

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BADAR

TUESDAY, THE 30TH DAY OF MARCH 2021 / 9TH CHAITHRA, 1943

WP(C).No.8319 OF 2021(L)

PETITIONER:

USMAN M.

AGED 58 YEARS

S/O. LATE HUSSAIN HAJI, MATTUMMAL HOUSE, SHORANUR,
MANAGING PARTNER CEDICOM ELECTRONICS.

BY ADV. SRI.L.RAJESH NARAYAN

RESPONDENTS:

- 1 THE COMMISSIONER OF STATE GST
TAX TOWERS, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM - 695 002.
- 2 STATE GOODS AND SERVICE TAX OFFICER
STATE GOODS AND SERVICE TAX OFFICE,
OTTAPALAM - 679101.
- 3 STATE TAX OFFICER
SQUAD NO.II, O/O. THE DEPUTY COMMISSIONER OF SALES
TAX (INTELLIGENCE), KERALA GST DEPARTMENT,
PALAKKAD - 678001.
- 4 MANAGER, CANARA BANK
SHORNUR BRANCH, PALAKKAD - 679121.

OTHER PRESENT:

SMT.THUSHARA JAMES, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of March 2021

Heard both sides.

2. Under orders of this Court in W.P.(C) No.18098 of 2020, goods were released vide release order at Ext.P2 on furnishing bank guarantee by the petitioner. The adjudication proceedings continued and those were culminated in the order at Ext.P3 by which the 3rd respondent had directed the petitioner to pay the IGST tax amounting to Rs.4,25,181/-. This order at Ext.P3 dated 05.03.2021 is reported to be received by the petitioner on 20.03.2021.

3. Learned counsel for the petitioner submits that the petitioner has time of three months' for preferring an appeal under Section 107 of the CGST Act and he is intending to prefer the appeal along with stay petition. However, according to the learned counsel for the petitioner, respondents are invoking the bank guarantee furnished by the petitioner for release of the goods. He further submits that the respondents be restrained from encashing the bank guarantee till filing of the statutory appeal by the petitioner.

4. Learned Government Pleader opposed the writ petition by contending that there is determination of the amount under order at Ext.P3.

5. I have considered the submissions so advanced and perused the materials placed before me. In terms of Section 107 of the CGST Act read with Rule 108 of the Goods and Services Tax Rules, the petitioner has time of three months to challenge the order at Ext.P3 which is received by the petitioner on 20.03.2021. The petitioner is intending to file statutory appeal within the prescribed period of limitation.

6. In this view of the matter, this writ petition is disposed of with the following directions:

If the petitioner files statutory appeal challenging the order at Ext.P3 within the prescribed period of limitation, then the respondents should not invoke bank guarantee furnished by the petitioner for a period of one week after filing of the statutory appeal. Learned Standing Counsel for the 4th respondent to communicate this judgment to the 4th respondent for compliance.

Sd/-

A . M . BADAR

JUDGE

smp

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE JUDGMENT DATED 7.9.2020 IN WPC NO.18098/2020.
EXHIBIT P2	TRUE COPY OF THE RELEASE ORDER DATED 8.9.2020.
EXHIBIT P3	TRUE COPY OF THE ORDER NO.VC.II/136/2020-21 GST DATED 5.3.2021.
EXHIBIT P4	TRUE COPY OF THE COMMUNICATION DATED 16.03.2021 NO.VC/II/136/20-21/GST.
EXHIBIT P5	TRUE COPY OF THE REQUEST DATED 26.03.2021.
EXHIBIT P6	TRUE COPY OF THE REQUEST DATED 26.03.2021 BEFORE THE 3RD RESPONDENT.
EXHIBIT P7	TRUE COPY OF THE JUDGMENT IN WPC NO.8998/2019 DATED 25.03.2019.
EXHIBIT P8	TRUE COPY OF THE JUDGMENT IN WPC NO.23251/2018 DATED 16.07.2018.

RESPONDENTS' EXHIBITS: NIL.

True Copy

P.S to Judge

smp