IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 19TH DAY OF JUNE 2020 / 29TH JYAISHTA, 1942

WP(C).No.12129 OF 2020(M)

PETITIONER/S:

BIJEESH P.V.,S/O MOHANAN,
AGED 35 YEARS, MANAGING PARTNER,
M/S GOLDEN TRADERS,
17/691 A, MUTHOORE,
CHANGARAMKULAM, MALAPPURAM 679 585.

BY ADVS.
SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH

RESPONDENT/S:

1 THE SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE, OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX & CENTRAL EXCISE, TIRUR RANGE, TARIFF BAZAR, TIRUR P.O, MALAPPURAM 676 101.

2 THE UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
NEW DELHI 110 001.

R1 BY SMT.SHEELA DEVI.I., SC, CENTRAL BOARD OF EXCISE AND CUSTOMS

OTHER PRESENT:

SRI P VIJAYAKUMAR ASGI SRI I SHEELA DEVI SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMIT RAWAL, J.

W.P.(C).No. 12129 of 2020

Dated this the 19th day of June, 2020

JUDGMENT

The petitioner, a managing partner of firm under the name and style “Golden Traders” in Malappuram District, is dealing with the trading of areca-nut. The petitioner has been issued registration under the Central Goods and Services Tax Act- 2017, for the purpose of assessment of GST and had been filing returns from time to time, which is marked as Exhibits P1 to P6.

2. Sri.K.R.Avinash, the learned counsel appearing on behalf of the petitioner submits that there was a minor delay in filing the GST returns for various periods and as a result thereof, the petitioner was served with a demand notice dated 13.03.2020 by Superintendent of Central Tax and Central Excise, Tirur, demanding an amount of Rs.9,72,519/-. The aforementioned demand notice is based on the gross tax instead of net tax and has to exclude the input tax credit.

3. In this regard, the petitioner submitted Exhibit-P8 representation; but thereafter on 12.06.2020, GST Council recommended to give reduction in Late Fee for past GST Returns and other measures to reduce the burden of the taxpayers such as Late Fee, Interest etc. It is in these circumstances, the petitioner has approached this Court for a direction to consider the representation for certain relaxed measures promulgated by GST, as the threat of initiation of coercive measures in the absence of payment of the demand is writ large.

4. Smt.Sheela Devi, the learned counsel for the GST accepts notice and supports the demand notice but do not deny certain moratorium given on 12.06.2020.

5. I have heard the learned counsel for the petitioner and appraised the paper book.

6. Decision dated 12.06.2020 is no doubt, also applicable to the petitioner. Concededly the case of the petitioner is that there was delay in filing GST returns. Demand notice includes the interest and as well as the gross tax whereas it should have been on the net tax excluding the

input tax credits. Be that as it may, I would not be commenting further as it would be in the domain of the competent authority to take a call on the representation keeping in view of certain relaxed measures extended by GST Counsel.

I dispose of this writ petition directing the 1st respondent to afford an opportunity of being heard to the petitioner with regard to the details expressed in the representation and take a decision as expeditiously as possible within a period of two months from the date of receipt of a copy of this judgment. It is made clear that till such time, the operation of Exhibit-P7 demand notice is ordered to be kept in abeyance. The petitioner, however, shall be at liberty to file returns from time to time which would be without prejudice to the decision contemplated to be taken in pursuance to the directions of this Court.

Sd/-
AMIT RAWAL,
JUDGE

Dxy

APPENDIX

PETITIONER(S)'S EXHIBITS

EXHIBIT-P1 : TRUE COPY OF THE PAYMENT CHALLAN OF THE BUSINESS CONCERN OF THE PETITIONER FROM 01.08.2018 TO 31.12.2018.

EXHIBIT-P2 : TRUE COPY OF THE PAYMENT CHALLAN OF THE BUSINESS CONCERN OF THE PETITIONER FROM 01.12.2018 TO 31.03.2019.

EXHIBIT-P3 : TRUE COPY OF THE PAYMENT CHALLAN OF THE BUSINESS CONCERN OF THE PETITIONER FROM 01.03.2019 TO 31.07.2019.

EXHIBIT-P4 : TRUE COPY OF THE PAYMENT CHALLAN OF THE BUSINESS CONCERN OF THE PETITIONER FROM 13.2019 TO 31.07.2019.

EXHIBIT-P5 : TRUE COPY OF THE PAYMENT CHALLAN OF THE BUSINESS CONCERN OF THE PETITIONER FROM 01.08.2019 TO 31.12.2019.

EXHIBIT-P6 : TRUE COPY OF THE PAYMENT CHALLAN OF THE BUSINESS CONCERN OF THE PETITIONER FROM 01.01.2020 TO 12.06.2020.

EXHIBIT-P7 : TRUE COPY OF THE DEMAND NOTICE DATED 13.03.2020 ISSUED BY THE SUPERINTENDENT OF CENTRAL TAX AND CENTRAL TAX EXCISE, TIRUR.

EXHIBIT-P8 : TRUE COPY OF THE REPRESENTATION DATED 20.03.2020 BEFORE THE 1ST RESPONDENT.