

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 4<sup>TH</sup> DAY OF JANUARY 2022 / 14<sup>TH</sup> POUSHA, 1943

W.P. (C) NO.40 OF 2022

PETITIONER:

NATIONAL RADIO ELECTRONICS CORPORATION,  
MAIN ROAD, TALIPARAMBA, KANNUR-670 141  
REPRESENTED BY ITS JOINT MANAGING PARTNER,  
P SHAJI.

BY ADV. RAJESH NAMBIAR

RESPONDENTS:

- 1 STATE TAX OFFICER (INTELLIGENCE),  
SQUAD NO.III,  
STATE GOODS AND SERVICE TAX DEPARTMENT KERALA,  
TIRURANGADI AT KOTTAKKAL, PIN-673 306.
- 2 ICICI BANK LTD.,  
NADAKKAVU BRANCH, KOZHIKODE, PIN-673 001  
REPRESENTED BY ITS BRANCH MANAGER.

SMT.M.M.JASMIN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
04.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

The petitioner is challenging Ext.P3 order issued under Section 129 of the Central Goods and Service Tax Act, 2017 to the extent it invoked the bank guarantee furnished by the petitioner, while obtaining release of the goods detained under Section 129(1) of the said Act.

2. The limited relief claimed by the petitioner is that the statute permits him to prefer an appeal within a period of three months and if within the said period of three months, he abides by the terms stipulated in Section 107 of the CGST Act, all proceedings for invocation of the bank guarantee or other proceedings shall stand stayed by virtue of the statutory prescriptions. However, even without waiting for the period of three months, the respondents have proceeded to invoke the bank guarantee, which according to him, is due.

3. The learned Government Pleader Smt.M.M.Jasmin, on instructions, submitted that the bank guarantee has not, in fact, been invoked and that the proper officer does not have any intention to invoke the bank guarantee before the expiry of the appeal period.

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4. Having regard to the period of three months available to the petitioner to prefer an appeal against Ext.P3 order, I am of the opinion that it is essential in the interests of justice that the bank guarantee is not invoked till the period for filing the appeal expires. The order dated 20.12.2021 produced as Ext.P3 shows that the 1<sup>st</sup> respondent has invoked the bank guarantee along with the order under Section 129 CGST Act, itself.

Accordingly, this writ petition is disposed of directing the 1<sup>st</sup> respondent to withhold invocation of the bank guarantee for a period of four months from 20.12.2021 to enable the petitioner to pursue the appellate remedy. It is also directed that the petitioner shall keep alive the bank guarantee for a period of four months from today.

Sd/-

**BECHU KURIAN THOMAS**  
**JUDGE**

bpr

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APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1 TRUE COPY OF THE SHOW CAUSE NOTICE DATED  
23.09.2021 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P2 TRUE COPY OF THE REPLY DATED 15.10.2021  
FILED TO THE SHOW CAUSE NOTICE.

EXHIBIT P3 TRUE COPY OF THE ORDER OF THE 1ST  
RESPONDENT DATED 20.12.2021 IMPOSING TAX  
AND PENALTY.