

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

MONDAY, THE 06TH DAY OF JULY 2020 / 15TH ASHADHA, 1942

WP (C) . No. 13493 OF 2020 (J)

PETITIONER/S:

JOY MATHEW
PROPRIETOR, ABRA FILM INTERNATIONAL, 33/4686, TOMS
COTTAGE, MALAPARAMBA, KOZHIKODE-673009.

BY ADV. SRI.K.I.MAYANKUTTY MATHER

RESPONDENT/S:

- 1 UNION OF INDIA,
THROUGH ITS SECRETARY (REVENUE), MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, GOVERNMENT OF INDIA, NORTH
BLOCK, NEW DELHI G.O.P.-110001.
- 2 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM G.P.O., THIRUVANANTHAPURAM-695001.
- 3 GST COUNCIL,
THROUGH ITS CHAIRPERSON, DEPARTMENT OF FINANCE, NORTH
BLOCK, NEW DELHI P.O., NEW DELHI-110001.
- 4 STATE TAX OFFICER,
OFFICE OF THE STATE TAX OFFICER, 2ND CIRCLE, SALES
TAX COMPLEX BUILDING, 2ND FLOOR, JAWAHAR NAGAR
COLONY, ERANHIPALAM P.O., KOZHIKODE-673006.
- 5 GOODS AND SERVICES TAX NETWORK,
THROUGH ITS CHAIRMAN, EAST WING, 401 FLOOR, WORLD
MARK-AERO CITY, GURGAON ROAD P.O., NEW DELHI-110037.
- 6 DEPUTY COMMISSIONER OF STATE TAX,
SALES TAX COMPLEX BUILDING, 3RD FLOOR, JAWAHAR NAGAR
COLONY, ERANHIPALAM P.O., KOZHIKODE-673006.

OTHER PRESENT:

SRI P VIJAYAKUMAR ASGI , GP DR THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 6th day of July 2020

Through the instant petition challenge has been laid to Exts.P4, P4 (a), P4(b) & P4 (c) Assessment orders and recovery notices Exts.P8, P8(b) & P8(c) with other consequential prayers. In support of the aforementioned prayer, the writ petition is based on the facts that owing to the advent of the new GST regime in case petitioner who is registered with GST is of the view that, is not liable to pay tax for these period need not file GST returns showing nil, but the provisions of the Act envisages requirement of filing returns. The aforementioned difficulty has been agitated in the present writ petition.

2. Petitioner, a registered dealer on the roles of the 4th respondent was granted registration under the GST Act. It is engaged in the production and distribution of films and had been regularly filing returns without fail. For the period from July 2018, petitioner submitted the payment of GST under CGST and SGST instead of IGST. The State after filing of the returns on input tax credit adjustment of Rs. 24.70 lakhs there was a short

fall of IGST and excess payment towards CGST and SGST was of sum of Rs.12.93 lakhs. On account of the fault committed by the petitioner to file returns in the month of July 2018 to March 2019, petitioner received notices dated 31 May 2019 in the form of GSTR-3A purportedly under Section 46 of KGST Act and CST Act. They were received on 1st July 2018 as evidenced vide P1 to P1 a (s) to c (2). The notices pertained to period August 2018, October 2018 and December 2018.

3. In response to the aforementioned, reply dated 25.9.2019 in accordance with the provisions of statute, was filed as evidenced from Ext.P3.

4. Mr. K.I Mayinkutty Mather, learned Counsel for the petitioner submitted that the 4th respondent ignoring the reply passed the assessment order impugned order aforementioned and recovery notice are totally in derogation of Section 62 (1) of the Act. He further submits that as per the provisions of sub section 2 of Section 62 of the GST Act, if on receipt of the assessment orders under Section 62(1), the assessee files returns within a period 30 days of the of the said assessment orders, the assessment orders issued are automatically recalled.

Petitioner on receipt of Exts.P1 to P1 (c) notices filed assessment vide Ext.P6 series on different dates, but within thirty days as Exts.P4 was dispatched on 19.9.2019, received on 27.9.2019.

5. Apparently, the returns filed within time as evidenced from screenshots Ext.P7.

6. For the reasons best known 4th respondent issued recovery notices Ext.P8 which are without adherence to sub Section 62(2) of the GST Act. The question of raising demand could not arise qua the returns in respect of the period referred to was not exigible to tax.

7. Issue notice before admission. Dr.Thushara James, learned Government Pleader accepts notice and submits that apparently there appears to be a compliance of provisions of the Act, but on perusal of Ext.P7 screen shots, it cannot be ruled out, petitioner purportedly complied with the provisions of sub section 2 of Section 62 and is not averse of the re-adjudication of the matter, in case the matter is revisited.

8. I have heard Counsel for the parties and appraised the paper books. On a plain reading of Section 62 (2), extracted in paragraph 18 of the writ petition which I need not reproduce it

again, it is not in doubt that whenever an assessee fails to file a return an assessing officer is required to sent the assessment order in terms of provisions Section 62 (1) of the Act but, there is a caveat in terms of provision under Section 62 (2) where on receipt of such information, as noticed above, was received by the petitioner on 27.10 2019, petitioner filed the returns on 25.10.2019 within 30 days. There could not have been an occasion for issuing of recovery notices as assessment orders Ext.P4 were in law required be withdrawn. There appears an apparent error and omission on the part of the revenue in not adhering to the fact referred (supra). For the reasons aforementioned impugned recovery notices Ext.P8 are set aside. Writ petition is allowed. 4th respondent is directed to look into the returns filed as evidenced from Ext.P6 and P7 and take a call on sustainability of Ext.P4. This exercise shall be undertaken after affording an opportunity of hearing to the petitioner in accordance with law.

sd/-

AMIT RAWAL

JUDGE

Jm/

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE FORM GSTR -3A NOTICE ISSUED BY THE 4TH RESPONDENT - AUGUST 2018 DATED 31.5.2019.

EXHIBIT P1 (A) TRUE COPY OF THE FORM GSTR -3A NOTICE ISSUED BY THE 4TH RESPONDENT - OCTOBER 2018 DATED 31.5.2019.

EXHIBIT P1 (B) TRUE COPY OF THE FORM GSTR -3A NOTICE ISSUED BY THE 4TH RESPONDENT - NOVEMBER 2018 DATED 31.5.2019.

EXHIBIT P1 (C) TRUE COPY OF THE FORM GSTR -3A NOTICE ISSUED BY THE 4TH RESPONDENT - DECEMBER 2018 DATED 31.5.2019.

EXHIBIT P2 TRUE COPY OF THE POSTAL COVER DATED 1.7.2019.

EXHIBIT P3 TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER TO THE 4TH RESPONDENT DATED 25.9.2019.

EXHIBIT P4 TRUE COPY OF THE ASSESSMENT ORDER-GST-ASSESSMENT -13- AUGUST 2018 19.9.2019.

EXHIBIT P4 (A) TRUE COPY OF THE ASSESSMENT ORDER-GST-ASSESSMENT -13- OCTOBER 2018 DATED 23.9.2019.

EXHIBIT P4 (B) TRUE COPY OF THE ASSESSMENT ORDER-GST-ASSESSMENT -13- NOVEMBER 2018 DATED 19.9.2019.

EXHIBIT P4 (C) TRUE COPY OF THE ASSESSMENT ORDER-GST-ASSESSMENT -13- DECEMBER 2018 23.9.2019.

EXHIBIT P5 TRUE COPY OF THE POSTAL COVER IN WHICH EXTS. P4, P4 (A), P4 (B) AND P4 (C) WERE ENCLOSED DATED 27.9.2019.

EXHIBIT P6 TRUE COPY OF THE FORM GSTR 3B RETURN FILED

BY THE PETITIONER FOR THE RETURN PERIOD-
AUGUST 2018 SUBMITTED ON 25.10.19.

EXHIBIT P6 (A)

TRUE COPY OF THE FORM GSTR 3B RETURN FILED
BY THE PETITIONER FOR THE RETURN PERIOD-
OCTOBER 2018 SUBMITTED ON 25.10.19.

EXHIBIT P6 (B)

TRUE COPY OF THE FORM GSTR 3B RETURN FILED
BY THE PETITIONER FOR THE RETURN PERIOD-
NOVEMBER 2018 SUBMITTED ON 25.10.19.

EXHIBIT P6 (C)

TRUE COPY OF THE FORM GSTR 3B RETURN FILED
BY THE PETITIONER FOR THE RETURN PERIOD-
DECEMBER 2018 SUBMITTED ON 25.10.19.

EXHIBIT P7

TRUE COPY OF THE SCREENSHOT OF THE
PETITIONER'S E-PORTAL EVIDENCING THE DATE
OF SUBMISSION OF FORM GSTR 3B RETURNS FOR
THE PERIODS - AUGUST 2018, OCTOBER 2018,
NOVEMBER 2018 AND DECEMBER 2018.

EXHIBIT P8

TRUE COPY OF THE FORM GST DRC 07- SUMMARY
OF ORDERS FOR THE RETURN PERIOD- AUGUST
2018 DATED 23.11.2019.

EXHIBIT P8 (A)

TRUE COPY OF THE FORM GST DRC 07- SUMMARY
OF ORDERS FOR THE RETURN PERIOD- OCTOBER
2018 DATED 23.11.2019.

EXHIBIT P8 (B)

TRUE COPY OF THE FORM GST DRC 07- SUMMARY
OF ORDERS FOR THE RETURN PERIOD- NOVEMBER
2018 23.11.2019.

EXHIBIT P8 (C)

TRUE COPY OF THE FORM GST DRC 07- SUMMARY
OF ORDERS FOR THE RETURN PERIOD- DECEMBER
2018 DATED 23.11.2019.

EXHIBIT P9

TRUE COPY OF THE E-MAIL COMMUNICATIONS
ISSUED BY THE 5TH RESPONDENT TO THE
PETITIONER DATED 22.2.2020.

EXHIBIT P9 (A)

TRUE COPY OF THE E-MAIL COMMUNICATIONS
ISSUED BY THE 5TH RESPONDENT TO THE
PETITIONER DATED 22.2.2020.

EXHIBIT P9 (B)

TRUE COPY OF THE E-MAIL COMMUNICATIONS
ISSUED BY THE 5TH RESPONDENT TO THE
PETITIONER DATED 1.3.2020.

EXHIBIT P10

TRUE COPY OF THE RECTIFICATION PETITION
SUBMITTED BY THE PETITIONER BEFORE THE 4TH
RESPONDENT (AUGUST 2018) DATED 22.2.2020.

EXHIBIT P10 (A)

TRUE COPY OF THE RECTIFICATION PETITION
SUBMITTED BY THE PETITIONER BEFORE THE 4TH
RESPONDENT (OCTOBER 2018) DATED 22.2.2020.

EXHIBIT P10 (B)

TRUE COPY OF THE RECTIFICATION PETITION
SUBMITTED BY THE PETITIONER BEFORE THE 4TH
RESPONDENT (NOVEMBER 2018) DATED 22.2.2020.

EXHIBIT P10 (C)

TRUE COPY OF THE RECTIFICATION PETITION
SUBMITTED BY THE PETITIONER BEFORE THE 4TH
RESPONDENT (DECEMBER 2018) DATED 22.2.2020.