

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 20TH DAY OF OCTOBER 2020 / 28TH ASWINA, 1942

WP(C).No.5127 OF 2020(M)

PETITIONER/S:

LOAFERS CORNER CAFE
1/351, PRINCESS STREET, FORT KOCHI, KOCHI-682001,
REPRESENTED BY ITS MANAGING PARTNER, PRASANTH M.R,

BY ADV. SRI.G.KRISHNAKUMAR

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW
DELHI-110001.
- 2 GST COUNCIL
5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING, JANPATH
ROAD, CONNAUGHT PLACE, NEW DELHI-110001.
- 3 GST NETWORK,
4TH FLOOR, TOWER-B, WORLD MARK 1, AEROCITY,
NEW DELHI-110037, REPRESENTED BY ITS DIRECTOR.
- 4 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF TAXATION AND FINANCE, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 5 COMMISSIONER OF GST
TAX TOWER, 4TH FLOOR, KILLIPALAM, KARAMANA P O,
THIRUVANANTHAPURAM-695002.
- 6 NODAL OFFICER,
(JOINT COMMISSIONER), COMMERCIAL TAX COMPLEX,
KARAMANA, THIRUVANANTHAPURAM-695001.
- 7 DEPUTY COMMISSIONER,
SGST, COMMERCIAL TAX COMPLEX, PERUMANOOR, ERNAKULAM-
682015.
- 8 DEPUTY COMMISSIONER,
SGST, MATTANCHERRY, KOCHI-682002.

9 ASSISTANT COMMISSIONER (ITMC)
5TH FLOOR, TAX TOWER, KARAMANA, THIRUVANANTHAPURAM-
695001.

10 STATE TAX OFFICER,
FIRST CIRCLE, MATTANCHERRY, KOCHI-682002.

R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R3 BY SHRI.P.R.SREEJITH, SC, GSTN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.10.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, which is a partnership firm, has approached this Court aggrieved by the delay occasioned by the respondent in cancelling an earlier registration, and granting him a new registration under the GST Act. It is the case of the petitioner that, while under the original registration it had opted for payment of tax on the normal basis, it had since filed an application for a fresh GST registration on 19.06.2018 so that it could opt for the compounded scheme for payment of tax in respect of the business carried on by the firm. It is not in dispute that the new registration sought for was allotted to it subsequently, but in the meanwhile, during the period between the date of application for the new registration and the grant of the same consequent to a cancellation of the earlier registration, the return filed by the petitioner under the composition scheme could not be uploaded into the system, since the system recognised only the earlier registration which was not under the compounded scheme. It is, therefore, that the petitioner has approached this Court seeking a direction to the respondents to make necessary changes in the portal so as to enable the petitioner to file returns for the period from October 2018 to December 2018, January 2019 to March 2019, April 2019 to June 2019, July 2019 to September 2019, October 2019 to December 2019 and January 2020 to March 2020 without charging any late fee or other charges for the delayed uploading.

2. Through a statement filed on behalf of the respondent No.3, it is admitted that while the cancellation application was filed by the petitioner earlier, it was approved by the respondent only on 18.05.2019 and this delay is stated to be attributable to the delayed processing through the system maintained by the respondent. It is not in dispute, however, that the application for cancellation of the earlier registration was filed by the petitioner on 22.05.2018 and the

application for the new registration was filed by him on 19.06.2018.

3. On a consideration of the rival submission, I note that inasmuch as it is not in dispute that the petitioner had applied for a cancellation of its earlier registration as early as on 22.05.2018 and had applied for a new registration on 19.06.2018, the mere fact that the respondents took time to process the said applications, and pass orders thereon approving the cancellation application as also granting the new registration, cannot be a reason to treat the interim period as one in which the petitioner cannot get the benefit of the compounding scheme which he had opted through its application for new registration. The delayed processing of the application submitted by the petitioner cannot be a reason to deprive the petitioner of the statutory benefit that he had claimed through the application in question.

I, therefore, allow this writ petition by directing the respondents to make the necessary changes in the portal so as to enable the petitioner to file the returns for the period aforementioned without charging the petitioner any late fee or other charges on account of the delay occasioned by the respondent. The respondent shall do the needful to facilitate the uploading of the returns aforementioned, and the availment of the applicable input tax credit, within a period of one month from the date of receipt of a copy of this judgment. The petitioner shall produce a copy of this judgment together with a copy of the writ petition before the respondents for further action.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1** TRUE COPY OF THE ELECTRONIC GENERATED GST REGISTRATION CERTIFICATE DATED 27.04.2018.
- EXHIBIT P2** TRUE COPY OF THE SCREEN SHOT SHOWING THE UPLOADING OF THE APPLICATION TO SURRENDER EXHIBIT P1 REGISTRATION HAVING GST NO 32AAHFL 3469P1ZT.
- EXHIBIT P3** TRUE COPY OF SEARCH RESULT OF GST NO. 32AAHFL3469P1ZT.
- EXHIBIT P4** TRUE COPY OF THE ORDER DATED 22.5.2018 ISSUED BY THE 10TH RESPONDENT CANCELLING EXT P1 REGISTRATION.
- EXHIBIT P5** TRUE COPY OF QUARTERLY RETURN FOR THE PERIOD JULY SEPTEMBER 2018 SUBMITTED BY THE PETITIONER.
- EXHIBIT P6** TRUE COPY OF THE PRINT OUT OF THE SCREEN SHOT HAVING TICKET NO.201901194306348.
- EXHIBIT P7** TRUE COPY OF THE REPRESENTATION DATED 19.1.2019 PREFERRED TO THE 10TH RESPONDENT.
- EXHIBIT P8** TRUE COPY OF THE RETURNS FILED FOR THE PERIOD APRIL 2018 TO JUNE 2019.
- EXHIBIT P9** TRUE COPY OF THE REPRESENTATION DATED 7.6.2019 TO THE 7TH RESPONDENT DEPUTY COMMISSIONER.
- EXHIBIT P10** TRUE COPY OF THE REPRESENTATION DATED 4.09.2019 TO THE 8TH RESPONDENT DEPUTY COMMISSIONER.
- EXHIBIT P11** TRUE COPY OF THE REPRESENTATION DATED 16.11.2019 PREFERRED TO THE RESPONDENT 1 TO 6
- EXHIBIT P12** TRUE COPY OF THE NOTICE DATED 16.12.2019 ISSUED BY THE 10TH RESPONDENT TO THE PETITIONER.
- EXHIBIT P13** TRUE COPY OF THE NOTICE DATED 16.12.2019 ISSUED BY THE 10TH RESPONDENT TO THE

PETITIONER.

EXHIBIT P14

**TRUE COPY OF THE NOTICE DATED 16.12.2019
ISSUED BY THE 10TH RESPONDENT TO THE
PETITIONER.**

EXHIBIT P15

**TRUE COPY OF THE NOTICE DATED 16.12.2019
ISSUED BY THE 10TH RESPONDENT TO THE
PETITIONER.**

EXHIBIT P16

**TRUE COPY OF THE OBJECTION DATED 20.01.2020
PREFERRED BY THE PETITIONER TO THE 10TH
RESPONDENT.**

EXHIBIT P17

**TRUE COPY OF THE SCREEN SHOT EVIDENCING
FILING OF RETURNS FOR THE PERIOD APRIL-JUNE
2020**

EXHIBIT P18

**TRUE COPY OF RETURNS FILED IN FORM GST
CMP084/R 62 FOR THE PERIOD APRIL-JUNE 2020**