

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 18TH DAY OF SEPTEMBER 2020 / 27TH BHADRA, 1942

WP(C).No.18212 OF 2020(B)

PETITIONER/S:

QUALITY ENTERPRISES
29/380F, MATHA BUILDING, NH47 BY PASS, THYKKOODAM,
VYTTILA-682019, REP. BY THE MANAGING PARTNER DHANOOP
VASUDEV.

BY ADVS.
SRI.CYRIAC TOM
SRI.ABRAHAM VARGHESE THARAKAN

RESPONDENT/S:

- 1 THE ASSISTANT STATE TAX OFFICER (INTELLIGENCE)
SQUAD NO.II, CHENGANNUR, S.G.S.T.DEPARTMENT, MINI
CIVIL STATION, CHENGANNUR, ALAPPUZHA-689121.
- 2 THE COMMISSIONER OF STATE TAX,
STATE GOODS AND SERVICE TAXES, TAX TOWER,
KILLIPPALAM, KARAMANA P.O., THIRUVANANTHAPURAM-
695002.

OTHER PRESENT:

G.P. DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.09.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

In the present writ petition, the petitioner impugns an order passed by the respondent in Form GST Mov 09, whereby goods have been detained by the respondent noticing a discrepancy in the documents that ought to have accompanied the transportation of the goods. When the matter came up for admission, it was pointed out by the learned Government Pleader that inasmuch as the final order under Section 129, in Form GST Mov 09, has already been passed, the remedy of the petitioner lies in moving an appeal before the appellate authority, and if the petitioner wants a clearance of the goods and the vehicle in the meanwhile, he has to produce a bank guarantee for the amounts confirmed through the detention order.

2. Taking cue from the said submission, the petitioner has since furnished a bank guarantee before the respondent for enabling an expeditious clearance of the goods and the vehicle. He has also produced as Ext.P12, a copy of the Appeal Memorandum that he has preferred under Section 107 of the GST Act, against Ext.P11 order of detention. The limited prayer at this stage is for a direction to the First Appellate Authority to consider and pass orders on Ext.P12 appeal expeditiously, and to keep in abeyance coercive steps for encashing the bank guarantee that was furnished by him (Ext.P14) before the respondent.

3. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the Bar, and finding that a final order under Section 129(3) in Form GST Mov 09 has already been passed, I dispose the writ petition with a direction to the First Appellate Authority, before whom Ext.P12 appeal has

been preferred by the petitioner, to consider and pass orders on Ext.P12 appeal within three weeks from the date of receipt of a copy of this judgment, after hearing the petitioner either through a physical hearing or through video conferencing. It is made clear that Ext.P14 bank guarantee furnished before the respondent shall not be encashed till such time as orders are passed by the First Appellate Authority as directed and the order communicated to the petitioner. The petitioner shall produce a copy of this judgment together with a copy of the writ petition before the respondents and the First Appellate Authority for further action.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

sd

APPENDIX**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 COPY OF THE GST REGISTRATION CERTIFICATE OF THE PETITIONER.
- EXHIBIT P2 COPY OF THE INVOICE DATED 18 AUGUST 2020 RAISED BY THE PETITIONER FOR THE SUPPLY OF POWER SAW.
- EXHIBIT P3 COPY OF THE GOODS CONSIGNMENT NOTE BEARING NO.B10/D2844418 DATED 18.08.2020.
- EXHIBIT P4 COPY OF THE INVOICE DATED 18.08.2020 FOR A VALUE OF INR 40,860 FOR THE POWER WASH EQUIPMENT TO THE RETAILER.
- EXHIBIT P5 COPY OF THE GOODS CONSIGNMENT NOTE BEARING NO.B10/D2844425 DATED 18.08.2020 ISSUED BY THE COURIER AGENCY.
- EXHIBIT P6 COPY OF THE GST MOV 04 DATED 19.08.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7 COPY OF THE GST MOV 06 DATED 19.08.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P8 COPY OF THE NOTICE GST MOV 07 DATED 21.08.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P9 COPY OF THE FAQ PROVIDED BY THE NATIONAL ACADEMY OF CUSTOMS, INDIRECT TAXES AND NARCOTICS (NACIN).
- EXHIBIT P10 COPY OF THE REPLY DATED 22.08.2020 SUBMITTED BY THE PETITIONER.
- EXHIBIT P11 COPY OF THE GST MOV 09 ORDER DATED 24.08.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P12 COPY THE APPEAL MEMORANDUM UNDER SECTION 107 OF THE GST ACT AGAINST EXHIBIT P11 ORDER WITHOUT ANNEXURES.
- EXHIBIT P13 COPY OF THE COURIER RECEIPT DATED 15.09.2020.
- EXHIBIT P14 BANK GUARANTEE NO 2003851BGF0011 FOR AN AMOUNT OF INR 40,072 ISSUED BY IDBI BANK PANAMPILLY NAGAR BRANCH.