IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946

WP(C) NO. 3075 OF 2023

PETITIONER/S:

SAJIN DAS V.M,
AGED 32 YEARS
PROPRIETOR, TANVI JEWELLERY, TC 38/1252 2, BALA RENGA COMPLES, VALAYA; CHETTY STREET, CHALAI P. O; THIRUVANANTHAPURAM, PIN - 695036

BY ADV TOMSON T.EMMANUEL

RESPONDENT/S:

1 STATE TAX OFFICER,
STATE GOODS & SERVICES TAX DEPARTMENT, INTELLIGENCE SQUAD NO.VI, NEDUMANGAD, THIRUVANANTHAPURAM, PIN - 695541

2 JOINT COMMISSIONER (APPEALS),
STATE GOODS & SERVICES TAX DEPARTMENT,TAX TOWER, KARAMANA P O, THIRUVANANTHAPURAM, PIN - 695002

3 STATE OF KERALA,
STATE GOODS AND SERVICES TAX DEPARTMENT,SECRETARIAT, THIRUVANANTHAPURAM,REPRESENTED BY SECRETARY TO GOVERNMENT, PIN - 695001

4 COMMISSIONER (GST),
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,GST POLICY WING, NEW DELHI, PIN - 110001

5 UNION OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,NEW DELHI, REPRESENTED BY ITS UNDER SECRETARY, PIN - 110001

6 COMMISSIONER OF STATE TAX,
STATE GOODS & SERVICES TAX DEPARTMENT,TAX TOWER, KARAMANA P O;,THIRUVANANTHAPURAM, PIN – 695002

7 SRI.S.SHIJU,
NOW WORKING AS STATE TAX OFFICER, NEYYATINKARA, THIRUVANATHAPURAM, PIN - 695572

8 SRI. SREEKUMAR D.S,
INTELLIGENCE SQUAD NO.VI, NEDUMANGAD,
THIRUVANANTHPURAM, PIN - 695541

SMT. JASMINE M.M., GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is a registered dealer under the CGST/SGST Act engaged in the business of Gold ornaments and jewellery in the name and style 'Tanvi Jewellery', Chalai, Thiruvananthapuram. According to the petitioner in the course of his business the petitioner raised Ext.P2 delivery challan in respect of 1258.41 gms new gold ornaments which was sent for selection purpose to M/s. Thrichur Fashion Jewellery, Nemom, Thiruvananthapuram District. According to the petitioner while taking the gold to the aforesaid Thrichur Fashion Jewellery two employees of the petitioner were intercepted by the officials of the GST Department and upon the allegation that the goods were being transported without any supporting documents, the gold was seized. According to the petitioner the employees of the petitioner were travelling in a scooter and Ext.P2 delivery challan was kept in the scooter which was not checked by the officials. It is submitted that notwithstanding the above, adjudicating authority by Ext.P6 order confirmed the proceedings initiated against the petitioner and passed the following order;

> *"This is hereby ordered to confiscate the detained goods vide the order referred 1" above in respect of Mr.Sri. Sajindas.V, Proprietor Thanvi Jewellary, 38/1252, Bala Renga Complex, ValayalChetty Street, Chalai.P.O, Thiruvananthapuram-695036, GSTIN 32CJAPS6827E1ZA, carried by his staffs sri. Safindas.V.M (brother of*

Sajindas) and Sri.Prasanth kumar.P.V without any documents as prescribed under the CGST/SGST Act 2017 by exercising the powers vested under Section 130(1) of the said Act Mr. Sr. Sajindas. V. Proprietor Thanvi Jewellery have the option to pay Tax Rs.1,71.536/- (SGST Rs 35,768/- and CGST Rs.85,768/-), penalty Rs.1,71,536/- (SGST Rs.85,768/- and CGST Rs 25,768/-) and fine Rs.57,17,824/- (SGST Rs.28,58,912/- and CGST Rs.28,58,912/-) Total. Rs.60,60,896/- (Rupees sixty lakhs sixty thousand eighty hundred and ninety six only) as specified in the notice referred 2nd above for the release of confiscated goods within 3 months from the date of receipt of this order, otherwise further proceedings U/s 130 shall be taken for the disposal of goods confiscated and deposit the sale proceeds thereof with the Government exchequer."

It is submitted that Ext.P6 order is not a legal or valid order on account of the fact that the said order does not carry any Document Identification Number (DIN) and is illegal and unsustainable in the light of the instructions contained in Ext.P10 circular, which clearly indicate that a document without a DIN will be invalid. The learned counsel appearing for the petitioner submits that when the petitioner raised an objection regarding the invalidity of Ext.P6 order, in order to get over the situation yet another order namely Ext.P13 (a) was issued with DIN. It is pointed out that Ext.P13 (a) is signed by the same officer who issued Ext.P6 order and at a time when the said official was no longer holding the office of the State Tax Officer (Intelligence), Mobile Squad-VI, Nedumangadu, Thiruvananthapuram. It is submitted that though an appeal was filed by the petitioner against the original order, the appeal was mechanically dismissed by the First Appellate Authority by Ext.P16 order. It is submitted that in the absence of a statutory Tribunal, the petitioner is unable to file an appeal against orders of the First Appellate Authority and he has therefore approached this court seeking the following reliefs:-

> *"i) to call the records from Assistant State Tax Officer, Squad No.VI, Thiruvananthapuram at Nedumangadu, leading to issuance of Ext P3, notice of detention and to issue a writ in the nature of certiorari or any BORT other appropriate writ or order quashing P3 notice of detention issued by Assistant State Tax Officer, Squad No. VI, Thiruvananthapuram at Nedumangadu;*
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> *ii) to call the records from 1 Respondent, leading to issuance of Ext P4, Ext P6 and P13(a) and to issue a writ in the nature of certiorari or any other appropriate writ or order quashing P4 notice, confirmed by Ext P6 and which was corrected by Ext P13(a) by 1st respondent;*
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> *iii) to issue a writ in the nature of certiorari or any other appropriate writ or order quashing P16 order issued by 2nd respondent and to issue directions to 2nd respondents for re-consider Ext P16 order;*
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> *iv) to declare that Ext P7(a) Circular issued by 6th respondent, without amending the GST Act and Rules, under a notification issued by GST Council is null and void;*
>
> *v) to direct 1 respondent to release gold ornaments confiscated pursuant to Ext P13(a) illegal order of confiscation;*
>
> *vi) to permit Petitioner to move the matter of forgery/manipulation of Government official record to Ext P6 made by respondents 7 and 8 before Jurisdictional Hon'ble Magistrate Court;*
>
> *vii) to issue a Writ in the nature of Mandamus or any other appropriate Writ order, directing 1 respondent not to sell the confiscated gold ornaments, without leave of this Hon'ble Court;"*

viii) to hear this Writ Petition along with WP(c) No.33989 of 2022 and connected cases, pending before this Hon'ble Court, in staying further proceedings to Ext P13(a) confiscation issued by 1st respondent;

2. The learned Government Pleader on instructions would submit that Ext.P13 (a) order was issued at the request of the petitioner. It is submitted that the petitioner had approached the office of the 1st respondent and had informed the officer that since Ext.P6 order was issued without DIN a copy of the order may be issued with a DIN. The learned Government Pleader also placed reliance on Ext.P11 request made by the petitioner for affixing the DIN on Ext.P6 order. It is submitted that the petitioner submitted Ext.P11 request and it is accordingly Ext.P13 (a) order was issued after affixing the DIN. However, it is not disputed that on the date on which Ext.P13 (a) was issued, the officer who signed Ext.P13 (a) was no longer the State Tax Officer (Intelligence), Mobile Squad-VI, Nedumangadu, Thiruvananthapuram. The appeal filed by the petitioner against Ext.P13 (a) order was rejected by Ext.P16 finding no fault with the proceedings initiated against the petitioner. Therefore, it is submitted, the petitioner must avail statutory remedies and there is no ground for granting the reliefs sought for in this writ petition. The Government Pleader also submits that going by provisions of Ext.P10 circular the affixing of a DIN on an order in the nature

of Ext.P6 was not at all mandatory.

3. Having heard the learned counsel appearing for the petitioner and the learned Government Pleader and having regard to the fact that no statutory Tribunal has been constituted to enable the petitioner to file an appeal under Section 102 of the CGST/SGST Act, I am of the view that the petitioner can be granted some reliefs in the present writ petition. Even if the arguments of the learned Government Pleader that in terms of Ext.P10 circular no DIN was required in respect of order in the nature of Ext.P6, it is not disputed before me that the subsequent order namely Ext.P13 (a) which bears the name and sign of the officer who originally issued Ext.P6 and a DIN was issued to the petitioner. It is also not disputed before me that on the date of issuance of Ext.P13 (a) order the officer who signed the said order was no longer holding the charge of the said office. On that short ground the said order has to be set aside. Therefore, this writ petition is allowed. Exhibit P6 and Ext.P13(a) orders of the 1st respondent and Ext.P16 order of the First Appellate Authority are set aside. The proceedings against the petitioner shall stand remitted back to the files of the 1st respondent, who shall pass fresh orders after taking into consideration any contention that may be taken by the petitioner and after affording an opportunity of hearing to the petitioner

within a period of 6 weeks from the date of receipt of a certified copy of this judgment. I make it clear that I have not expressed any opinion on the merits of the matter and it is open to the 1st respondent to pass fresh orders in accordance with the law. The petitioner shall appear before the 1st respondent at 10 a.m on 30-07-2024 and thereafter the matter shall be adjudicated as directed above.

Sd/-
GOPINATH P.
JUDGE

AMG

APPENDIX OF WP(C) 3075/2023

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF REGISTRATION CERTIFICATE DATED 08.10.2019 ISSUED TO PETITIONER UNDER THE GST ACT 2017**
Exhibit P2	**TRUE COPY OF DELIVERY CHELLAN NO.DC07 DATED 19.07.2021 RAISED BY PETITIONER FOR TAKING 1258.410 GRAMS OF NEW GOLD ORNAMENTS FOR SELECTION PURPOSE.**
Exhibit P3	**TRUE COPY OF FORM GST-MOV-02, GST-MOV-04 AND GST-MOV-06 DATED 19.07.2021 ISSUED BY ASSISTANT STATE TAX OFFICER, SQUAD NO.VI, THIRUVANANTHAPURAM, U/S.129 OF THE GST ACT.**
Exhibit P4	**TRUE COPY OF NOTICE U/S.130 OF THE GST ACT 2017 19.07.2021, ISSUED TO PETITIONER, BY 1ST RESPONDENT, IN DEMANDING TAX, PENALTY AND FINE IN LIEU OF CONFISCATION.**
Exhibit P5	**TRUE COPY OF REPLY DATED 27.07.2021 SUBMITTED BEFORE 1ST RESPONDENT, AGAINST EXT P3 AND P4, ALONG WITH COPY OF STOCK REGISTER AND RC BOOK TO VEHICLE NO. KL 08 BN 9095.**
Exhibit P6	**TRUE COPY OF ORDER NO.SCN/108/2020-21 DATED 08.09.2021 ISSUED U/S.130 TO THE GST ACT, SERVED TO PETITIONER ON 11.09.2021.**
Exhibit P7	**TRUE COPY OF CIRCULAR NO.41/15/2018-GST DATED 13.04.2018 IN PRESCRIBING PROCEDURE FOR INTERCEPTION ISSUED BY 4TH RESPONDENT.**
Exhibit P7(a)	**TRUE COPY OF CIRCULAR NO.17/2018 DATED 29.06.2018 ISSUED BY 6TH RESPONDENT IN PRESCRIBING PROCEDURE FOR INTERCEPTION ON THE BASIS OF EXT.P7.**

Exhibit P8	**TRUE COPY OF CIRCULAR NO.122/47/2019-GST DATED 05.11.2019 ISSUED BY 4TH RESPONDENT.**
Exhibit P9	**TRUE COPY OF CIRCULAR NO.128/47/2019-GST DATED 23.12.2019 ISSUED BY 4TH RESPONDENT.**
Exhibit P10	**TRUE COPY OF CIRCULAR NO.8/2020 DATED 04.08.2020 ISSUED BY COMMISSIONER OF STATE TAX, THIRUVANANTHAPURAM.**
Exhibit P11	**TRUE COPY OF LETTER DATED 25.11.2021 SUBMITTED BY THE PETITIONER BEFORE 1ST RESPONDENT, ALONG WITH INTERIM ORDER OF THE HON'BLE HIGH COURT FOR ENABLING, FILING OF ONLINE APPEAL.**
Exhibit P12	**TRUE COPY OF RELEVANT PAGES OF USER MANUAL FOR DOCUMENT IDENTIFICATION NUMBER ISSUED BY GST DEPARTMENT.**
Exhibit P13	**TRUE COPY OF COVERING LETTER NO.SCN/23/2021-22 DATED 01.12.2021 ISSUED TO PETITIONER ON 01.12.2021, BY 1ST RESPONDENT.**
Exhibit P13(a)	**TRUE COPY OF ORDER NO. SCN/23/2021-22 DATED 08.09.2022 U/S. 130 TO THE GST ACT ACCOMPANIED ALONG WITH EXT. P13, PURPORTING TO HAVE PREPARED ON 08.09.2021**
Exhibit P13(b)	**TRUE COPY OF DRC-07 DEMAND ID NO. ZD321221000044J DATED 01.12.2021, ACCOMPANIED ALONG WITH EXT.P13.**
Exhibit P14	**TRUE COPY OF ORDER NO.CT/2800/2019-A8 DATED 02.08.2021 PASSED BY 6TH RESPONDENT, WHERE BY 7TH TRANSFERRED TO STATE TAX OFFICE AND 8TH RESPONDENT TRANSFERRED THE OFFICE OF 1ST RESPONDENT.**

Exhibit P15	**TRUE COPY OF DOCUMENT IDENTIFICATION NUMBER SEARCH RESULT TO EXT. P13(A) FROM THE ONLINE PORTAL OF SGST DEPARTMENT.**
Exhibit P16	**TRUE COPY OF APPELLATE ORDER NO. GSTA- 95/22 DATED 15.09.2022 PASSED BY 2ND RESPONDENT, COMMUNICATED TO PETITIONER ON 03.11.2022.**
Exhibit P17	**TRUE COPY OF INTERIM ORDER DATED 28.10.2022 PASSED BY THIS HON'BLE COURT IN WP (C) NO.33989 OF 2022.**