

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY ,THE 16TH DAY OF NOVEMBER 2018 / 25TH KARTHIKA, 1940

WP(C).No. 37082 of 2018

PETITIONER/S:

PIONEER POLYLEATHERS LIMITED,  
90, GNT ROAD, PONNIAMMAN MEDU, MADHAVARAM,  
CHENNAI-600 110, REPRESENTED BY ITS MANAGER,  
MR.NEERAJ.

BY ADVS.  
SRI.ANIL D. NAIR  
SRI.R.SREEJITH  
SMT. ARYA ANIL  
SMT. NILOOFAR O. NIZAM

RESPONDENT/S:

1 ASSISTANT STATE TAX OFFICER,  
SQUAD NO.VIII, KERALA GOODS AND SERVICES TAX  
DEPARTMENT, PALAKKAD-678001.

Addl.2 GOODS AND SERVICES TAX NETWORK  
EAST WING, 4TH FLOOR, WORLD MARK-1, AEROCITY, NEW  
DELHI-110037. (ADDL.R2 IS SUO MOTU IMPLEADED AS PER  
ORDER DATED 15/11/2018)

BY ADV. SRI.P.R.SREEJITH,SC,GOODS AND SERVICES TAX  
NETWORK

OTHER PRESENT:

M.M.JASMINE, GP, SRI.P.R.SREEJITH, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
16.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## JUDGMENT

The petitioner, a registered dealer, suffered the detention of its goods, under Section 129(3) of the GST Act. The Assistant State Tax Officer issued the Ext.P2 notice, demanding the petitioner to pay IGST @ 18% and IGST @ 18%, both amounting to Rs.5,28,834/-.

2. The record reveals that the petitioner paid the amount through the portal, and obtained the Ext.P3 payment receipt. But the Assistant State Tax Officer refused to release the goods, for he insists that the petitioner ought to have paid the tax and penalty either through cash or through Demand Draft. Aggrieved, the petitioner has filed this writ petition.

3. Yesterday, the learned Government Pleader submitted, on instructions, that the amount must be apportioned between the Centre and the State, as the liability is under the head IGST. It is not within the State's purview to effect that apportionment. Therefore, she suggested that if the Court could have before it the GST Network, it will solve the problem. Therefore, I *suo motu* added GST Network as the 2<sup>nd</sup> respondent and notified the Standing Counsel.

4. Today, the Standing Counsel has appeared and submitted that the GST Network is only an infrastructure provider. It has no statutory role to play in apportionment of the taxes between the State and the Centre.

In this backdrop, the petitioner's counsel draws my attention to the Ext.P4 judgment, which is said to have attained finality. I reckon under identical circumstances, this Court, in the Ext.P4 judgment, that is *Fashion Marble and Granite Company Pvt. Ltd. v. Assistant State Tax Officer and Others*<sup>1</sup>, has held as follows:

*“14. Under these circumstances, the Court declares that the 1<sup>st</sup> respondent's insistence that the petitioner should pay the amount either in cash or through demand draft cannot be sustained. As is further evident from Ext.P7, the petitioner is a dealer registered under the CGST. Cumulatively viewed, the petitioner's paying the penalty under Ext.P5 receipt to the portal of GST is eminently sustainable. Therefore, I direct that the 1<sup>st</sup> respondent authority, release the goods, after receiving Ext.P5 receipt. With these observations, the writ petition stands disposed of.”*

5. Given the submissions advanced by the Standing Counsel

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1 W.P.(C)No.21988/2018

for the GST Network, evidently it is only a service provider, having no role to pay in the apportionment. Further, the Government both at the Centre and in the State, have ushered in the GST Tax regime to ensure that everything is made online with minimum manual interventions. Yet strangely, the authorities still insist that the payment should be by physical means: either in cash or through Demand Draft. That insistence seems to be archaic and out of tune with the very spirit of the GST regime. In apportionment, there may be delays and difficulties, but the tax payer cannot be made to suffer, on that count.

6. Under these circumstances, applying the ratio of the judgment in *Fashion Marbles and Granites Pvt. Ltd. v. Assistant State Tax Officer*, I hold that the Assistant State Tax Officer shall release the goods and the vehicle forthwith.

The Writ Petition is disposed of accordingly.

sd/-

**DAMA SESHADRI NAIDU**

**JUDGE**

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1** COPY OF THE CERTIFICATE OF REGISTRATION  
NO.33AADCP6436BIZT
- EXHIBIT P2** COPY OF NOTICE IN FORM NO.GST-MOV-07  
DATED 3.11.2017 ISSUED BY THE RESPONDENT  
WHILE DETAINING THE CONSIGNMENT
- EXHIBIT P3** COPY OF THE ONLINE GST PORTAL PAYMENT  
RECEIPT DATED 7.11.2018
- EXHIBIT P4** COPY OF LETTER DATED 9.11.2018 FILED  
BEFORE THE RESPONDENT BY THE PETITIONER

Css/