



2023:KER:82193

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 21ST DAY OF DECEMBER 2023 / 30TH AGRAHAYANA,

1945

WP(C) NO. 42265 OF 2023

PETITIONER/S:

VADAKKOOT CHACKOO DEVASSY,
AGED 79 YEARS
S/O. LATE V.L. CHACKOO, VADUKKOOTT HOUSE,
PAVARATTY P.O, THRISSUR DISTRICT. PROPRIETOR OF
SADHU HARDWARE, DOOR NO.472, PAVARATTY P.O,
THRISSUR DISTRICT, PIN - 680507.

BY ADVS.
K.J.ABRAHAM
ARAVINDAKSHAN K.R.
NIKHIL JOHN

RESPONDENT/S:

- 1 ASSISTANT STATE TAX OFFICER,
STATE GST DEPARTMENT, TAX PAYER SERVICES CIRCLE,
MINI CIVIL STATION, CHAVAKAD, THRISSUR DISTRICT,
PIN - 680004
- 2 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
REPRESENTED BY PRINCIPAL COMMISSIONER (GST), GST
POLICY WING, NORTH BLOCK, NEW DELHI, PIN - 110001
- 3 THE GOODS AND SERVICE TAX COUNCIL,
5TH FLOOR, TOWER II, JEEVAN BHARATI BUILDING,
JANPATH ROAD, CANNAUGHT PLACE, NEW DELHI- 110001.
REPRESENTED BY ITS CHAIRPERSON
- 4 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM DISTRICT, PIN - 695001



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5 UNION OF INDIA
 REPRESENTED BY SECRETARY (REVENUE), MINISTRY OF
 FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW
 DELHI, PIN - 110001

BY ADV THANUJA ROSHAN

OTHER PRESENT:

SMT.JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 21.12.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



J U D G M E N T

The present writ petition has been filed seeking the following reliefs:

“i. issue a WRIT OF CERTIORARI or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing Exhibit P5 order and P6 summary of order in Form GST DRC-07 passed by the 1st respondent as barred by limitation and against the principle of natural justice, or pass such further or other orders as may deem fit and proper in the circumstances of this case, and render justice;

ii. direct to invoke powers under section 172 of the CGST/SGST Act, 2017 to remove the difficulties faced by the taxable persons to avail input tax credit which was claimed through the returns filed belatedly without any specific time limit;

iii. to declare section 16(4) of the CGST/SGST Act, 2017 as ultravies to section 16(1) and 16(2) of the CGST Act as well as unconstitutional.”



2. Notice in Form GST ASMT-10 under Rule 99(1) of the Central Goods and Services Tax Rules, 2017/State Goods and Services Tax Rules, 2017 was issued to the petitioner on 29.9.2023 and on the very next day, a show cause notice under Section 73 of the Central Goods and Services Tax Act, 2017/State Goods and Services Tax Act, 2017 came to be issued. Learned counsel for the petitioner submits that no official copy of the notice either in GST ASMT-10 or the show cause notice dated 30.9.2023 under Section 73 was issued to the petitioner physically and the same were uploaded in the GST portal. Since the petitioner's registration had been cancelled before issuance of the said notices, the petitioner did not file reply to the said show cause notices. Otherwise, the petitioner was not granted any time in the notice so issued in GST ASMT-10 and therefore, there has been violation of the principles of natural justice in passing the assessment order, Ext.P5.



3. *Prima facie*, I find some substance in the submission advanced by the learned counsel for the petitioner. Notice in Ext.P2 disclosed that it is dated 29.9.2023 and on the very next day, Ext.P3 notice under Section 73 was issued. The petitioner was not afforded any time for filing reply to the notice in GST ASMT-10.

4. It is also not in dispute that the petitioner's GST registration was cancelled before the said notices were uploaded in the GST portal.

5. In view thereof, I find that there is violation of the principles of natural justice and, therefore, the impugned assessment order, Ext.P5, is unsustainable and the same is hereby set aside. The matter is remanded back to the file of the assessing authority, 1st respondent, to pass fresh a order. The petitioner is permitted to file reply to the show notice dated 30.9.2023, Ext.P3, within a period of three (3) days from today. If the petitioner files reply as above, he shall be afforded an opportunity before finalising the fresh



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assessment and order shall be passed as directed above by the assessing authority. The petitioner-assessee will not take any ground regarding the limitation in finalising the assessment for the assessment year 2017-18.

with the aforesaid observations and directions, the present writ petition stands finally disposed of. Pending interlocutory application, if any, in the present writ petition stands dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

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APPENDIX OF WP (C) 42265/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER FOR CANCELLATION OF REGISTRATION IN FORM GST REG-19 DATED 19.04.2021 ISSUED TO THE PETITIONER
- Exhibit P2 TRUE COPY OF NOTICE IN GST ASMT-10 DATED 29.09.2023 FOR THE YEAR 2017-18 ISSUED BY THE 1ST RESPONDENT
- Exhibit P3 TRUE COPY OF THE SHOW CAUSE NOTICE U/S.73 REF NO-32ABPPD1815Q1ZI /17-18 DATED 30.09.2023
- Exhibit P4 TRUE COPY OF THE SUMMARY OF SHOW CAUSE NOTICE IN FORM GST DRC-01 DATED 30.09.2023 WITH REFERENCE NO-ZD320923018533L
- Exhibit P5 TRUE COPY OF THE ORDER U/S.73 OF THE ACT FOR THE YEAR 2017-18 REF NO-ZD321123003030N DATED 03.11.2023 AND PROCEEDING PASSED BY THE 1ST RESPONDENT
- Exhibit P6 TRUE COPY OF THE SUMMARY OF THE ORDER IN FORM GST DRC-07 REF NO-ZD321123003030N DATED 03.11.2023 PASSED BY THE 1ST RESPONDENT
- Exhibit P7 TRUE COPY OF THE INTERIM ORDER PASSED BY THIS HON'BLE COURT IN WP (C) NO.31219 OF 2022 DATED 06.10.2022 PASSED BY THIS HON'BLE COURT
- Exhibit P8 TRUE COPY OF THE INTERIM ORDER PASSED BY THIS HON'BLE COURT IN WP (C) NO.32854 OF 2022 DATED 18.10.2022