

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 09TH DAY OF OCTOBER 2019 / 17TH ASWINA, 1941

WP(C).No.26751 OF 2019

PETITIONER/S:

MINAR IRON AND METALS PRIVATE LIMITED  
DOOR NO.IV/1005,NEAR PRECOT MILLS,  
KANJIKODE WEST,PALAKKAD-678623,  
REPRESENTED BY ITS MANAGING  
DIRECTOR,SRI.C.K.MOHAMMED.

BY ADVS.  
SRI.TOMSON T.EMMANUEL  
SRI.JENSON FRANCIS PAYANKAN

RESPONDENT/S:

- 1 STATE TAX OFFICER  
SQUAD NO.1,STATE GOODS AND SERVICE TAX  
DEPARTMENT,STATE GOODS AND SERVICE TAX  
COMPLEX,PALAKKAD-678001.
- 2 ASSISTANT STATE TAX OFFICER,  
SQUAD NO.1,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 STAT TAX (APPEALS),  
STATE GOODS AND SERVICE TAX COMPLEX,  
PALAKKAD-678001.
- 6 FEDERAL BANK LTD,  
KANJIKODE BRANCH,PALAKKAD-678623,  
REPRESENTED BY ITS BRANCH MANAGER.

7 ASSISTANT COMMISSIONER OF STATE TAX,  
STATE GOODS AND SERVICE TAX DEPARTMENT,  
STATE GOODS AND SERVICE TAX COMPLEX,  
PALAKKAD-678001.

GOVERNMENT PLEADER DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
09.10.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## JUDGMENT

**Dated this the 9th day of October 2019**

Against Ext.P7 order of the 1<sup>st</sup> respondent imposing tax and penalty on the petitioner under the IGST Act, the petitioner has preferred Ext.P8 appeal. In Ext.P8 appeal, the petitioner has also prayed for a stay of encashment of the bank guarantee furnished by him as security before the respondents. I also note that while seeking an exemption from payment of the pre-deposit of 10% of the disputed tax and cess, the petitioner in its appeal has indicated that, in view of the bank guarantee already furnished by it, it need not pay the pre-deposit of 10% of the disputed tax and cess. The prayer in the writ petition is for a direction to the 5<sup>th</sup> respondent, before whom Ext.P8 appeal has been preferred, to consider and pass orders in the stay application preferred along with the appeal expeditiously and to keep in abeyance the recovery proceedings pursuant to Ext.P7 order till such time as orders are passed by the 5<sup>th</sup> respondent in the stay application.

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

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I dispose the writ petition with the following directions.

a) On the petitioner paying 10% of the disputed tax as a condition for maintaining Ext.P8 appeal before the 5<sup>th</sup> respondent, within two weeks from today, the 5<sup>th</sup> respondent shall proceed to consider and pass orders on the said application preferred by the petitioner within a month from the date of receipt of a copy of this judgment, after hearing the petitioner.

b) To enable the petitioner to thereafter pursue his appellate remedy before

the 5<sup>th</sup> respondent, the recovery of amounts confirmed against the petitioner by Ext.P7 order, including steps to encash Ext.P6 bank guarantee, shall be kept in abeyance till such time as orders are passed by the 5<sup>th</sup> respondent as directed and the orders are communicated to the petitioner.

Sd/-

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

sd

**APPENDIX**

**PETITIONER'S EXHIBITS**

- EXT.P1** COPY OF TAX INVOICE NO.BVSPL/18-19/2287 DATED 19.02.2019 ISSUED BY M/S.BINJRAJKA VALUE STEELS PVT.LTD, TELUNGANA
- EXT.P2** COPY OF E-WAY BILL NO.1911 .0616 1086 DATED 20.02.2019 GENERATED ON THE BASIS OF EXT.P1 ACCOMPANIED WITH THE CONSIGNMENT
- EXT.P3** COPY OF E-WAY BILL NO.5610 8960 3558 DATED 01.03.2019, GENERATED AND PRODUCED BEFORE 2ND RESPONDENT, ON INFORMATION OF CANCELLATION OF EXT.P2 E-WAY BILL
- EXT.P4** COPY OF NOTICE 23.02.2019 ISSUED BY 2ND RESPONDENT U/S.129 OF STATE GOODS AND SERVICE TAX ACT, 2017, DEMANDING IGST AND PENALTY UNDER IGST AND SGST ACT.
- EXT.P5** COPY OF JUDGMENT DATED 05.03.2019 IN W/P.(C) NO.6543 OF 2019 PASSED BY THIS HONOURABLE COURT ON CHALLENGING EXT.P4 NOTICE OF DETENTION ISSUED BY 2ND RESPONDENT.
- EXT.P6** COPY OF BANK GUARANTEE NOS.IBG 95164 AND IBG 95165 DATED 07.03.2019 FOR RS.1,81,720/- EACH ISSUED BY 6TH RESPONDENT BANK, PRODUCED BEFORE 2ND RESPONDENT IN ACCORDANCE WITH EXT.P5 JUDGMENT
- EXT.P6(a)** COPY OF BOND DATED 28.02.2019 FOR RELEASE OF DETAINED GOODS FURNISHED BY PETITIONER BEFORE 2ND RESPONDENT
- EXT.P7** COPY OF ORDER DATED 27.09.2019 COMPLETED BY 1ST RESPONDENT IMPOSING PENALTY U/S.129 OF IGST ACT 2017, COMMUNICATED TO PETITIONER ON 03.10.2019
- EXT.P8** COPY OF APPEAL DATED 04.10.2019 U/S.108(1) OF GST RULE 2017 SENT BY COURTIER TO 5TH RESPONDENT AGAINST EXT.P7 PENALTY

sd