

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 19TH DAY OF FEBRUARY 2020 / 30TH MAGHA, 1941

WP(C).No.3320 OF 2020(L)

PETITIONER:

EMMAR TRADING COMPANY
41/681, SYED MOHAMMED COMPLEX, PULLEPADY ROAD,
ERNAKULAM -682 035 (BUSINESS STOPPED ON
31.03.2019) REPRESENTED BY
SRI. M.A MUHAMED SAFEEEK, POWER OF ATTORNEY HOLDER
OF SRI. MUHAMMED RESLI, PROPRIETOR OF THE
BUSINESS ENTITY

BY ADVS.
SRI.AJI V.DEV
SRI.ALAN PRIYADARSHI DEV
SHRI.KIRAN RAMACHANDRAN NAIR

RESPONDENTS:

- 1 THE STATE TAX OFFICER
THIRD CIRCLE, SGST DEPARTMENT, CLASS TOWER,
KARGIL LANE, OLD RAILWAY STATION ROAD,
ERNAKULAM-682 018
- 2 THE ASSISTANT COMMISSIONER,
SGST DEPARTMENT, CIVIL STATION,
KAKKANAD-680 3020
- 3 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO TAXES,
SECRETARIAT, THIRUVANANTHAPURAM-695 001

DR THUSHARA JAMES, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19.02.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT**(Dated this the 19th day of February, 2020)**

The petitioner in the instant case has sought indulgence of this Court under Article 226 of the Constitution of India seeking a writ of certiorari for quashing Exts.P6 and P6(a) to (e) assessment orders as well as Ext.P7 demand notice on a premise that the petitioner is a dealer registered under the GST Act evidenced by Ext.P1 registration certificate. The business engaged in was trading of plywood, which resulted into huge loss and therefore the petitioner submitted online application on 29.04.2019 seeking cancellation of registration evidenced by Ext.P3 acknowledgement. During the year 2017-18 the petitioner had marginal transactions and had filed returns accordingly under the new Act which is evident from Exts.P4 and P4(a). Even in the year 2018-19, petitioner has not effected any business transaction and as such filed monthly returns showing Nil transactions. The petitioner has filed 12 monthly returns from April/2018 to March/2019 evidenced by Exts.P5 and P5(a). The business was actually discontinued from 01.04.2019 onwards and the same was duly communicated to the Assessing

Officer.

2. Learned counsel for the petitioner submits that Section 62 of the Central Goods and Service Tax Act, 2017 would not have come into force in view of the fact that the petitioner had submitted a request for cancellation of the registration in terms of the provisions of Section 29 of the aforementioned Act. As per the proviso to Section 29(1) during the pendency of the proceedings relating to the cancellation of registration filed by the registered person, the registration will automatically be suspended for the period. In view of such provisions, the impugned assessment orders are not sustainable in the eyes of law. In support of the said submissions, reliance has also been made to the provisions of Rule 21 of the Central Goods and Service Tax Rules, 2017 which empowers the officers to cancel the registration. As per Rule, 21, the registration granted to a person is liable to be cancelled if the said person does not conduct any business from the declared place of business or issues invoice or bill without supply of goods.

3. Per contra, Mrs.Thushara James, learned Government Pleader appearing on behalf of the respondent urged that the

petitioner has not come with clean hands and has intentionally not disclosed the issuance of show cause notice dated 14.05.2019 issued by the Assessing Officer calling upon him to give complete details of the address of the business carried out in the new address and that in the rented premises. GST portal reveals that the petitioner was active till September, 2019. In January, 2020 the petitioner submitted a request for cancellation of the registration which is pending consideration. In support of this contention, learned Government Pleader placed reliance on the provisions of sub-rule (3) of Rule 22 and urged this Court for dismissal of the writ petition.

4. Having heard both sides, I am of the view that there is no force and merit in the submission of the petitioner. The writ petition is liable to be dismissed solely on the ground of non-disclosure of the issuance of show cause notice dated 14.5.2019 which is conveniently omitted from the pleadings. Be that as it may, no explanation is forthcoming and in how and what manner the petitioner refrained himself from relying on the issuance of show cause notice. No doubt, under sub-rule (3) of Rule 22, the person who applies for a cancellation of the registration, the

authorities concerned is required to pass an order in Form GST REG-19 within a period of 30 days from the date of receipt of the application. There could have been a force in the arguments, had there been no show cause notice on behalf of the Revenue. The petitioner could have conveniently replied and taken the benefit which has invited the attention of the revenue in imposition of the demand including penalty. Filing of the monthly returns even as "Nil" would not eradicate the impact of the imposition of penalty had the portal on which the petitioner was listed was alive. All these factors reveal that the petitioner did not respond to the request had there been the provisions of sub-rule (3) of Rule 22 as well as Rule 29 of the Rules would have come into force. Regarding the application of the provisions of Section 62 pertaining to assessment of non-filing of the returns once the portal remain active, petitioner even if had not conducted any business, has to file the return. The returns are filed in April 2019 and not thereafter. Submission of the fresh application and cancellation is perhaps on a premise that the petitioner could not overcome the rigors of the provisions of the Act, particularly provisions of Section 62. In view of the above findings, I am of

the view that no scope for interference is warranted under Article 226 of the Constitution of India, when the petitioner has a remedy of appeal as provided under the Act.

The writ petition fails and the same is accordingly dismissed.

Sd/-
AMIT RAWAL
JUDGE

dsn

APPENDIX

PETITIONER'S EXTS:

EXHIBIT P1	A TRUE COPY OF THE REGISTRATION CERTIFICATE HELD BY THE PETITIONER UNDER THE GST LAW
EXHIBIT P2	A TRUE COPY OF THE SCREEN SHOT OF THE UPLOADED APPLICATION FOR CANCELLATION OF REGISTRATION
EXHIBIT P3	A TRUE COPY OF THE ACKNOWLEDGMENT OF THE APPLICATION FOR CANCELLATION FILED /UPLOADED FROM THE GST PORTAL
EXHIBIT P4	A TRUE COPY OF THE RETURN FILED IN FOR,M GSTR-3B FOR THE OPENING MONTH OF JULY/2017
EXHIBIT P4A	A TRUE COPY OF THE RETURN FILED IN FORM GSTR-3B FOR THE OPENING MONTH OF MARCH/2018 (CLOSING MONTH 2017-18)
EXHIBIT P5	A TRUE COPY OF THE RETURN FILED IN FORM GSTR-3B FOR THE MONTH OF APRIL/2018
EXHIBIT P5A	A TRUE COPY OF THE RETURN FILED IN FORM GSTR-3B FOR THE MONTH OF MARCH/2019
EXHIBIT P6	A TRUE COPY OF THE ASSESSMENT ORDER PASSED IN FORM GST ASMT-13 FOR THE MONTH OF APRIL, 2019
EXHIBIT P6A	A TRUE COPY OF THE ASSESSMENT ORDER PASSED INFORM GST ASMT-13 FOR THE MONTH OF MAY, 2019
EXHIBIT P6B	A TRUE COPY OF THE ASSESSMENT ORDER PASSED INFORM GST ASMT-13 FOR THE MONTH OF JUNE, 2019
EXHIBIT P6C	A TRUE COPY OF THE ASSESSMENT ORDER PASSED INFORM GST ASMT-13 FOR THE MONTH OF JULY, 2019

- EXHIBIT P6D A TRUE COPY OF THE ASSESSMENT ORDER PASSED
INFORM GST ASMT-13 FOR THE MONTH OF
AUGUST, 2019
- EXHIBIT P6E A TRUE COPY OF THE ASSESSMENT ORDER PASSED
INFORM GST ASMT-13 FOR THE MONTH OF
SEPTEMBER, 2019
- EXHIBIT P7 TRUE COPY OF DEMAND NOTICE ISSUED IN
FORM TR DRC-07 DT.13.1.2020 FOR APRIL 2019.
- EXHIBIT P8 A TRUE COPY OF THE ACKNOWLEDGMENT OF THE
APPLICATION FOR CANCELLATION FILED
/UPLOADED FROM THE GST PORTAL, AS A
REMINDER ON 24.10.2020