IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 31ST DAY OF JANUARY 2020 / 11TH MAGHA, 1941

WP(C).No.1715 OF 2020(L)

PETITIONER/S:

1 P.M.SALEEM, AGED 40 YEARS
S/O.MOHAMMED, PUTHIYA VEETTIL, NATTIKA,
THRISSUR-680 566.

2 E.M.UNNIKRISHNAN,S/O.NARAYANAN,
EDACHALIL HOUSE, CHAMAKKALA P.O.,
THRISSUR-680 687.

BY ADV. SRI.K.I.SAGEER IBRAHIM

RESPONDENT/S:

1 STATE TAX OFFICER (WORKS CONTRACT)
STATE GOODS AND SERVICES TAX DEPARTMENT,
TAX COMPLEX, POOTHOLE, THRISSUR-680 004.

2 DEPUTY COMMISSIONER OF STATE TAX, THRISSUR,
OFFICE OF THE DEPUTY COMMISSIONER, TAX COMPLEX,
POOTHOLE, THRISSUR-680 004.

3 DIRECTOR, STATE GOODS AND SERVICES DEPARTMENT,
9TH FLOOR, TAX TOWER, KILLIPPALAM, KARAMANA P.O.,
THIRUVANANTHAPURAM-695 002.

4 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT,
STATE GOODS AND SERVICES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

DR.THUSHARA JAMES, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

WP(C).No.1715 OF 2020

Dated this the 31st day of January, 2020

JUDGMENT

The case set up in this writ petition is as follows:-

Petitioners are contractors having registration as Class-'C' and obtained registration from the 1st respondent. The petitioners have successfully completed the works of various departments of the Government. In the work schedule allotted to them for the said works, it was not stated that the amount due under the GST will be reduced at the time of disbursement of bill amount. Hence, while clearing the bills, GST amount was not reduced from the bill amount. Now the 1st respondent has issued assessment orders under Section 62 of the GST Act directing the petitioners to pay tax for each work for the financial years 2017-18, 2018-19 and 2019-20 respectively and the petitioners are taking steps to challenge the said orders. Since the tax was not paid as per Ext.P5, the respondents have blocked the GST registration of the petitioners and therefore, they are not in a position to purchase goods and to execute the works undertaken by them. Hence this writ petition.

2. In the light of these averments and contentions, the petitioners have filed the instant writ petition with following prayers:-

> *''a. Issue a writ of mandamus or any other appropriate writ order or direction declaring that the action of the respondents to block GST registration of the petitioners bearing Reg.Nos.32DUFPS9862A1ZH and 32AAFPU8050RIZ2 is illegal and unsustainable in law.*
>
> *b. Issue a writ of mandamus or any other appropriate writ order or direction directing the respondents to permit the petitioners to purchase goods and other articles with their GST registration bearing registration Nos. 32DUFPS9862A1ZH AND 32AAFPU8050RIZ2 without any kind of obstruction.''*

3. Heard Sri.K.I.Sageer Ibrahim, learned counsel appearing for the petitioners and Dr.Thushara James, learned Government Pleader for the respondents.

4. It is the admitted case of the petitioners that they have not paid the tax dues pursuant to the assessment orders rendered in this case for the respective assessment years and that petitioners would contend that petitioners will be prosecuting statutory appeals to impugn the legality and correctness of the said assessment orders and that in the meanwhile, due to default in such payments, respondents have blocked the GST registration itself.

5. Learned Government pleader has invited this Court's attention to Rule 138E of the Central Goods and Services Rules, 2017 (hereinafter referred to as 'the Rules') which reads as follows:-

> **Rule 138E: Restriction on furnishing of information in Part A of Form GST EWB- 01.-**Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in Part A of Form GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who,-
> (a) being a person paying tax under section 10, or availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No.02/2019-Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 189, dated the 7th March, 2019, has not furnished the statement in Form GST CMP-08 for two consecutive quarters; or
>
> (b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:
>
> Provided that the Commissioner may, on receipt of an application from a registered person in Form GST EWB-05, on sufficient cause being shown and for reasons to be recorded in writing, by order, in Form GST EWB-06, allow furnishing of the said information in Part A of Form GST EWB-01, subject to such conditions and restrictions as may be specified by him:

> Provided further that no order rejecting the request of such person to furnish the information in Part A of Form GST EWB-01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:
>
> Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.
>
> Explanation:– For the purposes of this rule, the expression "Commissioner" shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b).

6. It is pointed out by the learned Government Pleader that since the petitioners have not paid due tax amounts for the relevant periods and they do not file mandatory returns till day, blocking of E- way bill is made on account of this mandatory provision contained in the above said Rule and unblocking of E-way bill is possible only if the due amounts as envisaged in the above said Rule are remitted and the returns are filed up to date. Therefore, it is for the petitioners to take necessary steps to ensure that due tax amounts are paid, so that, the default in that regard is not for more than a period of two months as envisaged in clause (b) of Rule 138E(1) of the Rules. In case the petitioners wish to prosecute statutory appeals to impugn the assessment orders for the years concerned, it is for the

petitioners to avail such remedies, in accordance with law.

With these observations and directions, the above W.P(C) stands disposed of.

Sd/-

ALEXANDER THOMAS

JUDGE

ajt

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY EXECUTIVE ENGINEER, PWD ROADS DIVISION, THRISSUR TO THE 1ST PETITIONER DATED 14.10.2011.**
EXHIBIT P2	**A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY EXECUTIVE ENGINEER, PWD ROADS DIVISION, THRISUSR TO THE 2ND PETITIONER DATED 16.07.2018.**
EXHIBIT P3	**A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED TO THE 1ST PETITIONER IN FORM GST REG-06 DATED 16.01.2018.**
EXHIBIT P4	**A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED TO THE 2ND PETITIONER IN FORM GST REG-06 DATED 18.01.2018.**
EXHIBIT P5	**A TRUE COPY OF ASSESSMENT ORDER DATED 15.11.2019 ISSUED TO THE 2ND PETITIONER.**