IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

FRIDAY, THE 09TH DAY OF AUGUST 2019 / 18TH SRAVANA, 1941

WP(C).No.21821 OF 2019(C)

PETITIONER:

M/S.HYUNDAI CONSTRUCTION EQUIPMENT INDIA PVT LTD.,
PLOT A-2, MIDC CHAKAN, PHASE II, KHALUMBRE,
PUNE - 410 501, REPRESENTED BY RINU M. PHILIP,
BRANCH MANAGER.

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

1 THE STATE TAX OFFICER,
SQUAD NO.III, STATE GST DEPARTMENT,
KASARGOD - 671 121.

2 THE COMMISSIONER OF STATE GST
TAX TOWERS, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM - 695 002.

3 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
TAXES DEPT., SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

4 DEUTSCHE BANK AG.
BRANCH OFFICE AT SUPREM, CTS NO.1337/2, SHOP
NO.133/1 AND 134/2, MAIN ITI ROAD, AUNDH BRANCH,
PUNE - 411 007, REPRESENTED BY ITS SENIOR MANAGER

GP. DR. THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.08.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Heard the learned counsel appearing for the petitionerX and the learned Government Pleader appearing for the respondents.

2. The petitioners challenge Ext.P2 order dated 05.07.2019 as illegal and that the 1st respondent failed to consider the documents placed on record by the petitioners before the assessment order impugned in the writ petition is made. The alternative submission made by the counsel for the petitioner is that the petitioner in fact has statutory remedy of appeal under Section 107 of the Goods and Services Tax Act and one of the reasons why the petitioner is compelled to invoke extraordinary jurisdiction of this Court is that the 1st respondent confirmed invocation of bank guarantee there by facilitating encashment of the bank guarantee even before the period available for filing appeal is over.

3. The learned Government Pleader objects to the maintainability of writ petition primarily on the ground that the

explanation now offered by the petitioner cannot be treated as axiomatic and proceed to consider the infirmity in the finding recorded by the 1st respondent. Assuming without admitting that explanation is available for either delayed filing of documents or otherwise, the explanation is matter of record and requires to be verified by the competent authority. Therefore, it is contended that the writ petition is not maintainable. The counsel opposes the writ petition and prays for dismissing the writ petition on the alternative submission of petitioner, she fairly states that invocation of bank guarantee even before the expiry of period of appeal can be deferred by passing appropriate orders by this Court and thereafter the petitioner gets necessary orders from the appellate authority. The rival submissions made by the learned counsel appearing for the parties are taken note. The writ petition is disposed of by relegating the petitioner to work out the remedy of appeal under Section 107 of the Goods and Services Tax Act. The respondents are directed not to encash the bank guarantee for a period of 90 days from today and it is open to the petitioner to obtain orders as may be necessary in this behalf after the appeal and the stay petition are moved before the appellate authority. The stay petition if is filed, the petition is considered and disposed of before the expiry of three months period granted by this Court.

Sd/-

S.V.BHATTI

JUDGE

JS

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**COPY OF BANK GUARANTEE ISSUED BY THE 4TH RESPONDENT.**
EXHIBIT P2	**COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P3	**COPY OF JUDGMENT IN W.P.(C) NO.8998/19 OF THIS HON'BLE COURT.**