

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 29TH DAY OF SEPTEMBER 2023 / 7TH ASWINA, 1945

WP(C) NO. 31056 OF 2023

PETITIONER/S:

ANAZ ABDUL RAHIMAN KUTTY, AGED 43 YEARS



BY ADVS. K.N.SREEKUMARAN
P.J.ANILKUMAR (A-1768); N.SANTHOSHKUMAR

RESPONDENT/S:

- 1 STATE TAX OFFICER, STATE GOODS & SERVICES TAX DEPARTMENT,
KAYAMKULAM, PIN - 690502
- 2 STATE TAX OFFICER (ARREAR RECOVERY)
O/O. THE JOINT COMMISSIONER, TAX PAYER SERVICES, STATE
GOODS & SERVICE TAX DEPARTMENT, ALAPPUZHA., PIN - 688001
- 3 STATE OF KERALA REPRESENTED BY ADDITIONAL CHIEF SECRETARY
(TAXES), GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.,
PIN - 695001
- 4 UNION OF INDIA, REPRESENTED BY ITS SECRETARY
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT
OF INDIA, NORTH BLOCK, NEW DELHI., PIN - 110001

RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.09.2023, ALONG WITH WP(C).31026/2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 29TH DAY OF SEPTEMBER 2023 / 7TH ASWINA, 1945

WP(C) NO. 31026 OF 2023

PETITIONER/S:

CVV TRADING COMPANY, 16/239, C.V. TRADING COMPANY,

BY ADVS. K.N.SREEKUMARAN
P.J.ANILKUMAR (A-1768); N.SANTHOSHKUMAR

RESPONDENT/S:

- 1 ASSISTANT COMMISSIONER OF STATE TAX, (RE-DESIGNATED AS DEPUTY COMMISSIONER)
STATE GOODS & SERVICES TAX DEPARTMENT, SPECIAL CIRCLE AT MINI CIVIL STATION, PERUMBAVOOR, PIN - 683542
- 2 DEPUTY COMMISSIONER OF STATE TAX (ARREAR RECOVERY)
TAX PAYER SERVICES, STATE GOODS & SERVICE TAX DEPARTMENT, MINI CIVIL STATION, ALULA, PIN - 683101
- 3 STATE OF KERALA REPRESENTED BY ADDITIONAL CHIEF SECRETARY (TAXES), GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 4 UNION OF INDIA, REPRESENTED BY ITS SECRETARY
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI, PIN - 110001

RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.09.2023, ALONG WITH WP(C).31056/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

[WP(C) Nos.31056/2023, 31026/2023]

WPC 31056/2023

The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner impugning the Exts.P1, P2 and P3.

2. The petitioner is a registered dealer under the provisions of the CGST/SGST Act. The petitioner had filed monthly returns GSTR 3B for the Assessment Year 2017-18. On scrutiny of the monthly return filed by the petitioner, certain discrepancies were noticed, which were communicated to the petitioner through notice in Form GST ASMT 10 as per Rule 99(1) of the GST Rules. The petitioner was directed to furnish a reply along with proof of payment of tax and interest quantified in the notice sent in Form GST ASMT 10 within a period of thirty days from the receipt of the notice. It has been

observed that the petitioner neither filed any reply nor remitted the tax and interest on or after the due date. An intimation as per Rule 142(1A) of the SGST/CGST Rules in Form GST DRC-01A determining the tax ascertained, payable under Section 73(5) of the Act, along with the defects found in the return of the scrutiny was communicated to the petitioner. The petitioner was directed to pay the said amount of tax as ascertained, along with the applicable interest in full by 27.01.2021, failing which show cause notice will be issued under Section 73(1). The petitioner was given an opportunity to file any objection or submission against the intimation. However, the petitioner neither remitted the tax and interest demanded in DRC 01A nor filed any objections to the tax ascertained.

2.1 In the circumstances, notice under Section 73(1) of the SGST/CGST Act along with DRC 01 was issued to the petitioner. The assessment Order would note that said notice

was also delivered to the petitioner through a special messenger. However, the petitioner did not produce any documentary proof to support his claim, nor did he produce the cash book/ day Book, inward supply register, inward supply bills, outward supply register, outward supply bills, stock register and other documents as demanded. In view thereof, considering the difference between GSTR 2A and 3B, the input tax credit claim of the petitioner to the extent of Rs.1,26,281/- under the SGST and the same amount under the CGST were disallowed. The Assessing Authority has levied interest of Rs.1,03,315/- under the CGST and the same amount under the SGST, and Rs.12,628/- each penalty has been imposed under the CGST and SGST. The total tax, interest and penalty has been assessed at Rs.4,84,448/-.

3. The learned Counsel for the petitioner submits that it was the initial period of the implementation of the GST regime. The petitioner and other small dealers were facing a

lot of difficulty. In fact, the supplier dealers have paid the tax for which the petitioner had claimed an input tax credit, and the petitioner has all the evidence to support his claim. The petitioner should be granted one opportunity before the Assessing Authority to produce all the documents to support his claim regarding his claim for the input tax credit to extent of Rs.4,84,448/-

4. Ms Rasmitha Ramachandran has, however, opposed this prayer and submits that the petitioner was served with the notice, and he chose not to respond to the notice. There was compliance of the provisions of the Act and the principle of natural justice. Therefore, this petition is liable to be dismissed.

5. I have considered the submissions.

5.1 The period involved is 2017-18 when the GST regime was rolled out. There may be some substance in the submission of the learned Counsel for the petitioner that the

petitioner faced enormous difficulty in understanding the provisions of the GST Act. He also submits that the tax has been paid to the Government. Therefore, the Government is not at a loss for which the petitioner's claim for input tax claim has been disallowed.

5.2 Considering these aforesaid facts, the impugned order to the extent of disallowing the input tax credit of Rs.4,84,448/- is set aside. The petitioner is directed to appear before the State Tax Officer, Kayamkulam, with all the relevant documents in his possession to support his claim for the input tax credit of an amount of Rs.4,84,448/- for the Assessment Year 2017-18. The State Tax Officer, Kayamkulam, will, after examining the documents and hearing the petitioner, pass fresh orders in accordance with the law within a period of two weeks thereafter. If the petitioner is dissatisfied with the order so passed on remand, he may take recourse to the appropriate proceeding under the Statute.

However, it is made clear that a writ petition shall not be entertained.

W.P.(C) No.31026/2023

6. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner impugning the Exts.P4 and P5 order. The petitioner is a registered dealer under the provisions of the CGST/SGST Act. The petitioner had filed monthly returns GSTR 3B for the Assessment Year 2017-18.

7. Notice under Section 73(1) of the SGST/CGST Act, along with DRC 01, was issued to the petitioner. However, the petitioner did not produce any documentary proof to support his claim. In view thereof, considering the difference between GSTR 2A and 3B, the input tax credit claim of the petitioner to the extent of Rs.1,33,580/- under the SGST and the same amount under the CGST was disallowed. The Assessing Authority has levied interest of Rs.1,46,938/- under the SGST

and the same amount under the CGST, and Rs.13,358/- each penalty has been imposed under the SGST and CGST. The total tax, interest and penalty has been assessed at Rs.5,87,752/-.

8. The learned Counsel for the petitioner submits that the supplier-dealers have paid the tax for which the petitioner had claimed input tax credit, and the petitioner has all the evidence to support his claim. The petitioner should be granted one opportunity before the Assessing Authority to produce all the documents to support his claim regarding his claim for the input tax credit to the extent of Rs.5,87,752/-.

9. Considering these aforesaid facts, the impugned order to the extent of disallowing the input tax credit is set aside. The petitioner is directed to appear before the State Tax Officer, Perumbavoor, with all the relevant documents in his possession to support his claim for the input tax credit for the Assessment Year 2017-18. The State Tax Officer, Perumbavoor, after examining the documents and hearing the

petitioner, will pass fresh orders in accordance with the law within a period of two weeks thereafter. If the petitioner is dissatisfied with the order so passed on remand, he may take recourse to the appropriate proceeding under the Statute. However, it is made clear that a writ petition shall not be entertained.

With the aforesaid directions, both the writ petitions are disposed of.

Sd/-

DINESH KUMAR SINGH

JUDGE

APPENDIX OF WP(C) 31026/2023

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF THE SHOW CAUSE NOTICE IN FORM GST ASMT 10 NO.32AAEFC5987G1ZD/2017-18 DATED 23..6..2020 ISSUED BY THE 1ST RESPONDENT.
- Exhibit-P2 TRUE COPY OF THE REPLY IN ASMT 11 WITH NO.ARN:ZD320920005456Q DATED 8..9..2020 ALONG WITH ATTACHED REPLY DATED 31..8..2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- Exhibit-P3 TRUE COPY OF THE SHOW CAUSE NOTICE NO.32AAEFC5987G1ZD/2017-18 DATED 1..2..2022 ISSUED BY THE 1ST RESPONDENT.
- Exhibit-P4 TRUE COPY OF THE ASSESSMENT ORDER NO.32AAEFC5987G1ZD/2017-18 DATED 4..11..2022 ALONG WITH ANNEXURES AND DRC 07 ISSUED BY THE 1ST RESPONDENT.
- Exhibit-P5 TRUE COPY OF THE NOTICE NO.AR/B4/32AAEFC5987G1ZD/ 2017-18 DATED 18..9..2023 IN MALAYALAM WITH TRUE ENGLISH TRANSLATION ISSUED BY THE 2ND RESPONDENT.

APPENDIX OF WP(C) 31056/2023

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF THE ASSESSMENT ORDER NO.32BIH PA0229H1ZY/2017-18 DATED 15..2..2022 ISSUED BY THE 1ST RESPONDENT.
- Exhibit-P2 TRUE COPY OF THE ORDER U/S 73 AND DRC 07 BEARING NO.ZJ3202220071551 DATED 16..2..2022 ISSUED BY THE 1ST RESPONDENT.
- Exhibit-P3 TRUE COPY OF THE RECOVERY NOTICE NO.32BIHPA0229H1ZY/2017-18 DATED 9..6..2023 IN MALAYALAM WITH TRUE ENGLISH TRANSLATION ISSUED BY THE 2ND RESPONDENT.
- Exhibit-P4 TRUE COPY OF THE ORDER DATED 24..8..2023 IN W.P.(C) 28331/2023 OF THIS HON'BLE COURT.