IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WA NO. 636 OF 2025

AGAINST THE JUDGMENT DATED 27.03.2025 IN WP(C) NO.10993 OF 2025 OF HIGH COURT OF KERALA

APPELLANT(S)/PETITIONER :

ITI LIMITED
KANJIKODE(WEST), PALAKKAD
REPRESENTED BY ITS DEPUTY FINANCE MANAGER/
UNIT FINANCE HEAD, VINAY.M.P, PIN - 678623

BY ADVS.ANIL D. NAIR (SR.)
PADMANATHAN K.V.
R.SREEJITH

RESPONDENT(S)/RESPONDENTS:

1 **THE JOINT COMMISSIONER**
CENTRAL TAX & CENTRAL EXCISE, CENTRAL REVENUE BUILDING,
MANANCHIRA ROAD, KOZHIKODE, PIN - 673001

2 **THE COMMISSIONER**
CENTRAL TAX & CENTRAL EXCISE, CENTRAL REVENUE BUILDING,
MANANCHIRA ROAD, KOZHIKODE, PIN - 673001

BY ADV SRI. GIRISH KUMAR V, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DR. A.K. JAYASANKARAN NAMBIAR &
EASWARAN S., JJ.

W.A. No.636 of 2025

Dated this the 10th day of April, 2025

JUDGMENT

Easwaran S.,J.

This intra court appeal is preferred by the appellant/petitioner aggrieved by the judgment of the learned Single Bench in dismissing the W.P.(C) No.10993 of 2025 directing him to avail the alternate remedy of appeal under Section 107 of the Central Goods and Services Tax Act (for short, CGST Act).

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

The appellant/petitioner is a Central Public Sector undertaking engaged in assembling of telephone exchanges for BSNL/MTNL, manufacture and supply of telecommunication equipments such as EPBAX systems and also providing data collection services through third party service providers for National Population Registry, Socio Economic and Caste Census etc.. The petitioner is a registered assessee under the provisions of the CGST-SGST Act, 2017. In the course of the business, especially during the financial year 2017-2018 to 2019-2020, the petitioner availed input tax credit in its monthly GSTR-3B returns on the

basis of reflection in GSTR-2A. Wherever the payments were not made within a period of 180 days, the petitioner is stated to have reversed the input tax credit availed on expiry of 180 days. Subsequently, when the payments were made during the financial year 2020-2021, the petitioner reclaimed the input tax credit in the monthly GSTR-3B returns. Thus, according to the petitioner, the input tax credit availed in GSTR-3B returns during the financial year 2020-2021 includes input tax credit pertaining to invoices reflected in GSTR-2A of the financial year 2020-2021. When the authorities scrutinised the statutory returns in GSTR-9, GSTR-3B and GSTR-2A for the financial year 2020-2021, it was observed that there was a mismatch between IGST credit auto-populated in GSTR-2A and IGST credit availed in GSTR-3B. Accordingly, the show cause notice dated 9.10.2024 was issued to the petitioner. The petitioner showed cause by a reply dated 1.11.2024. Thereafter, on 23.1.2025, the 1st respondent conducted a personal hearing. During the course of personal hearing, as evident from Ext.P3, it was noticed that the petitioner had produced various annexures along with the argument note and, it was recorded by the proper officer. Written submissions were also given by the petitioner. However, by Ext.P4 order, ignoring the relevant documents produced by the petitioner, the proper officer proceeded to assess the petitioner for an amount of Rs.3,28,92,582/-, the IGST under Section 73 of the CGST Act and SGST Act read with

Section 20 of IGST Act, 2017 and further imposed a penalty of Rs.32,89,258/- under Section 73(9) of the Act. Aggrieved by the said order, the petitioner approached the writ court raising a primary ground on account of violation of the principles of natural justice inasmuch as the 1st respondent failed to consider the relevant documents produced by it before the authority in the course consideration of Ext.P1 show cause notice. The learned Single Judge who considered the writ petition found that the question as to whether the competent authority had considered the documents produced before it or not is a question of fact which could be agitated by the petitioner in an appeal to be preferred against Ext.P4 order and therefore declined to exercise the discretion and dismissed the writ petition as not maintainable reserving liberty to the petitioner to pursue the statutory remedies. Thus, the petitioner is before this Court in this intra-court appeal.

3. Heard Sri. Anil D. Nair, the learned Senior counsel appearing for the appellant assisted by K.V. Padmanathan and Sri. Girish Kumar, the learned Standing Counsel appearing for the respondents.

4. When the matter came up for consideration before us on 4.4.2025, after hearing both parties, we had directed the learned Standing Counsel to file an affidavit of the concerned officer stating as to whether the documents stated to have been presented by him before the authority was infact presented or not.

5. Today, when the matter is taken up for consideration, Sri. Girish Kumar, the learned Standing Counsel appearing for the respondents filed a statement, wherein, it is stated under paragraph Nos.3 and 4 as follows:

> " 3. It is submitted that the Petitioner's claim that they had submitted a month-wise breakup of ITC availed including the ITC re-claimed as Annexure 'A' and the invoices given in the Annexure 'C' for reconciliation, are documents generated by them from their in house computer systems, and are not relatable to the data available in the statutory returns filed in the GST system/portal. During the proceedings, the petitioner was supposed to bring data to prove that the reversal of the ITC was done on account of the reasons for which he had reclaimed it after a period of time, which they have not submitted. The data given by the Petitioner in relation to the ITC reversed and re-claimed, is not relatable or reconcilable with the data available in the GST portal and the onus was on the Petitioner to reconcile the same in support of his arguments which they have failed to do. The Petitioner, in the Writ Appeal, has produced documents which cannot be verified in terms of the data available in the GST portal.
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> 4. It is most respectfully submitted that while issuing the said Show Cause Notice, it was also made clear that all the documentary evidences supporting their defence should be submitted. But no such relevant documents had been submitted to substantiate their claim. ITC availed and utilized had a huge difference on just comparison of the statutory returns submitted by the petitioner and they themselves have accepted in their reply that they had committed some errors while availing the Input Tax Credit. It was obligatory on the part of the petitioner to submit the relevant documents to prove that ITC availed and

> utilized were eligible. The same were not submitted by the Petitioner as explained in detail in para 10.1,10.2,10.3,10.4 and 10.5 of the impugned Order in Original."

6. A reading of the statement above would clearly show that the case projected by the petitioner is, in fact, true. The entire materials were placed before the authority in the statutory forms, and it was incumbent upon them to verify the genuineness of the statutory forms that are available in the portal. When we read the impugned order, we find that the stand as now reflected in the statement that the 1st respondent could not reconcile the data available in the GST portal and, therefore, he had proceeded to reject the claim of the petitioner, does not appear to be the ground on which the final order was issued. The apparent change in the stand clearly reveals that the 1st respondent did not apply his mind properly to the relevant records before it. It is in this context that we need to appreciate the argument of Sri. Anil D. Nair, the learned Senior counsel, that had an opportunity been granted to the appellant, which is indeed a Central Government undertaking to explain the entries in the statement in order to reconcile the same with the statutory forms in the portal, the consequences would have been different.

7. We find considerable force in the aforesaid argument. If, as a matter of fact, the 1st respondent had any doubt to undertake the reconciliation of the facts and figures as reflected in the documents

presented before it by the appellant and with that of the one which is uploaded in the portal, then the 1st respondent ought to have afforded an opportunity to the appellant to explain the discrepancies. Having not chosen to do so, would vitiate Ext.P4 order.

8. Though, normally, the remedy of the appellant against Ext.P4 order is to prefer an appeal before the appellate authority, we are of the considered view that, in the peculiar facts and circumstances, the appellant need not be relegated to the alternative remedy of preferring the appeal especially since the 1st respondent himself has now admitted before us that he was not in a position to reconcile the data presented before him by the appellant/petitioner and that was available in the portal. Therefore, in such circumstances, we feel that the 1st respondent ought to have granted an opportunity to the appellant to explain the discrepancy. Having not chosen to do so is clearly a violation of the principles of natural justice.

9. Accordingly, we are inclined to allow the writ appeal by setting aside Ext.P4 order. Consequently, the writ petition is also allowed. The 1st respondent shall fix a date for hearing of the appellant within a period of two weeks from today and shall intimate the same to the appellant. On receipt of the notice, the appellant shall appear before the 1st respondent and will be at liberty to produce such other additional evidence if required by the respondents. The respondent shall thereafter

decide the issues afresh by giving an opportunity to the appellant to do the reconciliation of the datas which are available with him as well as in the GST Portal and take a fresh decision in accordance with law, at any rate, as expeditiously as possible.

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

Sd/-
EASWARAN S.
JUDGE

NS