

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 29TH DAY OF OCTOBER 2019 / 7TH KARTHIKA, 1941

WP(C).No.28884 OF 2019(I)

PETITIONER:

SMEARA ENTERPRISES
SHOP NO-4, BAY PRIDE MALL, SHANMUGHAM ROAD, KOCHI-682
031. REPRESENTED BY SMT. MINI ASHRAFF, MANAGING
PARTNER.

BY ADVS.
SRI.K.N.SREEKUMARAN
SRI.P.J.ANILKUMAR (A-1768)
SRI.N.SANTHOSHKUMAR
SRI.N.JAYAKUMAR

RESPONDENTS:

- 1 STATE TAX OFFICER
SQUAD NO.5, STATE GOODS AND SERVICES TAX DEPARTMENT,
PERUMANOOR, THEVARA, ERNAKULAM.682 015
- 2 DEPUTY COMMISSIONER (APPEALS)
STATE GOODS AND SERVICES TAX DEPARTMENT, PERUMANOOR,
THEVARA, ERNAKULAM.

SMT. THUSHARA JAMES; GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.10.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by Ext.P3 order of penalty, the petitioner preferred Ext.P5 appeal before the 2nd respondent. It is stated that 10% of the disputed tax has also been paid as a condition for maintaining the appeal. It is also submitted by the learned counsel for the petitioner that, the goods that were the subject matter of the penalty order, are still in the custody of the department and the petitioner has not cleared the same by furnishing any security. There is a further prayer therefore, for release of the goods pending disposal of the appeal by the 2nd respondent.

2. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for the respondents.

3. Smt. Thushara James, the learned Government Pleader would point out that the appeal preferred before the 2nd respondent is against Ext.P3 order which confirms the liability of tax and penalty. The detention of the goods, and the possibility of confiscating the goods pursuant to proceedings under Section 130, that it is envisaged under Section 129(6) still subsist and, in as much as the petitioner has defaulted on the conditions under Section 129(6), he would have to await the out come of the confiscation proceedings under Section 130 before seeking a release of goods. Alternatively, it is submitted, that if the petitioner furnishes a Bank guarantee

for the entire tax and penalty determined, then he can seek release of the goods as contemplated under Section 129(5).

On a consideration of the rival submissions, I find force in the submission of the learned Government Pleader that the mere pendency of an appeal cannot be the basis for a direction to release the goods without any security, since the non payment of the security in respect of the goods can independently lead to a confiscation of the goods under Section 130 of the CGST Act. Accordingly, I dispose the writ petition by directing the 2nd respondent to consider and pass orders on Ext.P5 appeal within a period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner. The petitioner may seek a release of goods by furnishing the necessary Bank guarantee for the tax and penalty amounts confirmed against him, pending disposal of the appeal or in the alternative, await the outcome of the confiscation proceedings under the Act.

SD/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPIES OF THE PAMPHLETS ISSUED BY M/S. "LEVIS" STRAUSS INDIA PVT. LTD., BANGALORE.
- EXHIBIT P2 TRUE COY OF THE DELIVERY CHALLAN NO.7296281447 DATED 18.9.2019 ISSUED BY M/S. "LEVIS" STRAUSS INDIA PVT. LTD., BANGALORE TO THE PETITIONER.
- EXHIBIT P2 A TRUE COPY OF THE E-WAY BILL NO.1711 6121 3160 GENERATED ON 19.9.2019 BY M/S. LEVIS STRAUSS INDIA P.LTD. BANGALORE TO THE PETITIONER.
- EXHIBIT P3 TRUE COPY OF THE ORDER NO.VCR/V/GST-64/2019-20 DATED 9.10.2019 ISSUED U/S 129(3) OF THE GST ACT BY THE IST RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE E-CHALAN RECEIPT DATED 24.10.2019 BY THE PETITIONER.
- EXHIBIT P5 TRUE COPY OF THE APPEAL IN FORM IN APL-01 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ON 25.10.2019.
- EXHIBIT P5 A TRUE COPY OF THE APPLICATION FOR RELEASE OF GOODS FILED IN EXT-P5 APPEAL BY THE PETITIONER ON 25.10.2019.
- EXHIBIT P6 TRUE COPY OF THE REQUEST DATED 25.10.2019 FILED BY THE PETITIONER BEFORE THE IST RESPONDENT.