

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

FRIDAY, THE 02ND DAY OF AUGUST 2019 / 11TH SRAVANA, 1941

WA.No.1703 of 2019

AGAINST THE ORDER DATED 29-05-2019 IN WP(C) 14719/2019

APPELLANT/PETITIONER:

VE COMMERCIAL VEHICLES LTD
SURVEY NO.45/3A,45/3A & 45,VILLAGE THONNACHI KUPPU
KASABA HOBIL NEELAMANGALA TALUK,TUMKUR ROAD,
NEAR HAMPSON AEROSPACE,BENGALURU, KARNATAKA-562123.
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR.AFSAL HUSSAIN.

BY ADVS.
SRI.A.KUMAR
SMTG.MINI(1748)
SRI.AJAY V.ANAND
SRI.P.J.ANILKUMAR
SRI.P.S.SREE PRASAD

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY FINANCE SECRETARY,
NORTH BLOCK,NEW DELHI-110001.
- 2 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY(TAXES),
MINISTRY OF FINANCE,GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 3 COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWER,KILLIPPALAM,KARAMANA.P.O,
THIRUVANANTHAPURAM-695002.
- 4 STATE TAX OFFICER(INTELLIGENCE),
SURVEILLANCE SQUAD,STATE GOODS AND SERVICES TAX
DEPARTMENT, ANAPPARA BLDG., LEO HOSPITAL ROAD,
KALPETTA,WAYANAD, KERALA-673121.

5 ASSISTANT STATE TAX OFFICER,
SURVEILLANCE SQUAD NO.IV,
STATE GST DEPARTMENT,WAYANAD,KERALA-673121.

OTHER PRESENT:

SRI. MOHAMMED RAFIQ - SR.G.P,
SRI. R.PRASANTH KUMAR - C.G.C

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02.08.2019, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K. ABDUL REHIM, J.
&
R. NARAYANA PISHARADI, J.

W.A. No. 1703 OF 2019

DATED THIS THE 2nd DAY OF AUGUST, 2019

J U D G M E N T

Abdul Rehim, J:

The petitioner in W.P (C) No.14719/2019 is challenging the interim order passed by the Single Judge, dated 29th May, 2019. The respondents herein are the respondents in the writ petition.

2. The appellant challenged validity of Section 129 of the Central Goods and Services Tax Act, 2017 (CGST Act for short), to the extent it provides imposition of tax and penalty in the manner as set out therein, in cases where there are only mere technical breaches or contraventions of the provisions of the Act and where there is no evasion of tax, the above said provision was challenged as illegal and violative of Article 14 and 300 A of the Constitution of India. Inter alia, the appellant challenged Ext.P11 notice issued requiring them to appear for an adjudication proceedings initiated under Section 129 (1) of the CGST Act based on interception of goods transported and Ext.P4 notice issued. Evidently, the appellant sought for an interim relief in the writ petition to direct the respondents not to encash

the Bank Guarantee furnished by the petitioner at the time of release of the intercepted goods. The learned Single Judge had passed the impugned order by observing that, the appellant can work out their remedies under law against any order which may be passed against pursuant to Ext.P11 and will be entitled to obtain orders from the appropriate forum. It was observed that, the appellant had already obtained release of the detained goods by complying with the requirement contemplated under Section 129 of the CGST Act. Since the appellant had already chosen to get release of the detained goods by complying with that procedure, granting of any interim order as prayed for would amount to deviate from the order of release made under Ext.P8, which is in compliance with Section 129. It was found that, even if an order is passed on completion of the adjudication, the appellant has got remedy under the statute. On the other hand, the learned Judge observed that, putting any restraint on encashment of Bank Guarantee may result in deviating the conditions under which the release was already ordered.

3. Assailing the impugned order, learned counsel for the appellant contended that, encashment of the Bank Guarantee on the basis of order if any passed to the extent of imposing penalty,

will in turn defeat the purpose of the writ petition itself. Since the power conferred by virtue of Section 129 to impose penalty for technical violation itself is under challenge in the writ petition, it was only just and proper in the interest of justice that the Single Judge ought to have restrained the respondents from encashing the Bank Guarantee, till the writ petition is disposed of. It is pointed out that in an identical case another learned Judge of this court had passed Ext.P12 order restraining encashment of the Bank Guarantee till the disposal of the writ petition. According to learned counsel, it was improper on the part of the learned Single Judge in not following the order passed in a similar case.

4. While appreciating the above said contentions, we take note of the fact that the writ petition was filed at a stage after release of the goods on the appellant furnishing the Bank Guarantee with respect to the security deposit demanded through Ext.P4 notice. As observed by the learned Single Judge, release of the goods was effected on the basis of the Bank Guarantee furnished, in compliance with the requirement under Section 129 of the CGST Act. Now the adjudication proceedings is pursued. The interim relief sought for in the writ petition is to

restrain encashment of the Bank Guarantee. If it is granted, it will amount to an order in anticipation that the adjudication will culminate in imposition of penalty. If such an anticipatory restraint is put on the respondents, as observed by the learned Single Judge, that will be in a manner defeating the interest of the respondents who ordered release of the goods by securing the probable amount which may be due after the adjudication, in accordance with the provisions contained in Section 129 of the Act. Therefore we do not find any illegality, error or impropriety in the judgment of the learned Single Judge.

5. However, we make it clear that, the appellant will be at liberty to take appropriate challenges against the order imposing penalty, if any passed against them, either in the writ petition or in any other appropriate proceedings. The appellant will also be entitled to seek appropriate interim relief in any such proceedings, if the order imposing penalty is challenged as mentioned above, for restraining encashment of the Bank Guarantee, pending such challenge.

6. We are of the considered opinion that the interest of justice on equitable basis can be achieved by issuing a direction to the respondents not to encash the Bank Guarantee furnished

by the appellant, if ultimately the adjudication goes against them and if penalty is imposed in such proceedings, until the expiry of 14 days from the date of service of order on such adjudication.

sd/-

C.K.ABDUL REHIM

JUDGE

sd/-

R. NARAYANA PISHARADI

JUDGE

AMG