



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 3RD DAY OF JANUARY 2024 / 13TH POUSHA, 1945

WP(C) NO. 38 OF 2024

PETITIONER/S:

DIVYA S.R.
AGED 41 YEARS
D/O SUKUMARAN NAIR, ADHIL MANZIL, THEKKADA ,
VEMBAYAM.P.O. THIRUVANANTHAPURAM, PIN - 695615.

BY ADVS.
SREEJI M.M
MADHUSOODANANNAIR.P

RESPONDENT/S:

- 1 UNION OF INDIA
THROUGH ITS SECRETARY (REVENUE), MINISTRY OF
FINANCE, DEPARTMENT OF REVENUE, GOVERNMENT OF
INDIA, NORTH BLOCK, NEW DELHI G.P.O., PIN - 110001
- 2 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM G.P.O., THIRUVANANTHAPURAM.,
PIN - 695001
- 3 GST COUNCIL
THROUGH ITS CHAIR PERSON, DEPARTMENT OF FINANCE,
NORTH BLOCK, DELHI G.P.O, PIN - 110001
- 4 CHAIRMAN
GOODS AND SERVICES TAX NETWORK EAST WING 4TH
FLOOR, WORLD MARK - I AERO CITY, NEW DELHI, PIN -
110037
- 5 COMMISSIONER
OFFICE OF THE COMMISSIONER, STATE GOODS AND
SERVICE TAX DEPARTMENT TAX TOWER, KARAMANA P.O
THIRUVANANTHAPURAM, PIN - 695002



WP (C) NO. 38 OF 2024

2

6 ASSISTANT TAX OFFICER
TAX PAYER SERVICE CIRCLE, SGST, 4TH FLOOR ,
REVENUE TOWER, NEDUMANGAD, THIRUVANANTHAPURAM, PIN
- 695541

OTHER PRESENT:

SMT.JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.01.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



WP (C) NO. 38 OF 2024

3

J U D G M E N T

The petitioner, an assessee under the provisions of the Central Goods and Services Tax Act/State Goods and Services Tax Act, 2017, has approached this Court in the present writ petition seeking a writ of mandamus directing the 6th respondent to set off input tax credit of IGST to the tune of Rs.1,14,957/-, which was wrongly claimed under CGST and SGST for the period July, 2017 to March, 2018 against the output tax liability of the petitioner for the said period.

2. The financial year is of 2017-18. The petitioner had received IGST tax credit through inter state inward supply of goods. The total amount of IGST Credit as reflected in GSTR 2A was Rs.1,14,957/-. The petitioner while preferring monthly return in GSTR 3B for July, 2017, by mistake claimed the entire input tax credit of Rs.1,14,957/- under the heads of CGST and SGST, instead of claiming it under the head IGST. This

WP (C) NO. 38 OF 2024

4

mistake had resulted in passing the assessment order in Ext.P1. Learned counsel for the petitioner further submits that the petitioner has filed rectification application in GST RFD-01 on 21.12.2023 as provided under Rule 89(1)(A) of the Goods and Services Tax Rules, 2017. However, no decision has been taken on the said rectification application, Ext.P4, till date. He, therefore, submits that the 6th respondent may be directed to consider Ext.P4 application and pass necessary orders thereon, in accordance with law, and till a decision is taken on the said application as above, no coercive measure be taken against the petitioner for realisation of the tax assessed in Ext.P1 assessment order.

3. Smt.Jasmine M.M., Learned Government Pleader, submits that Ext.P4 application has been filed only on 21.12.2023 and that this Court may direct the 6th respondent for consideration of the said application filed by the petitioner, and that

WP (C) NO. 38 OF 2024

5

the 6th respondent shall consider the application, in accordance with law, and pass necessary orders.

4. Considering the aforesaid submissions, and the facts of the case, the present writ petition is disposed of with direction to the 6th respondent to consider Ext.P4 application filed by the petitioner/assessee and pass necessary orders thereon expeditiously, in accordance with law. Needless to say that the petitioner could be afforded an opportunity of hearing before final order is passed on Ext.P4 application. Until final order is passed on Ext.P4 application as above, no coercive measures shall be taken against the petitioner for realisation of the tax amount assessed in Ext.P1 order.

Pending interlocutory application, if any, in the present writ petition stands dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

jg



WP (C) NO. 38 OF 2024

6

APPENDIX OF WP (C) 38/2024

PETITIONER EXHIBITS

- Exhibit-P1 A TRUE COPY OF THE ASSESSMENT ORDER
DRC-07 ISSUED BY THE 6TH RESPONDENT
DATED 15-12-2023
- Exhibit-P2 A TRUE COPY OF THE STATEMENT OF INPUT
TAX CREDIT REFLECTED IN FORM GSTR-2A
- Exhibit-P3 A TRUE COPY OF THE PETITION FILED BY
THE PETITIONER BEFORE THE 6TH
RESPONDENT DATED 21.12.2023 FOR
RECTIFYING ORDER
- Exhibit-P4 A TRUE COPY OF THE APPLICATION FOR
REFUND / SETTING OF IGST CREDIT WHICH
IS AVAILABLE IN GSTR-2A FOR SETTING OF
ITC CLAIM OF EXCESS AMOUNT SHOWN IN
CGST AND SGST COLUMN IN TABLE -4 OF
MONTHLY RETURN GSTR-3B CLAIM
APPLICATION FILED BY THE PETITIONER
BEFORE THE 6TH RESPONDENT DATED
21.12.2023
- Exhibit-P5 A TRUE COPY OF ANNUAL RETURN FILED BY
THE PETITIONER REFLECTING THE PROOF OF
IGST CLAIM IN COLUMN NO -8A OF ANNUAL
RETURN
- Exhibit-P6 A TRUE COPY OF THE JUDGEMENT OF THIS
HON'BLE COURT IN WP(C) 41219 OF 2023
DATED 08.12.2023