

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BADAR

TUESDAY, THE 16TH DAY OF FEBRUARY 2021 / 27TH MAGHA, 1942

WP(C).No.3900 OF 2021(J)

PETITIONER:

VARAHAMURTHI FLEXIRUB INDUSTRIES PVT.LTD.,
S F NO.205, PADUVAMPALI, SUTUR TALUK, COIMBATORE,
TAMIL NADU-641 659, REPRESENTED BY ITS SENIOR
ACCOUNTANT AND AUTHORISED SIGNATORY A.KODEESWARAN.

BY ADV. SRI.PREMJIT NAGENDRAN

RESPONDENTS:

- 1 STATE TAX OFFICER SQUAD-VII
OFFICE OF THE DEPUTY COMMISSIONER OF STATE TAX,
INTELLIGENCE KERALA SGST DEPARTMENT,
PALAKKAD-678 001.
- 2 BRANCH MANAGER,
STATE BANK OF INDIA, ANNAUR BRANCH, SF NO.280/1,
SATHY MAIN ROAD, ANNUR, COIMBATORE -641 653.

OTHER PRESENT:

SMT.THUSHARA JAMES, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.02.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 16th day of February 2021

Heard both sides. The petitioner, who has suffered an order of confirmation of penalty at the hands of the respondent-State Tax Officer, is challenging the action of the said authority in directing the 2nd respondent-Bank to invoke bank guarantee and to forward the demand draft of the value of the said bank guarantee to the 1st respondent.

2. Learned counsel for the petitioner has rightly pointed out the provisions of Section 107 of the Goods and Service Tax Act which provide for pre deposit. He also relied on Section 78 of the said Act to demonstrate that the petitioner has time of three months for depositing the amount as per the assessment. With this, learned counsel submitted that the direction contained in the order at Ext.P3 to the 2nd respondent directing the said respondent to encash the bank guarantee and forward the demand draft of the value of the bank guarantee to the 1st respondent is per se illegal. It is further argued that the petitioner is intending to file an appeal within two or three weeks

though limitation for filing such statutory appeal is upto 15.05.2021.

3. Learned Government Pleader opposed the writ petition.

4. Keeping in mind the provisions of Sections 78 and 107 of the GST Act, this writ petition deserves to be allowed with the following directions:

The 2nd respondent shall not comply with the directions of the 1st respondent to encash bank guarantee and to forward the amount under the bank guarantee by demand draft to the 1st respondent and the said direction is quashed and set aside. However, the petitioner shall continue the bank guarantee till filing of the appeal. The parties to act on authenticated copy of this judgment.

sd/-

A . M . BADAR

JUDGE

smp

