

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 19<sup>TH</sup> DAY OF SEPTEMBER 2023 / 28TH BHADRA, 1945

WP(C) NO. 30660 OF 2023

PETITIONER/S:

M/S HENNA MEDICALS BUS STAND ROAD, PANOOR, KANNUR,  
REPRESENTED BY PROPRIETOR SMT. POOVATANTAVIDA SUHARABI,  
PIN - 670692

BY ADVS.RAJESH NAMBIAR; SINDHU K.NAMBIAR

RESPONDENT/S:

- 1 STATE TAX OFFICER SECOND CIRCLE, STATE GOODS AND SERVICE TAX DEPARTMENT, OPPOSITE MUNICIPAL TOWN HALL, CHIRAKKARA, THALASSERY, PIN - 670104
- 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

RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The present writ petition has been filed, impugning Ext.P1 assessment order and Ext.P2 recovery notice dated 28.12.2021 and 02.09.2023, respectively. The petitioner claims input tax credit to the extent of Rs.2,58,116/- with interest and penalty. The total amount comes to approximately Rs.4,58,156/-.

2. From the perusal of the Assessment Order impugned in the present writ petition, it appears that the only ground on which the petitioner has been said to have availed the input tax credit is the difference between GSTR 2A and GSTR 3B. This Court, after taking note of the judgment of the Supreme Court in the case of *The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited*<sup>1</sup> as well as Calcutta High Court judgment in *Suncraft Energy Private Limited v. The Assistant*

*Commissioner, State Tax, Ballygunge Charge*<sup>2</sup> has held that the input tax credit of the assessee under the GST regime cannot be denied merely on the difference of GSTR 2A and 3B.

3. Paragraph 8 of *Diya Agencies v. The State Tax Officer*<sup>3</sup> of this Court would read as under:

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

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petitioner/assessee, the assessing authority will pass a fresh order in accordance with law.”

4. In view thereof, the present writ petition is allowed. The matter is remitted back to the file of the Assessing Authority/1<sup>st</sup> respondent to examine the evidence of the petitioner irrespective of the Form GSTR 2A for the petitioner's claim for the input tax credit. After examination of the evidence placed by the petitioner/assessee, the Assessing Authority shall pass fresh orders in accordance with the law. The petitioner is directed to appear before the Assessing Officer on 03.10.2023 at 11.00 a.m. with all the evidence in support of his claim for input tax credit.

Sd/-  
DINESH KUMAR SINGH  
JUDGE

APPENDIX OF WP(C) 30660/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ASSESSMENT ORDER DATED  
28.12.2021 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
- Exhibit P3 TRUE COPY OF THE INTERIM ORDER IN W.P. ( C )  
27893/2023 DATED 22.08.2023