



2023:KER:67277

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR.JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 1ST DAY OF NOVEMBER 2023/10TH KARTHIKA, 1945

W.A.NO.1874 OF 2023

AGAINST THE JUDGMENT DATED 17.10.2023 IN W.P(C).NO.33787/2023 OF
THE HIGH COURT OF KERALA

APPELLANT(S)/PETITIONER:

M/S. GLOBAL PLASTO WARES
AGED 44 YEARS
2/407, AVINISSERY, THRISSUR,
REPRESENTED BY ITS MANAGING PARTNER DAVIS JOHN,
PIN - 680027

BY ADV.SRI.P.N.DAMODARAN NAMBOODIRI
BY ADV.SRI.HRITHWIK D. NAMBOOTHIRI

RESPONDENT(S)/RESPONDENT:

- 1 ASSISTANT STATE TAX OFFICER
TAX PAYER SERVICES CIRCLE, NATTIKA,
STATE GST DEPARTMENT, POOTHOLE, THRISSUR,
PIN - 680004
- 2 THE STATE TAX OFFICER
STATE GST DEPARTMENT, FOURTH CIRCLE, POOTHOLE,
THRISSUR, PIN - 680004
- 3 THE JOINT COMMISSIONER
STATE GST DEPARTMENT, POOTHOLE, THRISSUR,
PIN - 680004

BY DR. THUSHARA JAMES, SENIOR GOVT. PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
01.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

The petitioner in W.P.(C).No.33787 of 2023 is the appellant before us aggrieved by the judgment dated 17.10.2023 of the learned Single Judge in the writ petition.

2. The brief facts necessary for disposal of the Writ Appeal are as follows:

The appellant had impugned Ext.P5 order dated 14.9.2023, by which, *inter alia* it had been imposed a penalty of Rs.40,000/-. The said penalty was imposed on the appellant on the ground that it had not paid the entire tax dues within 30 days from the date of the show cause notice that informed it of the fact that differential tax was due from it. It was the case of the appellant that while the show cause notice intimating it of the differential tax dues was dated 28.2.2022, and it had paid the tax dues mentioned in the notice on 10.3.2022, by Ext.P5 order impugned in the writ petition, the 1st respondent had imposed a penalty *inter alia* under Sub-section (11) of Section 73 of the Central Goods and Services Tax Act [CGST Act]/State Goods and Services Tax Act [SGST Act]. It was the case of the appellant that the show cause notice did not



specifically refer to the provisions of Section 73(11) of the CGST/SGST Act but had proceeded on the assumption that what the appellant was liable to was only a penalty under Section 73(8) of the CGST/SGST Act, which, on the facts of the instant case, did not apply.

3. The learned Single Judge, who considered the matter, found that the Assessing Authority was correct in finding that the appellant was a firm that had not paid the tax collected from its customers to the Department immediately thereafter. The differential tax was paid only when the same was demanded from it, and in view of that factual situation, it was the provision of Section 73(11) that applied to the case of the appellant and the respondents were therefore correct/justified in imposing the penalty in terms of the said statutory provision. The writ petition was therefore dismissed by the learned Single Judge after entering a finding that the view taken by the Assessing Authority did not require any interference by the writ court.

4. We have heard Sri.Hrithwik D. Namboothiri, the learned counsel for the appellant as also Dr. Thushara James, the learned senior Government Pleader for the respondents.

5. Before us, it is the submission of Sri.Hrithwik, the learned counsel for the appellant that the learned Single Judge erred in



confirming the demand of penalty which was impugned in the writ petition. In particular, it is contended that Ext.P1 notice issued to the appellant mentioned only the possibility of a penalty under Section 73(9) of the CGST/SGST Act, and therefore, it was not open to the Assessing Authority to travel beyond the show cause notice and impose a penalty under Section 73(11) of the CGST/SGST Act. The argument of the learned counsel is essentially premised on the principles of natural justice, and it is his submission that those principles have been violated in the instant case.

6. While the said argument of the learned counsel may appear persuasive on first blush, we are afraid, we cannot accept the same on the facts of the instant case. It is not in dispute that the differential tax amount demanded from the appellant pertains to transactions covered by invoices in which the appellant had clearly shown the price of the goods and also the tax amounts due from the customer concerned. While paying the tax due to the State along with the returns filed by the appellant, the appellant had failed to include the tax amounts covered by the invoices considered by the Assessing Authority for the issuance of the demand for differential tax, and it was under those circumstances that the demand for differential tax came to be made as against the appellant. While it may be a fact that Ext.P1 notice issued to the appellant did not specifically refer to Section 73(11) of the CGST/SGST Act, when we find that, on the admitted facts, the



appellant had not paid tax due to the State despite collecting the same from its customers, then, as per the statutory provisions, it is the provision of Section 73(11) and not the provision of Section 73(8) that will apply to determine the penal liability of the appellant. The Assessing Authority, having found that as per the provisions of Section 73(11) of the CGST/SGST Act, the appellant would be liable to penalty in view of the non-payment of tax collected from its customers, we see no reason to interfere with the findings of the learned Single Judge that upheld the order of the Assessing Authority laying down the correct position in law. Merely because the show cause notice issued to the appellant did not refer to a particular statutory provision, the appellant cannot be said to have been prejudiced when the facts leading to the invocation of the statutory provision concerned were admitted by the appellant. We, therefore, dismiss this writ appeal, by upholding the judgment of the learned Single Judge.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE