

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

MONDAY, THE 19TH DAY OF AUGUST 2019 / 28TH SRAVANA, 1941

WA.No.1591 OF 2019

AGAINST THE JUDGMENT IN WP(C) 16124/2019(M) OF HIGH COURT OF
KERALA DATED 13.04.2019

APPELLANT/WRIT PETITIONER :

VERA DISPLAY AND STORAGE PRODUCTS PVT. LTD
XIII/589, WISE PARK, INTEGRATED INDUSTRIAL TOWNSHIP-
1, KANJIKODE EAST P.O., PALAKKAD-678 621 REPRESENTED BY
VENU.S.PILLAI, MG.DIRECTOR

BY ADVS.
SRI.P.S.SOMAN
SMT.T.RADHAMANY

RESPONDENTS/RESPONDENTS :

- 1 STATE TAX OFFICER (INTELLIGENCE)
SQUAD-II, SGST DEPARTMENT, TAX COMPLEX, PERUMANOOR
P.O., ERNAKULAM-682 015
- 2 THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
GOV.T.SECRETARIAT, THIRUVANATHAPURAM-695 001
- 3 THE COMMISSIONER OF STATE TAX,
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, GOV.T
SECRETARIAT, THIRUVANATHAPURAM-695 001

SR. G.P. SRI. MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19.08.2019, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.K. ABDUL REHIM
&
R. NARAYANA PISHARADI, JJ.**

W.A.No. 1591 OF 2019

Dated this the 19th day of August, 2019

JUDGMENT

Abdul Rehim,J

The appellant herein is the petitioner in WP(C) No.16124/2019, challenging the judgment of the Single Judge, dated 13.06.2019. The respondents in the appeal are the respondents in the writ petition.

2. An order passed by the 1st respondent under Section 129 of the Central Goods and Service Tax Act (CGST Act) and the Kerala State Goods and Service Tax Act (KSGST Act) imposing tax and penalty to the tune of Rs.9,03,190/- was challenged by the appellant in the writ petition. The learned Single Judge found that the appellant is having the remedy of a statutory appeal against the said order. Therefore the writ petition was dismissed without making any observation on the merits and leaving open the appellant to agitate the issue before the statutory Appellate Authority on all grounds

available. Encashment of the Bank Guarantee furnished by the appellant at the time of release of the consignment was stayed for a period of two weeks from the date of the impugned judgment, in order to facilitate the appellant to avail the remedy of appeal and to move for stay before the Appellate Authority. The Appellate Authority was directed to dispose of the stay petition, if any filed, within two weeks, for which time encashment of the Bank Guarantee was stayed.

3. The appellant contended that, the learned Single judge ought to have considered the writ petition on the merits of the impugned order, because Ext.P5 order is suffering from the illegality of denial of opportunity of personal hearing. We are of the considered opinion that such a ground will be available to the appellant before the Appellate Authority while challenging the impugned order. Hence we are not persuaded to interfere on that ground.

4. Sri. P.S.Soman Pulladan, learned counsel for the appellant contended that, Section 107(6) of both the CGST Act and the KSGST Act stipulates a pre-condition for deposit of

10% of the disputed amount of tax for maintaining an appeal. It is pointed out that, in the case at hand the entire amount in dispute is secured through the Bank Guarantee furnished, which the department can encash in case the appeal is dismissed. Therefore the insistence for deposit of 10% in compliance with the stipulations under Section 107(6) will work out to prejudice to the appellant. It is pointed out that, even in a case where the appeal is dismissed, the department will be at an obligation to make refund of such deposit, because the disputed tax and penalty will be encashed from the Bank Guarantee available.

5. Learned Government Pleader by relying on settled legal precedents contended that, the pre-condition stipulated for deposit of 10% is mandatory as long as the provision remains valid, a waiver of such pre-condition cannot be permitted.

6. We are of the considered opinion that, the above mentioned point is not germane for consideration in this writ appeal. This was not an issue agitated before the learned

Single Judge. Further, we noticed that a statutory appeal is yet to be filed. If the petitioner is intending to seek exoneration or waiver from the pre-conditions stipulated, it is them for to take steps if any available, either before the Appellate Authority or before any other appropriate forum. Since such an issue was not raised at the time of disposal of the writ petition and since no such ground was seen raised either in the writ petition or in the writ appeal, we are not deciding anything on the merit of such an issue.

7. Under the above mentioned circumstances, the writ appeal is hereby disposed of by leaving liberty to the appellant as mentioned above.

However, in view of the fact that the disputed amount now remains secure through the Bank Guarantee furnished, we are inclined to modify the impugned judgment by directing to keep in abeyance encashment of the Bank Guarantee furnished until the disposal of the appeal, provided the appellant keeps the same valid until disposal of a validly constituted appeal against Ext.P5 within a period of one month from today.

Needless to observe that if the appellant files such an appeal within the time stipulated as above and keeps the Bank Guarantee alive, the respondent shall not pursue any steps for recovery till the disposal of such appeal.

Sd/-C.K. ABDUL REHIM, JUDGE.

Sd/-R. NARAYANA PISHARADI, JUDGE.

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APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE-A CERTIFIED COPY OF JUDGMENT DATED
13.06.2019 IN WRIT PETITION (CIVIL)
16124/2019 OF THE LEARNED SINGLE JUDGE

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

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