

GIB/KR/Fashion Marble/06-07-2018/HC-16

High Court Category : E-way Bill

State : Kerala

Order No.: GIB/KR/Fashion Marble/06-07-2018/HC-16

Name of Entry :

M/s Fashion Marble and Granite Company Pvt Ltd

Date : 06-07-2018

Breif Issue :

Issues Involved:

Revenue Department can not insist to pay tax on detained goods through Cash/DD, when payment is made through Portal.

Fact of the Case:

The petitioner, dealing in Marble and Granite registered under Kerala GST Act. When he supplied a consignment of goods to another dealer, the 1st respondent intercepted the goods and begin detention proceedings. Later, he issued SCN U/S 129(3) of the GST Act. Eventually, 1st respondent demanded tax and penalty of Rs.22,880/-.

Petitioner faced proceedings under Section 129 and it decided to pay the tax and penalty as demanded under show cause notice. Therefore, it invoked Section 49 and paid the tax and penalty in the portal of GST maintained by the Central Government. According to him, Section 129 itself does not indicate the manner of payment. he has also drawn attention to the Circular No.41/15/2018 - GST dated 13th April 2018, issued by the Government of India. Under these circumstances, the learned counsel contends that the 1st respondent's stand cannot be sustained and there shall be a judicial direction for the release of the detained goods. The learned Government Pleader, on the other hand, has submitted that Section 17(5) of the Act is categoric that any payment paid under Section 129 will not entail input tax credit. Therefore, in the end, he has contended that as the 1st respondent has insisted to get the goods released, the petitioner ought to pay either in cash or through a demand draft.

Decision of Advance Ruling Authority :

Decision :

High Court directed that 1st respondent's insistence that the petitioner should pay the amount either in cash or through demand draft cannot be sustained. The petitioner is a dealer registered under the CGST Act. Cumulatively viewed, the petitioner's paying the penalty and evidence as receipt to the

portal of GST is eminently sustainable. HC direct that the 1st respondent authority, release the goods, after receiving receipt.