IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF DECEMBER 2019/22ND AGRAHAYANA, 1941

WP(C).No.33823 OF 2019(C)

PETITIONER:

M/S. FESTOON PROPS AND RENTALS LLP
CC 37/547A1,EZHUTHULLI BUILDINGS,MUTTATHIL LANE,
KADAVANTHARA,KOCHI-682020
REPRESENTED BY ITS PARTNER,SRI.SIDHESJH.K.

BY ADV. SRI.BEJOY CHERIYAN

RESPONDENTS:

1 STATE TAX OFFICER
SQUAD NO.II,STATE GOODS AND SERVICE TAX DEPARTMENT,
STATE GOODS AND SERVICE TAX COMPLEX,PALAKKAD-678001.

2 ASSISTANT STATE TAX OFFICER,
SQUAD NO.II,STATE GOODS AND SERVICE TAX DEPARTMENT,
STATE GOODS AND SERVICE TAX COMPLEX,PALAKKAD-678001.

3 STATE OF KERALA,
STATE GOODS AND SERVICE TAX DEPARTMENT,
SECRETARIAT,THIRUVANANTHAPURAM-695001,
REPRESENTED BY SECRETARY TO GOVERNMENT.

4 GOVERNMENT OF INDIA,
DEPARTMENT OF REVENUE,CENTRAL BOARD OF EXCISE AND
CUSTOMS,NEW DELHI-110001,REPRESENTED BY ITS SECRETARY
TO GOVERNMENT,MINISTRY OF FINANCE.

5 DEPUTY COMMISSIONER OF STATE TAX (APPEALS),
STATE GOODS AND SERVICE TAX COMPLEX,
PALAKKAD-678001.

6 UNION BANK OF INDIA,
JAWAYAR NAGAR,KADAVANTHARA,
COCHIN-682020,REPRESENTED BY ITS BRANCH MANAGER.

7 ASSISTANT COMMISSIONER OF STATE TAX,
STATE GOODS AND SERVICE TAX DEPARTMENT,
CIVIL STATION,KAKKANAD,COCHIN-682030.

BY SMT.THUSHARA JAMES, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13.12.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P8 determination order under Section 129 of the SGST Act. It is stated by the petitioner that pursuant to the determination order, the goods and the vehicle have been released pursuant to the petitioner furnishing Ext.P4 bank guarantee for the tax and penalty amounts determined under Section 129 of the SGST Act. The petitioner thereafter took time to produce before this Court Ext.P10 objection, filed before the 1st respondent, objecting to the proposal to levy penalty under Section 130 of the GST Act. The limited prayer, at this stage, is for a direction to the 1st respondent to consider Ext.P10 objection and to hear the petitioner before finalising the proposal for imposition of penalty against the petitioner.

2. 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 as also the submissions made across the bar, I dispose the writ petition with a direction to the 1st respondent, before whom Ext.P10 objection has been filed by the petitioner, to consider the objection of the petitioner and also hear the petitioner before finalising the penalty proceedings under Section 130 of the GST Act. It is made clear that till such time as orders are passed by the 1st respondent, under Section 130 of the GST Act, as directed, and the order communicated to the petitioner, recovery steps for recovery of the penalty amount, including further steps for encashment of the bank guarantee shall not be pursued against the petitioner. The petitioner shall produce a copy of the writ petition together with a copy of this judgment, before the 1st respondent, for further action.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/13/12/19

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE DELIVERY CHELLAN NO.216 DATED 28.10.2019 ACCOMPANIED WITH GOODS ON RETURN OF HIRED GOODS.
EXHIBIT P2	TRUE COPY OF THE E-WAY BILL NO.591145401048 DATED 06.11.2019 PRODUCED BEFORE THE 2ND RESPONDENT
EXHIBIT P3	TRUE COPY OF NOTICE 08.11.2019 ISSUED BY 2ND RESPONDENT,U/S.129 OF STATE GOODS AND SERVICE TAX ACT,2017,DEMANDING IGST AND PENALTY UNDER IGST AND SGST ACT.
EXHIBIT P4	TRUE COPY OF BANK GUARANTEE NO.74040IGL0000219 DATED 07.11.2019 FOR RS.1,36,800/-ISSUED BY 6TH RESPONDENT BANK,PRODUCED BEFORE 2ND RESPONDENT FOR RELEASE OF GOODS ALONG WITH TRANSPORT VEHICLE.
EXHIBIT P4 A	TRUE COPY OF BOND DATED 07.11.2019 FOR RELEASE OF DETAINED GOODS FURNISHED BY PETITIONER BEFORE 2ND RESPONDENT.
EXHIBIT P5	TRUE COPY OF ORDER IN MOV.05 DATED 08.11.2019 ISSUED BY THE 2ND RESPONDENT ON ACCEPTING EXT P4 AND P4(A)AS SECURITY.
EXHIBIT P6	TRUE COPY OF ORDER NO.MOV-09 DATED 08.11.2019 COMPLETED BY 2ND RESPONDENT,IMPOSING PENALTY U/S.129 OF IGST ACT 2017.

EXHIBIT P7	**TRUE COPY OF APPEAL DATED 30.11.2019 U/R.108(1)OF GST RULE 2017 SENT TO 5TH RESPONDENT AGAINST EXT P6 PENALTY.**
EXHIBIT P8	**TRUE COPY OF NOTICE DATED 02.12.2019 ISSUED BY THE 1ST RESPONDENT IN FIXING ADJUDICATION TO 07.12.2019,WITHOUT CONSIDERING EXT P6 PENALTY IMPOSED BY 2ND RESPONDENT.**
EXHIBIT P9	**TRUE COPY OF REPLY SENT BY E-MAIL DATED 06.12.2019 TO 1ST RESPONDENT AGAINST EXT P8 NOTICE.**
EXHIBIT P10	**TRUE COPY OF REPLY DATED 12.12.2019 SUBMITTED AGAINST EXT P8 NOTICE BEFORE 1ST RESPONDENT, BY E-MAIL.**

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE