



2024/KER/53464

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 17TH DAY OF JULY 2024 / 26TH ASHADHA, 1946

WP(C) NO. 3946 OF 2020

PETITIONER:

VELPLEX INDUSTRIES,
ELAKAMON, VARKALA, THIRUVANANTHAPURAM-695 141,
REPRESENTED BY ITS MANAGING PARTNER, VISMA A.

BY ADV P.M.POULOSE

RESPONDENT:

THE STATE TAX OFFICER (INTELLIGENCE),
SQUAD NO.II, STATE GOODS & SERVICE TAX DEPARTMENT,
KERALA AT ATTINGAL, THIRUVANANTHAPURAM-695 101.

BY SMT. THUSHARA JAMES (SR. GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

This writ petition has been filed challenging Exts.P2 and P3 orders imposing penalties on the petitioner under Section 74 read with Section 122 (1) of the CGST / SGST Acts, 2017 for the years 2017-18 and 2018-19. Ext.P2 is the order for the year 2017-18 and Ext.P3 is the order for the year 2018-19.

2. The learned counsel appearing for the petitioner would submit that Exts.P2 and P3 orders are liable to be set aside on a short ground. It is submitted that a reading of Exts.P2 and P3 orders will show that after a revised notice was issued for both the years on 27.11.2019, the petitioner had appeared before the officer and had submitted a request for adjournment of the proceedings on 05.12.2019. It is submitted that both in Exts.P2 and P3, the officer records that on 05.12.2019, a request was made for adjournment by a period of three weeks but a period of two weeks was granted. It is pointed out that even if the period of two weeks is counted from 05.12.2019, the period of adjournment granted would be till 19.12.2019. It is pointed out that both the impugned orders namely, Exts.P2 and P3 are issued on 17.12.2019. It is thus contended that Exts.P2 and P3 have been issued without affording a proper opportunity to the petitioner



and therefore, they are liable to be set aside on the ground that they have been issued in violation of principles of natural justice.

3. The learned Senior Government Pleader appearing for the respondent, on instructions, would submit that though in Exts.P2 and P3, the adjournment request is stated to have been submitted on 05.12.2019, the adjournment requests were undated requests and the adjournment of two weeks granted was from 02.12.2019 and therefore, the finalization of the proceedings on 17.12.2019 by Exts.P2 and P3 cannot be said to be in violation of principles of natural justice. It is submitted that if the petitioner is in any manner aggrieved by Exts.P2 and P3 orders, it is for the petitioner to approach the appellate authority by filing an appeal under Section 107 of the CGST / SGST Acts. It is submitted that no ground has been made out for interference with Exts.P2 and P3 orders in exercise of the writ jurisdiction of this Court under Article 226 of the Constitution of India.

4. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader and having perused Exts.P2 and P3 orders, I am of the view that there is some merit in the contention taken by the petitioner that after having granted an adjournment for a period of two weeks on the basis of an adjournment request filed on 05.12.2019, the officer could not



have proceeded to pass final orders on 17.12.2019 as the period of two weeks would have expired only on 19.12.2019. Even if the contention of the learned Government Pleader that the adjournment granted was for a period of two weeks from 02.12.2019 is considered, a reading of the order does not indicate that the adjournment granted was for a period of two weeks from 02.12.2019 and on the other hand it appears that the adjournment granted was for a period of two weeks from 05.12.2019.

Therefore, without expressing anything on the merits of the matter, this writ petition will stand allowed setting aside Exts.P2 and P3 and remitting the proposals for imposition of penalty for the years 2017-18 and 2018-19 to the files of the respondent and permitting the said respondent to pass fresh orders, in accordance with the law. The petitioner will appear before the respondent at 11.00 A.M on 22.07.2024 and thereafter, the matter shall be finalized by the respondent as directed above. It is made clear that the petitioner shall co-operate with the adjudication and shall not delay the adjudication in any manner.

Sd/-
GOPINATH P.
JUDGE

**APPENDIX OF WP(C) 3946/2020****PETITIONER EXHIBITS**

- EXHIBIT P1** TRUE COPY OF THE REQUEST NIL DATED NIL GIVEN BY PETITIONER BEFORE THE RESPONDENT.
- EXHIBIT P2** TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT DATED 17.12.2019 FOR THE YEAR 2017-2018.
- EXHIBIT P3** TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT DATED 17.12.2019 FOR THE YEAR 2018-2019.
- EXHIBIT P4** TRUE COPY OF THE REVISED PENALTY NOTICE NO.GST/NS.01/17-18(1) DATED 27/11/2019 ISSUED BY RESPONDENT TO THE PETITIONER FIRM PERTAINING TO THE PERIOD 2017-2018.
- EXHIBIT P5** TRUE COPY OF THE REVISED PENALTY NOTICE NO.GST/INS.01/18-19 DATED 27/11/2019 ISSUED BY RESPONDENT TO THE PETITIONER FIRM PERTAINING TO THE PERIOD 2018-2019.
- Exhibit P6** TRUE COPY OF THE NOTICE NO.GST/2020-21/02 DATED 26.2.2024 ISSUED BY THE DEPUTY COMMISSIONER (ARREAR RECOVERY), OFFICE OF JOINT COMMISSIONER, TAX PAYER SERVICE, STATE GOODS SERVICE TAX DEPARTMENT, KORAMANA, THIRUVANANTHAPURAM TO THE PETITIONER