

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 12TH DAY OF MARCH 2019 / 21ST PHALGUNA, 1940

WP(C).No.7180 of 2019

PETITIONER:

M/S. ASIAN PAINTS,  
DOOR NO.33/246, G2 DEVI BUILDINGS, LABOUR COLONY  
ROAD, PALARIVATTOM BYEPASS, CHAKKARAPARAMBU, VYTTILLA  
ERNAKULAM 682 019, REPRESENTED BY ITS REGIONAL  
COMMERCIAL EXECUTIVE MR.M.G SURESH.

BY ADV. SMT.K.LATHA

RESPONDENTS:

1 THE ASSISTANT STATE TAX OFFICER  
SURVILANCE SQUAD NO.1, STATE GST DEPARTMENT, WAYANAND  
AT MUTHANGA -673 592.

ADDL. DEPUTY COMMISSIONER,  
R2 STATE GOODS AND SERVICE TAX DEPARTMENT, THEVARA,  
ERNAKULAM-682019

ADDL.R2 IS IMPEADED AS PER ORDER DATED 11/3/2019 IN  
IA NO.1/19 IN WP(C) 7180/19.

OTHER PRESENT:

SMT.THUSHARA JAMES, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
12.03.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**J U D G M E N T**

The petitioner is a registered dealer under the Goods Service Tax (GST) Act. The petitioner approached this Court challenging the detention notices produced as Exts.P3, P3A, P3B and P3C. Pending the writ petition, an order has been passed imposing penalty under Sections 129(1)(a) and 129(1)(b) of the Central Goods and Services Tax Act, 2017. The petitioner's argument is that imposition of penalty under both the Sections cannot sustain together. Anyhow, as of now the petitioner has suffered an adverse order.

2. Learned Government Pleader made available before this Court the details of the order and the calculation of penalty under Sections 129(1)(a) and 129(1)(b) of the CGST Act, 2017.

3. The petitioner submits that the petitioner is intending to file an appeal.

In such circumstances, I am of the view that the goods detained shall be released to the petitioner on furnishing bank guarantee in terms of the order passed under Section 129(1)(a) of the CGST Act, 2017. The petitioner shall file an appeal within a period of one month. The appeal shall be disposed of within a further period of three

months. The bank guarantee shall not be invoked pending appeal. It is made clear that the invocation of bank guarantee would depend upon the outcome of the appeal.

This writ petition is disposed of as above.

sd/-

**A . MUHAMED MUSTAQUE**

**JUDGE**

smp

**APPENDIX****PETITIONER'S EXHIBITS:**

- EXHIBIT P1 THE TRUE COPY OF THE EWAY BILL NUMBERS 111107197354, 111107364664, 131107084809, 181107358457 ALL GENERATED ON 23.2.2019.
- EXHIBIT P2 THE TRUE COPY OF THE INTERIM STAY ORDER OF THIS HONBLE COURT IN WPC NO. 21229/2018 DATED 27.2.2019.
- EXHIBIT P3 THE TRUE COPY OF THE DETENTION NOTICE NO. VCR/99-14/GST52/18/19 DATED 27.2.2019 ISSUED BY THE RESPONDENT TO THE PETITIONER.
- EXHIBIT P3 A THE TRUE COPY OF THE DETENTION NOTICE NO. VCR/99-14/GST53/18-19 DATED 27.2.2019 ISSUED BY THE RESPONDENT TO THE PETITIONER.
- EXHIBIT P3 B THE TRUE COPY OF THE DETENTION NOTICE NO. VCR/99-19/GST54/18-19 DATED 27.2.2019 ISSUED BY THE RESPONDENT TO THE PETITIONER.
- EXHIBIT P3 C THE TRUE COPY OF THE DETENTION NOTICE NO. VCR/99-14/GST55/18/19 DATED 27.2.2019 ISSUED BY THE RESPONDENT TO THE PETITIONER.
- EXHIBIT P4 THE TRUE COPY OF THE REPLY FILED BY THE PETITIONER AGAINST THE EXT P3 DETENTION NOTICES UNDER SECTION 129 (3) OF THE CGST ACT, 2007 AND U/S 20 OF IGST ACT, 2017 WHICH DATED 1ST MARCH 2019 FIELD BY THE PETITIONER BEFORE THE RESPONDENT.
- EXHIBIT P5 THE TRUE COPY OF THE ORDER IN FORM GST MOV 5 ORDER No.VCR/22-14/GST52/18-19 DTD.8.3.2019 ISSUED BY FIRST RESPONDENT TO THE PETITIONER.
- EXHIBIT P5A THE TRUE COPY OF THE ORDER IN FROM GST MOV 5 ORDER No.VCR/SS-14/GST53/18-19 DTD.8.3.2019, ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.
- EXHIBIT P5B THE TRUE COPY OF THE ORDERIN FROM GST MOV 5 ORDER No.VCR/SS-14/GST54/18-19 DTD.8.3.2019 ISSUED BY FIRST RESPONDENT TO THE PETITIONER.

EXHIBIT P5C

THE TRUE COPY OF THE ORDERIN FROM GST MOV 5  
ORDER No.VCR/SS-14/GST55/18-19 DTD.8.3.2019  
ISSUED BY THE FIRST RESPONDENT TO THE  
PETITIONER.

RESPONDENTS' EXHIBITS: NIL.

True Copy

P.S to Judge

smp