

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**THURSDAY, THE 20<sup>TH</sup> DAY OF JANUARY 2022 / 30<sup>TH</sup> POUSHA, 1943**

**WP(C) NO. 2011 OF 2022**

**PETITIONER:**

M/S. KOLUTHARA EXPORTS LTD.,  
KELTRON ROAD, AROOR P.O., ALAPUZHA-688 534,  
REPRESENTED BY ITS MANAGING DIRECTOR, ANTONY VARGHESE.

BY ADVS.  
M.GOPIKRISHNAN NAMBIAR  
K.JOHN MATHAI  
JOSON MANAVALAN  
KURYAN THOMAS  
PAULOSE C. ABRAHAM  
RAJA KANNAN

**RESPONDENTS:**

- 1 UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE,  
MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI-110 004.
- 2 STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,  
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 3 THE COMMISSIONER OF STATE GOODS AND SERVICES TAX  
DEPARTMENT, TAX TOWER, KARAMANA,  
THIRUVANANTHAPURAM-695 002.
- 4 THE STATE TAX OFFICER,  
AIT AND CT OFFICE, KUTHIYATHODE, ALAPPUZHA-688 533.

R1 - SRI.MANU.S, ASSISTANT SOLICITOR GENERAL  
R2 TO 4 - DR.THIOUSHARA JAMES, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
20.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**W.P.(C)No.2011 of 2022**

2

## **JUDGMENT**

Dated this the 20<sup>th</sup> day of January, 2022

This writ petition is filed by the petitioner seeking the following reliefs:

- “i) to call for records leading to Exhibits P8 notice issued by the 4<sup>th</sup> respondent and quash the same by issuance of a writ of certiorari or such other writ, order or direction.
- ii) to issue a writ of mandamus or any other writ, order or direction, directing the respondents to grant 24 installments to the petitioner to pay the GST liability that would arise on a self-assessment by the petitioner of the business activities undertaken by the petitioner.”

2. Admittedly, the petitioner has registration under the Goods and Services Tax Act. The petitioner has not submitted the returns continuously for a period of six months and consequent to which, the petitioner has submitted Exhibit P1 application before the Commissioner of State Goods and Services Tax Department - 3<sup>rd</sup> respondent, seeking extension of time for payment of their amounts due, which is pending consideration. While so, Exhibit P8 notice is now issued by the

**W.P.(C)No.2011 of 2022**

**3**

State Tax Officer, AIT & CT Office, Kuthiyathodu, Alappuzha – 4<sup>th</sup> respondent, informing the petitioner that consequent to non-filing of return for a continuous period of six months, the GST registration stands suspended and directing the petitioner to show cause as to why the GST registration shall not be cancelled.

3. According to the petitioner, on receipt of Exhibit P8, the petitioner has submitted Exhibits P9 and P10 before the 4<sup>th</sup> respondent which are also pending consideration. It is evident from Exhibit P8 notice that the petitioner is directed to appear before the 4<sup>th</sup> respondent on 24.01.2022 at 11 AM. The prime contention advanced by the learned counsel for the petitioner is that by virtue of the powers conferred under Section 80 of the Central Goods and Services Tax Act, the Commissioner is vested with powers to extend time and since the said application is pending consideration, unless and until a final adjudication is made to the same, the petitioner would not be in a position to contest the proceedings pertaining to Exhibit P8 suspension of the licence and threat of

**W.P.(C)No.2011 of 2022**

**4**

cancellation.

4. On the other hand, learned Senior Government Pleader Smt.Thushara James appeared for the State, submitted that provisions of Section 80 would not apply strictly to the case put forth by the petitioner, however, the subject matter to be considered by the said authority.

5. Anyhow, I am of the view that a direction can be issued to the Commissioner to dispose of Exhibit P1 within a time frame until such time, Exhibit P8 proceedings can be directed to be kept in abeyance.

6. Having heard learned counsel for the petitioner Sri.Kuryan Thomas and learned Senior Government Pleader Smt.Thushara James and perusing the pleadings and materials on record, the writ petition is disposed of directing the Commissioner of State Goods and Services Tax Department - 3<sup>rd</sup> respondent to finalise Exhibit P1 within three weeks from the date of receipt of a copy of this judgment. Petitioner is directed to appear before the 4<sup>th</sup> respondent on 24.01.2022 as directed therein and appraise the situation of pendency of the

**W.P.(C)No.2011 of 2022**

**5**

application before the Commissioner.

In view of the directions issued as above, the final proceedings pertaining to Exhibit P8 and Exhibits P9 and P10 reply submitted by the petitioner, shall be deferred for a period of six weeks and the parties would be guided by the orders passed by the Commissioner as per the direction above in Exhibit P8 application. All the other questions raised in the writ petition are left open.

Sd/-  
**Shaji P.Chaly**  
**Judge**

**vpv**

**W.P.(C)No.2011 of 2022**

**6**

**APPENDIX OF WP(C) 2011/2022**

PETITIONER EXHIBITS

- Exhibit P1           A TRUE COPY OF THE APPLICATION DATED 03/09/2021 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- Exhibit P1(A)       A TRUE COPY OF THE LETTER DATED 03/09/2021 UNDER COVER OF WHICH EXT.P1 APPLICATION WAS SENT TO THE 3RD RESPONDENT.
- Exhibit P2           A TRUE COPY OF THE COMMUNICATION DATED 15/09/2021 ISSUED TO THE PETITIONER BY THE ADDITIONAL COMMISSIONER (GENERAL), OFFICE OF THE 3RD RESPONDENT.
- Exhibit P2(A)       A TRUE COPY OF THE E-MAIL DATED 17/09/2021 UNDER COVER OF WHICH EXT.P1 WAS SENT TO THE PETITIONER.
- Exhibit P3           A TRUE COPY OF THE PETITION DATED 18/09/2021 SENT BY THE PETITIONER TO THE 3RD RESPONDENT.
- Exhibit P3(A)       A TRUE COPY OF THE COVERING LETTER DATED 18/09/2021 UNDER COVER OF WHICH EXT.P3 PETITION WAS FORWARDED TO THE 3RD RESPONDENT.
- Exhibit P4           A TRUE COPY OF THE NOTICE DATED 24/09/2021 ISSUED TO THE PETITIONER BY THE OFFICE OF THE 3RD RESPONDENT.
- Exhibit P4(A)       A COPY OF THE E-MAIL COMMUNICATION DATED 24/09/2021 UNDER COVER OF WHICH EXT.P4 WAS SENT TO THE PETITIONER.
- Exhibit P5           A TRUE COPY OF THE REPLY DATED 30/09/2021 SENT BY THE PETITIONER TO THE 3RD RESPONDENT.
- Exhibit P6           A TRUE COPY OF THE NOTICE DATED 30/10/2021 ISSUED TO THE PETITIONER BY THE OFFICE OF THE 3RD RESPONDENT.

**W.P.(C)No.2011 of 2022**

**7**

- Exhibit P7            A TRUE COPY OF THE REPLY DATED 15/11/2021  
SENT BY THE PETITIONER TO THE 3RD  
RESPONDENT.
- Exhibit P8            A TRUE COPY OF THE NOTICE DATED 12/01/2022  
ISSUED TO THE PETITIONER BY THE 4TH  
RESPONDENT.
- Exhibit P9            TRUE COPY OF THE PRINT OUTS OF THE VIEW OF  
THE SUBMISSION OF THE RESPONSE IN THE GST  
PORTAL AND THE STATUS OF EXT.P8 SHOW CAUSE  
NOTICE AS APPEARING IN THE GST PORTAL.
- Exhibit P10           A TRUE COPY OF THE HARDCOPY OF THE  
RESPONSE, DATED 17/01/2022 SENT BY THE  
PETITIONER TO THE 4TH RESPONDENT.

//TRUE COPY/

P.A. TO JUDGE