

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 16<sup>th</sup> 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 2<sup>nd</sup> respondent-Bank to invoke bank guarantee and to forward the demand draft of the value of the said bank guarantee to the 1<sup>st</sup> 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 2<sup>nd</sup> respondent directing the said respondent to encash the bank guarantee and forward the demand draft of the value of the bank guarantee to the 1<sup>st</sup> 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 2<sup>nd</sup> respondent shall not comply with the directions of the 1<sup>st</sup> respondent to encash bank guarantee and to forward the amount under the bank guarantee by demand draft to the 1<sup>st</sup> 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

**APPENDIX**

**PETITIONER'S EXHIBITS:**

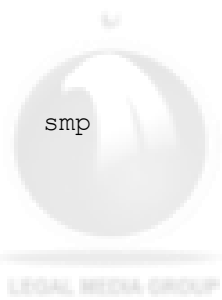
**EXHIBIT P1**                      **A COPY OF THE JUDGMENT OF THIS COURT IN WPC NO.21626 OF 2020 DATED 14.10.2020.**

**EXHIBIT P2**                      **A COPY OF THE BANK GUARANTEE NO.050712BG0000212 ISSUED FOR THE PETITIONER BY THE SECOND RESPONDENT BANK DATED 19.10.2020.**

**EXHIBIT P3**                      **A COPY OF THE ORDER MOV 09 AS VC/VII/78/2020-21 DATED 05.02.2021 ISSUED BY THE FIRST RESPONDENT.**

RESPONDENTS' EXHIBITS: NIL.

True Copy



P.S to Judge

**LEGALERA**  
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE