



2024:KER:78610

W.P (C) No.43416/2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 22ND DAY OF OCTOBER 2024 / 30TH ASWINA, 1946

WP(C) NO. 43416 OF 2023

PETITIONER/S:

ANCHERIL AGENCIES,
TEEPEYEM HOUSE, BRISTOW ROAD, WILLINGDON ISLAND, KOCHI-
ERNAKULAM DISTRICT REPRESENTED BY MR. MATHEW GEORGE-
MANAGING PARTNER, PIN - 682003

BY ADV JOSEPH JERARD SAMSON RODRIGUES

RESPONDENT/S:

- 1 THE DEPUTY COMMISSIONER,
SPECIAL CIRCLE (PRODUCE), STATE GOODS & SERVICES TAX
DEPARTMENT, MATTANCHERRY, KOCHI, ERNAKULAM DISTRICT,
PIN - 682002
- 2 THE DEPUTY COMMISSIONER (ARREAR RECOVERY),
OFFICE OF THE JOINT COMMISSIONER, STATE GOODS &
SERVICES TAX DEPARTMENT, TAX PAYER SERVICES, ERNAKULAM,
ERNAKULAM DISTRICT, PIN - 682015
- 3 GOODS AND SERVICES TAX NETWORK,
WORLDMARK 1, AEROCITY,
INDIRA GANDHI INTERNATIONAL AIRPORT,
NEW DELHI-110037,
REPRESENTED BY ITS CHAIRMAN.
[SUO MOTU IMPLEADED AS PER JUDGMENT DATED 22-10-2024 IN
WP(C) No.43416/2023]
SMT. JASMINE M.M., GOVT. PLEADER
SRI. P. R. SREEJITH, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-12-2023, THE COURT ON 22-10-2024 DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner has approached this court being aggrieved by the fact that the petitioner has been denied the benefit of certain input tax credit for the year 2017-18 on account of the fact that the petitioner had, while filing annual return for that year, mistakenly and inadvertently marked the place of supply as 'other territory' instead of 'Kerala'. It is pointed out that the year in question was the year immediately after the introduction of GST and the petitioner should not be mulcted with any liability on account of such mistake. The learned counsel also placed judgment of the Madras High Court in ***Deepa Traders v. Principal Chief Commissioner of GST and Central Excise and others; 2023 SCC OnLine Mad. 8099*** in support of his contention. The learned counsel submits that the view taken by in ***Deepa Traders*** (supra) was followed by another Bench of the Madras High Court in ***Akshaya Building Solution v. Assistant Commissioner of CGST and Central Excise, Coimbatore-IV Division, Coimbatore; 2023 SCC OnLine Mad. 8103.***

2. The learned Government Pleader submits that the authorities have not committed any mistake in issuing the impugned demand notice to the petitioner. It is submitted that on the petitioner's own showing the petitioner



has wrongly marked the place of supply as 'other territory' instead of 'Kerala'.

As a result the mistake committed by the petitioner the tax due to the State of Kerala has not been received. The learned Government Pleader submits that if this court is inclined to grant relief, she may be allowed to file a detailed counter affidavit to the writ petition.

3. Having heard the learned counsel appearing for the petitioner and the learned Government Pleader and having considered the judgments of the Madras High court in **Deepa Traders** (supra) and **Akshaya Building Solution** (supra) and also taking into consideration of the fact that the alleged mistake was in the year immediately after the introduction of GST, I am of the view that the petitioner can be granted relief as was done by the Madras High Court in the judgment referred to above. In **Deepa Traders** (supra) the Madras High Court held as follows:-

"13.....

20. In the absence of an enabling mechanism, I am of the view that assessee should not be prejudiced from availing credit that they are otherwise legitimately entitled to. The error committed by the petitioner is an inadvertent human error and the petitioner should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute.



21. This writ petition is allowed and the impugned order set aside. The petitioner is permitted to resubmit the annexures to form GSTR-3B with the correct distribution of credit between IGST, SGST and CGST within a period of four weeks from date of uploading of this order and the respondents shall take the same on file and enable the auto-population of the correct details in the GST portal. No costs."

In ***Akshaya Building Solution*** (supra) another learned Judge of the Madras High Court held as follows:

"8.....

18. Undoubtedly, the petitioner in this case has committed an error in filing of the details relating to credit. What should have figured in the CGST/SGST column has inadvertently been reflected in the ISGT column. It is nobody's case that the error was deliberate and intended to gain any benefit, and in fact, by reason of the error, the customers of the petitioner will be denied credit which they claim to be legitimately entitled to, owing to the fact that the credits stands reflected in the wrong column. It is for this purpose, to ensure that the suppliers do not lose the benefit of the credit, that the present writ petition has been filed."

I am in respectful agreement with the view taken by the Madras High Court in the decisions referred to above. Accordingly, this writ petition is allowed by



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setting aside Ext.P3 order in original and consequential recovery notices namely Exts.P4 and P7 and directing the competent among the respondents to permit the petitioner to resubmit the annual return for the year 2017-18 in GSTR 9 by correcting the mistakes allegedly committed by the petitioner. I make it clear that even after filing any fresh return if there is any demand to be raised on the petitioner, the authority is free to raise any such demand on the petitioner. If the portal has to be enabled to permit the petitioner to file GSTR 9 for the year 2017-18, the same shall also be permitted on the orders of the competent authority. Since going by the provisions of Section 17 (5) of the IGST Act certain actions on behalf of the GST Network may also be required. I *suo motu* impleaded the Goods and Services Tax Network, Worldmark 1, Aerocity, Indira Gandhi International Airport, New Delhi-110037, as the addl. 3rd respondent to the writ petition. The additional 3rd respondent shall accept the return to be filed by the petitioner and further action on such return shall be taken in accordance with the law.

Writ petition is disposed of as above.

Sd/-
GOPINATH P.
JUDGE

AMG

APPENDIX OF WP(C) 43416/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTICE IN FORM GSTASMT-10 DATED 03/11/2020 ISSUED BY THE 1ST RESPONDENT
- Exhibit P2 TRUE COPY OF THE SHOW CAUSE NOTICE UNDER SECTION 73 OF THE KSGST/CGST ACT, 2017 DATED 05/01/2022 ISSUED BY THE 1ST RESPONDENT
- Exhibit P3 TRUE COPY OF THE ORDER NO. 32AABFA9374Q1Z0/2017-18 DATED 08/06/2022 ISSUED BY THE FIRST RESPONDENT
- Exhibit P4 TRUE COPY OF THE ARREAR NOTICE DATED 03/05/2023 ISSUED BY THE SECOND RESPONDENT WITH ENGLISH TRANSLATION
- Exhibit P5 TRUE COPY OF THE TAX REMITTED IN FORM GST DRC-03 DATED 20/02/2020 TOWARDS GST RS.2,16,201/-, CGST RS.27,609/-, SGST RS.27,609/- TALLING TO RS.2,71,419/-
- Exhibit P5(a) TRUE COPY OF THE GSTR-9 ANNUAL RETURN FOR THE FINANCIAL YEAR 2017-2018
- Exhibit P5(b) TRUE COPY OF THE FORM GSTR-9C RECONCILIATION STATEMENT FOR THE FINANCIAL YEAR 2017-2018
- Exhibit P6 TRUE COPY OF THE REPLY LETTER DATED 15/05/2023 TO THE SECOND RESPONDENT
- Exhibit P7 TRUE COPY OF THE ARREAR NOTICE DATED 30/11/2023 ISSUED BY THE SECOND RESPONDENT WITH ENGLISH TRANSLATION