

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945

WP(C) NO. 22478 OF 2023

PETITIONER/S:

RAJU JOSEPH,
AGED 49 YEARS
PROP: FUTURE GRAPHIC SYSTEMS, TP 10/600, VARANAM,
ALAPPUZHA, PIN - 688555

BY ADVS.
K.N.SREEKUMARAN
P.J.ANILKUMAR (A-1768)
N.SANTHOSHKUMAR

RESPONDENT/S:

- 1 STATE TAX OFFICER,
STATE GOODS & SERVICES TAX DEPARTMENT, MINI CIVIL STATION,
CHERTHALA., PIN - 688522
- 2 ASSISTANT STATE TAX OFFICER,
TAXPAYER SERVICES CIRCLE, STATE GOODS & SERVICE TAX
DEPARTMENT, ALAPPUZHA NORTH, MINI CIVIL STATION,
ALAPPUZHA., PIN - 688013
- 3 COMMISSIONER OF STATE GOODS & SERVICE TAX DEPARTMENT,
TAX TOWER, 9TH FLOOR, KILLIPPALAM, KARAMANA-P.O,
THIRUVANANTHAPURAM, PIN - 695002
- 4 STATE OF KERALA, REPRESENTED BY ADDITIONAL CHIEF
SECRETARY (TAXES),
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001

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

BY ADVS.
THUSHARA JAMES
K.R.RAJKUMAR
SREEJITH P. R

OTHER PRESENT:

RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The present writ petition under Article 226 of the Constitution of India has been filed impugning Exts. P5 and P5(a) orders dated 14.06.2023 and 16.06.2023, respectively.

2. The petitioner is a registered dealer under the provisions of Central Goods and Services Tax (CGST) Act as well as the State Goods and Services Tax (SGST) Act. On a perusal of the records in the writ petition, it appears that the only ground on which the petitioner has been said to have availed excess input tax credit is the difference between Form GSTR 2A and Form GSTR 3B for the tax period 2017-18.

3. The Learned Counsel for the petitioner submits that the Government of India, Department of Revenue, Central Goods Indirect Tax and Customs considered the difficulties faced by the assesseees in the initial year in respect of

difference in input tax availed in Form GSTR 3B as compared to that received in form GSTR 2A for the financial year 2017-18 and 2018-19 and has issued clarification *vide* Circular No.183/15/2022-GST dated 27.12.2022, and it has been said that where the supplier has filed GSTR-1 as well as return in Form GSTR-3B for a tax period, but has declared the supply with the wrong GSTIN of the recipient in Form GSTR-1, the difference regarding the input tax credit claim by the recipient dealer in its Form GSTR-3B, but it is not reflected in Form GSTR-2A because of the wrong GSTIN of the recipient, the procedure has to be followed as amended in paragraph 4 of the Circular dated 27.12.2022.

3.1 Paragraph 4 of the said Circular reads as follows:

“4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfilment of the following conditions of

Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii) that he has received the goods or services or both;
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the

said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icaai.org/search-udin> and that issued by CMAs can be verified from ICAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of

furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till

the due date of furnishing FORM GSTR 1 for the month of March, 2019.”

3.2 Paragraph 5 of the Circular also clarifies that the Circular would be applicable in respect of *bona fide* errors committed in reporting during financial years 2017-18 and 2018-19 and the guidelines issued for reconciliation of the input tax credit claimed in Form GSTR -3B and Form GSTR – 2 and as reflected in Form GSTR – 2A are clarificatory in nature and may be applied to the facts and circumstances of each case.

3.3 Learned Counsel for the petitioner has also placed reliance on the Judgment of this Court in the case of *Diya Agencies v. State of Kerala*¹ wherein paragraph 8 of the Judgment reads as under:

“8. In view thereof, I find that the impugned Exhibit P-1

¹ Judgment dated 12.09.2023 in W.P.(C) No.29769/2023

assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit. If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be given input tax credit. Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit. The assessing authority is therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit. The petitioner is directed to appear before the assessing authority within fifteen days with all evidence in his possession to prove his claim for higher claim of input tax credit. After examination of the evidence placed by the petitioner/assessee, the assessing authority will pass a fresh order in accordance with law.”

4. Considering these facts and taking into consideration Circular No.183/15/2022-GST dated 27.12.2022, the present writ petition is allowed. The impugned Exts. P5 and P5(a) orders dated 14.06.2023 and 16.06.2023 are set aside.

The matter is remitted back to the Assessing Authority to reconsider the case of the petitioner irrespective of the Form GSTR 2A for the petitioner's claim of the input tax credit. However, the petitioner shall deposit 10% of the amount assessed within a period of fifteen days and appear before the Assessing Authority with all the documents and evidence in his possession for passing fresh orders in accordance with the law.

4.1 If, on consideration of the evidence and materials and also the Circular, the Assessing Authority is of the opinion that the petitioner's claim for input tax credit for the financial year 2017-18 is not justified, the petitioner shall be liable to remit the remaining amount. The 10% of the amount assessed paid by the petitioner shall be subject to the final decision of the Assessing Authority. The petitioner shall appear before the

Assessing Authority on **30.11.2023** at 11.00 a.m., complying with all the directions as above.

The writ petition stands allowed.

Sd/-

DINESH KUMAR SINGH

JUDGE

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APPENDIX OF WP(C) 22478/2023

PETITIONER EXHIBITS

Exhibit-P1	TRUE COPY OF SHOW CAUSE NOTICE IN FORM NO.GST ASMT 10 DATED 23..8..2020 ISSUED BY THE 1ST RESPONDENT.
Exhibit-P2	TRUE COPY OF THE REPLY NO.GST ASMT 11 DATED 19..9..2020 FILED BEFORE THE 1ST RESPONDENT
Exhibit-P3	TRUE COPY OF THE NOTICE ALONG WITH FORM GST DRC-01 DATED 2..9..2021 ISSUED BY THE 2ND RESPONDENT.
Exhibit-P4	TRUE COPY OF THE REPLY IN DRC 06 (AS PART B OF THE NOTICE) DATED 25..9..2021 FILED BEFORE THE 2ND RESPONDENT
Exhibit-P5	TRUE COPY OF ORDER NO.1/2023/ALPYNORTH CIRCLE DATED 14..6..2023 IN FORM GST DRC 07 ISSUED BY THE 2ND RESPONDENT.
Exhibit-P5(a)	TRUE COPY OF SUMMARY ORDER UNDER REFERENCE NO.ZD320623011506V DATED 16..06..2023 ISSUED BY THE 2ND RESPONDENT
Exhibit-P6	TRUE COPY OF THE ORDER DATED 11..11..2022 IN W.P.(C) 32054/2022 OF THIS HON'BLE COURT