

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 3RD DAY OF OCTOBER 2023 / 11TH ASWINA, 1945

WP (C) NO. 32070 OF 2023

PETITIONER/S:

GEETHA AGENCIES
R AND E SYNDICATE, M.M. ROAD, THALASSERY, KANNUR
REPRESENTED BY PROPRIETOR VASANTHA K.P, PIN - 670101
BY ADVS.
RAJESH NAMBIAR
SINDHU K.NAMBIAR

RESPONDENT/S:

- 1 DEPUTY COMMISSIONER OF STATE TAX
STATE GOODS AND SERVICE TAX DEPARTMENT, SPECIAL CIRCLE,
KANNUR, PIN - 670002
- 2 DEPUTY COMMISSIONER (ARREAR RECOVERY)
OFFICE OF THE JOINT COMMISSIONER, STATE GOODS AND
SERVICE TAX DEPARTMENT, ADDITIONAL CIVIL STATION ,
KANNUR, PIN - 670002
- 3 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF
FINANCE (DEPARTMENT OF REVENUE) GOVERNMENT OF INDIA,
NORTH BLOCK, NEW DELHI, PIN - 110001
- 4 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS
GST POLICY WING, NORTH BLOCK, NEW DELHI REPRESENTED BY
PRINCIPAL COMMISSIONER (GST), PIN - 110001
- 5 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001

OTHER PRESENT:

RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 3rd day of October, 2023

Instant writ petition has been filed impugning Exhibit P1 assessment order and Exhibit P2 recovery notice. The petitioner's input tax credit for an amount of Rs.1,10769/- (SGST + CGST), has been denied on the ground that there is mismatch in GSTR 2A and GSTR 3B.

2. In reply to the show cause notice, writ petitioner/assessee had submitted that the petitioner had claimed the input tax as specified in GSTR-3B, based on valid invoices available with them. Petitioner also submitted that certain suppliers while uploading the data in GSTR-1, due to certain technical problem in the website, the data was uploaded as '0' tax items.

3. The reply submitted by the petitioner/assessee was not found convincing and satisfactory to drop the proceedings and GST DRC-01A was issued to the petitioner. Thereafter, notice under Section 73 of the State Goods and Services Tax Act, 2017 was issued and Exhibit P1 order came to be passed for an amount of Rs. 3,61,304/-, which would include denied

input tax to an extent of Rs.1,62,526/- + interest @ 79.5% Rs.1,78,778/- and penalty of Rs.20,000/-. For realisation of the said amount, revenue recovery notice Exhibit P2 has been issued.

4. Learned counsel for the petitioner submits that the supplier/dealer has remitted the tax collected from the petitioner for inward supply, with some delay. There is no difference between the GSTR 3B, on the basis of which the petitioner claimed the input tax credit and the GSTR 2A, reflecting the tax paid by the supplier/dealer. If the petitioner is given an opportunity, he will prove that the input tax credit claimed by him is correct and the tax amount for which the input tax credit claimed by the petitioner is truly reflected in GSTR 2A.

5. Learned counsel for the petitioner also placed reliance on the judgment of this Court dated 12.9.2023 in W.P(C).No.29769 of 2023, wherein this court held that denial of input tax credit merely on the ground that there is difference between GSTR-2A and GSTR-3B should not be correct, if the assessee, on the basis of the evidence and

documents is able to prove that in fact he has paid the tax to supplier /dealer, who did not pay tax to the Government.

6. In the present case, learned counsel for the petitioner submitted that this is not a case of nonpayment of tax by supplier dealer. In fact the tax was collected by the supplier/dealer from the petitioner, for which he has claimed the input tax credit, is reflected in the form GSTR 2A.

7. Considering the said aspect of the matter that as per the stand of the petitioner/assessee, the tax for which the petitioner claimed input tax credit is reflected in Form GSTR 2A, though with some delay, the claim of the petitioner for input tax credit which has been denied in Exhibit P1 does not appear to be correct.

8. To prove his case, one opportunity is granted to the petitioner to appear before the Assessing authority, within seven days from today with all relevant documents.

The present writ petition is allowed. Impugned order Exhibit P1 and notice Exhibit P2 are set aside. Petitioner is directed to appear before the assessing authority within seven days from today with all relevant documents and on

examination of the documents, if the assessing authority is satisfied that the petitioner's claim for input tax credit denied by Exhibit P1 order, is bonafied, he be granted the said benefit and a revised order be issued.

**sd/- DINESH KUMAR SINGH
JUDGE**

SJ

APPENDIX OF WP(C) 32070/2023

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE ASSESSMENT ORDER ISSUED
BY THE 1ST RESPONDENT DATED 20.10.2022
UNDER THE STATE GOODS AND SERVICE TAX ACT
FOR THE YEAR 2017-18
- EXHIBIT P2 TRUE COPY OF THE RECOVERY NOTICE DATED
2.09.2023 ISSUED BY THE 2ND RESPONDENT
WITH ENGLISH TRANSLATION
- EXHIBIT P3 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE
COURT IN W.P. (C) 29769 OF 2023 DATED
12.09.2023
- EXHIBIT P4 TRUE COPY OF THE INTERIM ORDER IN W.P.
(C) 27893/2023 DATED 22.08.2023