

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 19TH DAY OF NOVEMBER 2021 / 28TH KARTHIKA, 1943

WP (C) NO. 20447 OF 2021

PETITIONER:

THOMAS MATHEW
PROPRIETOR, M/S. J.M.J.MODERN RICE MILL,
VIII/188A, ARPOOKARA WEST,
KOTTAYAM-686 008.

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

- 1 THE STATE TAX OFFICER (IB) - 1
SGST DEPARTMENT, TAX TOWERS,
5TH FLOOR, KARAMANA,
THIRUVANANTHAPURAM-695 002.
- 2 THE DEPUTY COMMISSIONER (IB)
SGST DEPARTMENT, TAX TOWERS,
5TH FLOOR, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM-695 002.
- 3 THE COMMISSIONER OF STATE TAX
SGST DEPARTMENT, TAX TOWERS,
KILLIPALAM, KARAMANA,
THIRUVANANTHAPURAM-695 002.

BY DR.THUSHARA JAMES, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.11.2021, ALONG WITH WP(C)NOS.20453/2021,
20455/2021 & 20475/2021, THE COURT ON 19.11.2021 DELIVERED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 19TH DAY OF NOVEMBER 2021 / 28TH KARTHIKA, 1943

WP (C) NO. 20453 OF 2021

PETITIONER:

LILLYKUTTY MATHEW
PROPRIETRIX, M/S.ST.MARY'S PADDY PROCESSING UNIT,
ARPOOKARA WEST, KOTTAYAM-686 008.

BY ADVS.

SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

- 1 THE STATE TAX OFFICER (IB) - I
SGST DEPARTMENT, TAX TOWERS,
5TH FLOOR, KARAMANA,
THIRUVANANTHAPURAM-695 002.
- 2 THE DEPUTY COMMISSIONER (IB)
SGST DEPARTMENT, TAX TOWERS,
5TH FLOOR, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM-695 002.
- 3 THE COMMISSIONER OF STATE TAX
SGST DEPARTMENT, TAX TOWERS,
KILLIPALAM, KARAMANA,
THIRUVANANTHAPURAM-695 002.

BY DR.THUSHARA JAMES, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.11.2021, ALONG WITH WP(C).20447/2021 AND
CONNECTED CASES, THE COURT ON 19.11.2021 DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 19TH DAY OF NOVEMBER 2021 / 28TH KARTHIKA, 1943

WP(C) NO. 20455 OF 2021

PETITIONER:

M/S.K.E. AGRO PRODUCTS (P) LTD.,
VIII/188B ARPOOKKARA WEST,
KOTTAYAM, 686 008,
REPRESENTED BY ITS MANAGING DIRECTOR,
THOMAS MATHEW.

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

- 1 THE STATE TAX OFFICER (IB)-1,
SGST DEPARTMENT, TAX TOWERS,
5TH FLOOR, KARAMANA,
THIRUVANANTHAPURAM 695 002.
- 2 THE DEPUTY COMMISSIONER (IB),
SGST DEPARTMENT, TAX TOWERS,
5TH FLOOR, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM 695 002.
- 3 THE COMMISSIONER OF STATE TAX,
SGST DEPARTMENT, TAX TOWERS,
5TH FLOOR, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM 695 002.

BY DR.THUSHARA JAMES, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.11.2021, ALONG WITH WP(C).20447/2021 AND
CONNECTED CASES, THE COURT ON 19.11.2021 DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 19TH DAY OF NOVEMBER 2021 / 28TH KARTHIKA, 1943

WP (C) NO. 20475 OF 2021

PETITIONER:

M/S.GEE YEM AGRO MILLS
IX/134, ELAMBAKKAPPILLY P.O.,
KOOVAPADY, ERNAKULAM 683 544,
REP.BY ITS MANAGING PARTNER, THOMAS MATHEW

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT/S:

- 1 THE STATE TAX OFFICER (IB)-I
SGST DEPARTMENT, TAX TOWERS,
5TH FLOOR, KARAMANA,
THIRUVANANTHAPURAM 695 002
- 2 THE DEPUTY COMMISSIONER (IB)
SGST DEPARTMENT, TAX TOWERS,
5TH FLOOR, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM 695 002
- 3 THE COMMISSIONER OF STATE TAX
SGST DEPARTMENT, TAX TOWERS,
KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM 695 002

BY DR.THUSHARA JAMES, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.11.2021, ALONG WITH WP(C).20447/2021 AND
CONNECTED CASES, THE COURT ON 19.11.2021 DELIVERED THE
FOLLOWING:

“C.R.”

BECHU KURIAN THOMAS, J.

**W.P.(C) Nos.20447, 20453
20455 & 20475 of 2021**

Dated this the 19th day of November, 2021

JUDGMENT

Petitioners' request for transfer of files of enquiry to a place of petitioners' choice and for grant of copy of statements recorded by respondents in the process of investigation into non-collection of tax for outward supply of rice, were not considered by the Proper Officer under the Central Goods and Services Tax Act, 2017 (for short 'the Act').

2. These four writ petitions are filed by respective tax payers against whom summons have been issued relating to an investigation on supply of goods under the Act. When the petitioners were served with the summons, to give evidence in the enquiry, applications were filed seeking transfer of files to an officer in a jurisdiction near to the place of business of the petitioners, alleging the prevalent pandemic as a reason. A further request was made to furnish copy of statements already given by other persons who were summoned as part of the enquiry.

3. In W.P.(C) No.20475 of 2021, the only request made to the Tax Officer was for transfer of the files while in the remaining three cases, the requests included the grant of copy of statements already recorded.

4. By the impugned proceedings, the Proper Officer refused to consider the requests by a curt reply as follows:- “Now the case is being (sic) under investigation stage. At this juncture, the request for transferring the said file to the IB Unit, Kottayam and for issuing copy of statements already obtained from Sri.Benny Joseph, Manager of the firm M/s. St. Marrys Paddy Processing and Sri.Melvin T.Mathew, S/o. Sri.Thomas Mathew, Director of the firm M/s.K.E.Agro Products Pvt. Ltd. cannot be considered.”

5. Petitioners urge that the transfer of files to a place of petitioners' choice and furnishing copy of statements recorded by the officer, to the person, against whom the enquiry is being conducted is part of the constitutional right of every individual and hence petitioners are entitled to get copies of such documents.

6. A counter affidavit was filed by the second respondent in W.P.(C) No.20453 of 2021 stating that the information gathered during the enquiry is very crucial and sensitive in nature and that, issuance of copies or sharing of extracts of the statements at the present stage would prejudicially affect the investigation. It was further averred that, transfer of files to a place of petitioners' choice would defeat the purpose of investigation as those were all matters of administrative arrangement, which cannot be dictated by a person under the cloud of suspicion and investigation.

7. I have heard Adv.Harisankar V.Menon, learned counsel for the petitioners and Dr.Thushara James, learned Senior Government Pleader for the respondents.

8. During the course of arguments, learned counsel for the petitioners submitted that they are not pressing the relief relating to transfer of files, especially since, the waning of restrictions of Covid-19 pandemic enabled ease in commuting to Thiruvananthapuram. In view of the above submission, the claim for transfer of files is rendered infructuous. Even otherwise, petitioners cannot claim any right to have the investigation transferred to the jurisdiction of their choice. Therefore in W.P.(C) No.20475 of 2021, nothing further remains to be considered.

9. Section 67 of the CGST/KGST Act deals with inspection, search, seizure and arrest. Section 67(5) thereof reads as follows:

“The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.”

10. Thus the person from whose custody any documents are seized shall be entitled to make copies which the officer may permit, except in cases where, in the opinion of the Proper Officer taking such copies will prejudicially affect the investigation.

11. Though in the counter affidavit it is pleaded by the first

respondent that issuing copies at this stage will prejudicially affect the investigation, such a reason is absent in the impugned order. A perusal of Ext.P10 reveals that the only reason stated for denying the request for issuance of a copy of the statements recorded is that "it cannot be considered". The Proper Officer did not have a case in Ext.P10 that giving copy of statements would cause prejudice to the investigation. He refused to consider the request.

12. It is the settled proposition of law that an affidavit cannot enlarge or supplement reasons which the order did not contain at the time it was issued. Reasons recorded in the pleadings of an affidavit cannot contribute to the validity of an order when impugned. The reason, must of necessity, be reflected in the order impugned. Reference can be made to **Commissioner of Police, Bombay v. Gordhandas Phanji** (AIR 1952 SC 16) and **Mohinder Singh Gill v. Chief Election Commissioner** [(1978) 1 SCC 405].

13. While refusing to consider the request of the petitioners, the Proper Officer failed to state any reason. The officer had not mentioned that giving copy of the statements would cause prejudice to the investigation. The request of the petitioners for issuing copies of statements already recorded by the investigating officer, as mentioned earlier was refused to be considered. There is a marked distinction between refusing to consider and rejecting an application for reasons.

The Proper Officer ought to have considered the request and either granted copies of the statements or rejected such requests for reasons to be recorded, rather than avoiding consideration of such request.

14. The distinction sought to be canvassed on the basis of a document seized under section 67(5) of the Act and a statement given as evidence pursuant to a summons under section 70 of the Act, though impressive at first blush, may not be of any avail to the petitioners on a deeper consideration. Section 70 of the Act relates to the power to summon persons to give evidence. By the legislative reference in section 70 of the Act, the power to summon persons or produce documents can be treated as akin to the power in the Code of Civil Procedure, 1908 (for short 'the CPC'). It is only the power that is referable to the CPC. This will be clear from a reading of section 70 of the Act, which is as follows:

“70. Power to summon persons to give evidence and produce documents.

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a Civil Court under the provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860).”

15. Order XVI of the CPC deals with power to summon witnesses to give evidence or for production of documents. By conferring the power

of summoning a witnesses to give evidence or to produce a document as provided in Order XVI of the CPC, the nature or character of the investigation or inquiry being conducted under Chapter XIV of the Act will not be changed. The power to summon or produce a document is distinct from the nature of proceedings conducted. Merely because the source of power to summon witnesses and power to direct production of documents is referable to CPC, that does not alter the nature of investigation or inquiry being conducted. It remains to be an investigation or inquiry. Therefore, the contention raised by the petitioners on the basis of section 70 of the Act is rejected.

16. In view of the above deliberations, this Court is of the view that Ext.P10 order is liable to be set aside and the first respondent is directed to reconsider the application of the petitioners for giving a copy of the statements already obtained in the course of investigation and pass fresh orders.

17. In this context, it is relevant to observe that a learned single Judge of this Court had in W.P.(C) No.14144 of 2020 held that, the person against whom an inquiry is conducted will be entitled to seek copies of the documents seized, when they are confronted with any notice or other proceedings, wherein, reliance is placed on such seized documents. The aforesaid judgment was affirmed by a Division Bench of this Court in W.A. No.1185 of 2020. In the instant case, such a situation has also not arisen

as no notice have been issued relying upon any seized document.

In view of the above deliberations, W.P.(C) No.20447 of 2021, W.P.(C) No.20453 of 2021 and W.P.(C) No.20455 of 2021 are allowed in part. Ext.P10 in these three writ petitions are set aside and the first respondent is directed to pass fresh orders on the request of the petitioners for grant of copies of statements recorded from the witnesses. The relief of transfer of files claimed in those writ petitions are dismissed as not pressed. W.P.(C) No.20475 of 2021 is closed, since the only relief claimed in the writ petition is for transfer of files.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX OF WP(C) 20447/2021

PETITIONER'S/S' EXHIBITS

- Exhibit P1 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER'S SON MELVIN T. MATHEW DATED 23.7.2021.
- Exhibit P2 COPY OF REQUEST FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 5.8.2021.
- Exhibit P3 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 9.8.2021.
- Exhibit P4 COPY OF LETTER FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 12.8.2021.
- Exhibit P5 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 17.8.2021.
- Exhibit P6 COPY OF LETTER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 24.8.2021.
- Exhibit P7 COPY OF LETTER SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 26.8.2021.
- Exhibit P8 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT DATED 6.9.2021.
- Exhibit P9 COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 10.9.2021.
- Exhibit P10 COPY OF LETTER ISSUED BY THE 1ST RESPONDENT DATED 7.9.2021.
- Exhibit P11 COPY OF CERTIFICATE WITH DISCHARGE SUMMARY ISSUED BY THE CARITAS HOSPITAL, THELLAKOM P.O., KOTTAYAM DATED 18.9.2021.

APPENDIX OF WP(C) 20453/2021

PETITIONER'S/S' EXHIBITS

- Exhibit P1 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 7.7.2021.
- Exhibit P2 COPY OF REQUEST FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 5.8.2021.
- Exhibit P3 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 9.8.2021.
- Exhibit P4 COPY OF LETTER FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 12.8.2021.
- Exhibit P5 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 17.8.2021.
- Exhibit P6 COPY OF LETTER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 24.8.2021.
- Exhibit P7 COPY OF LETTER SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 26.8.2021.
- Exhibit P8 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT DATED 6.9.2021.
- Exhibit P9 COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 10.9.2021.
- Exhibit P10 COPY OF LETTER ISSUED BY THE 1ST RESPONDENT DATED 7.9.2021.

APPENDIX OF WP(C) 20455/2021

PETITIONER'S/S' EXHIBITS

- Exhibit P1 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO MELVIN T. MATHEW. DTD. 23.07.2021.
- Exhibit P2 COPY OF REQUEST FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 05.08.2021.
- Exhibit P3 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DTD. 09.08.2021.
- Exhibit P4 COPY OF LETTER FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 12.08.2021.
- Exhibit P5 COPY OF THE SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DTD. 17.8.2021.
- Exhibit P6 COPY OF LETTER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DTD. 24.8.2021.
- Exhibit P7 COPY OF LETTER SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 26.08.2021,
- Exhibit P8 COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT DATED 06.09.2021.
- Exhibit P9 COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 10.09.2021.
- Exhibit P10 COPY OF LETTER ISSUED BY THE 1ST RESPONDENT DTD. 07.09.2021.
- Exhibit P11 COPY OF CERTIFICATE WITH DISCHARGE SUMMARY ISSUED BY THE CARITAS HOSPITAL THELLAKOM P.O., KOTTAYAM 18.09.2021.

APPENDIX OF WP(C) 20475/2021

PETITIONER'S/S' EXHIBITS

| | |
|------------|---|
| Exhibit P1 | COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER |
| Exhibit P2 | COPY OF REQUEST FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT |
| Exhibit P3 | COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER |
| Exhibit P4 | COPY OF LETTER FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT |
| Exhibit P5 | COPY OF SUMMONS ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER |
| Exhibit P6 | COPY OF LETTER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER |

