the release of the gold subject to a bond being executed along with sufficient security to the satisfaction of the officer. It is submitted that such directions were issued taking into consideration the fact that even the State is not benefited



by keeping the gold in its custody. The learned counsel relied on the judgment of this Court in WP(C)No.33989/2022 in support of her contention.

3. Heard the learned Senior Government Pleader also.
4. This Court in WP(C)No.33989/2022 held as follows:

"2. In an almost identical situation, this Court, considering the fact that the gold, which has been confiscated is the stock-in-trade, directed that on adequate security being produced, the gold, which is now in the custody of the Department, can be released to the assessee in that case. The operative portion of the judgment in W.P.

(c) No.4244/2024 and connected case reads as follows:-

"7. Though the learned Senior Government Pleader would contend that the goods in question in this case (namely the gold ornaments) are liable for confiscation, since it is settled that the goods can be released on the payment of fine in lieu of confiscation and considering the fact that the gold ornaments are stock-in-trade of the petitioner, I am inclined to dispose of these writ petitions without going into the merits of the contentions raised by either side and directing that the entire quantity of 1647.970 grams of gold which has been seized from the petitioner shall be released on the aforesaid Diljith K K and the aforesaid Mohandas K K executing bonds in the manner and form required by the 2nd respondent. The aforesaid Diljith K K and the aforesaid Mohandas K K will undertake that they will not alienate the property covered by Exts.P9 and P10 documents till the culmination of proceedings. The petitioner as also the State will thereafter be entitled to approach the Appellate Tribunal (yet to be constituted) if they are in any manner aggrieved by the proceedings of the Appellate



Authority. I make it clear that I have not expressed any opinion on the merits of the contentions raised by either side and the Appellate Tribunal (as and when it is constituted) shall consider any appeal filed by either of the parties on merits and untrammelled by any observation contained in this judgment. It is made clear that the seized gold ornaments shall be released as directed above, immediately on the bonds as directed above being executed by the parties."

3. The petitioner in this case also states that he is willing to produce sufficient security to cover the value of the gold, which is now in the custody of the Department.

4. The learned Government Pleader submits that this writ petition can also be disposed of in terms of the directions contained in W.P.(c) No.4244/2024 and connected case.

5. The learned counsel appearing for the petitioner would submit that the goods, which were seized, are not hallmarked and were being taken for hallmarking at the time when it was intercepted by the competent officer. This is an aspect to be considered by the Appellate Tribunal as and when an appeal is filed by the petitioner.

6. Accordingly, this writ petition will stand disposed of directing that the quantity of gold seized from the petitioner shall be released on the petitioner executing bonds in such manner and form required by the 1st respondent and also on the 1st respondent being satisfied that the properties, which are offered as the security, are not encumbered and on the petitioner/owner of the said property undertaking that the property shall not be alienated or encumbered till the culmination of the proceedings. The petitioner may, thereafter, approach the Appellate Tribunal as and when



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the same is constituted. All contentions raised are left open for consideration by the Tribunal”.

Taking into consideration the above and without going into the merits of the contentions raised by either side, this writ petition will stand disposed of directing that the quantity of gold seized from the petitioner shall be released on the petitioner executing bonds in such manner and form required by the 1st respondent and also on the 1st respondent being satisfied that the properties, which are offered as the security, are not encumbered and on the petitioner/owner of the said property undertaking that the property shall not be alienated or encumbered till the culmination of the proceedings. The petitioner may, thereafter, approach the Appellate Tribunal as and when the same is constituted. All contentions raised are left open for consideration by the Tribunal.

The writ petition is disposed of accordingly.

**Sd/-
GOPINATH P.
JUDGE**

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APPENDIX OF WP(C) 33378/2022

PETITIONER'S EXHIBITS

- Exhibit P1** THE TRUE COPY OF THE GST TAX INVOICE NO. 3 DATED 1-2-2022 ISSUED BY M/S NEW VATTAKUZH PRINCE JEWELLERS REGISTERED DEALER UNDER GST ACT 2017 WITH GSTIN NUMBER 32AAIFN5527HIZC TO THE PETITIONER
- Exhibit P1 A** THE TRUE COPY OF THE GST TAX INVOICE NO. 4 DATED 3-2-2022 ISSUED BY M/S NEW VATTAKUZH PRINCE JEWELLERS REGISTERED DEALER UNDER GST ACT 2017 WITH GSTIN NUMBER 32AAIFN5527HIZC TO THE PETITIONER
- Exhibit P1 B** THE TRUE COPY OF THE GST TAX INVOICE NO. 5 DATED 4-2-2022 ISSUED BY M/S NEW VATTAKUZH PRINCE JEWELLERS REGISTERED DEALER UNDER GST ACT 2017 WITH GSTIN NUMBER 32AAIFN5527HIZC TO THE PETITIONER
- Exhibit P2** THE TRUE COPY OF THE STOCK REGISTER OF THE PETITIONER
- Exhibit P3** THE TRUE COPY OF DELIVERY CHALLAN DATED 6/2/2022 ISSUED BY THE PETITIONER
- Exhibit P4** THE TRUE COPY OF THE DETENTION NOTICE NO. VCR/MSII/B6/2021-22 DATED 9-2-2022 ISSUED BY THE RESPONDENT UNDER SECTION 130 OF THE GST ACT 2017
- Exhibit P5** THE TRUE COPY OF THE REPLY DATED 25/2/2022 FILED BY THE PETITIONER AGAINST THIS EXHIBIT P4 NOTICE .
- Exhibit P6** THE TRUE COPY OF THE ORDER NO. VCR/MSII/86/2021-22 DATED 28-2-2022 ISSUED BY THE RESPONDENT UNDER SECTION 130 OF THE GST ACT 2017.



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- Exhibit P7 THE TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST THE EXHIBIT P6.
- Exhibit P8 THE TRUE COPY OF THE APPELLATE ORDER IN GSTA 79/22 DATED ...-08-2022 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER
- Exhibit P9 THE TRUE COPY OF THE JUDGMENT IN WP(C).NO.17379 OF 2020(V) DATED 12TH DAY OF JANUARY 2021
- Exhibit P10 THE TRUE COPY OF THE SALE DEED OF IMMOVABLE PROPERTY PURCHASED IN THE NAME OF THE PETITIONER AS PER REGISTRATION DOCUMENT NO. 1441 OF 2021 DATED 2-11-2021 REGISTERED IN THE SUB REGISTRAR OFFICE ANTHIKAD REGISTRATION OFFICE.
- Exhibit P10A THE TRUE COPY OF THE LAND TAX RECEIPT DATED 23-08-2024 PAID AGAINST THANDAPER NO. 7696 PAID IN THE NAME OF THE PETITIONER
- Exhibit P11 :- THE TRUE COPY OF THE SALE DEED OF IMMOVABLE PROPERTY PURCHASED IN THE NAME OF THE PETITIONER AS PER REGISTRATION DOCUMENT NO. 2086 OF 2014 DATED 17-06-2014 REGISTERED IN THE SUB REGISTRAR OFFICE CHERPU REGISTRATION OFFICE
- Exhibit P11A THE TRUE COPY OF THE LAND TAX RECEIPT DATED 22-05-2024 PAID AGAINST THANDAPER NO. 7420 PAID IN THE NAME OF THE PETITIONER
- Exhibit P11B :- THE TRUE COPY OF THE VALUATION OF THE PROPERTY IN FORM 1B