



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 10<sup>TH</sup> DAY OF JULY 2023 / 19TH ASHADHA, 1945

WP(C) NO. 20038 OF 2023

PETITIONER:

- 1 MARVEL ASSOCIATES,  
VIII/614, MEKKAD, NEDUMBASSERY,  
ERNAKULAM, PIN - 683589  
REPRESENTED BY ITS MANAGING PARTNER SRI. P.P. ALIAS,  
BY ADVS.  
AJI V.DEV  
S.SAJEEVAN  
ALAN PRIYADARSHI DEV

RESPONDENTS:

- 1 THE STATE TAX OFFICER,  
STATE G.S.T. DEPARTMENT,  
K.A.P. COMPLEX, ALUVA - 683101  
PRESENTLY REDESIGNATED AS ASSISTANT COMMISSIONER OF STATE  
TAX, TAXPAYER SERVICES CIRCLE,  
STATE G.S.T DEPARTMENT, THOTTAKKARA BUILDING,  
OPP. GOVT. HOSPITAL. ANGAMALY, PIN - 683572
- 2 THE DEPUTY COMMISSIONER OF STATE TAX (ARREAR RECOVERY),  
TAXPAYER SERVICES, STATE GST DEPARTMENT,  
MINI CIVIL STATION, ALUVA, PIN - 683101
- 3 THE JOINT COMMISSIONER OF STATE TAX TAXPAYER SERVICES,  
ALUVA, STATE GST DEPARTMENT,  
MINI CIVIL STATION, ALUVA, KERALA, PIN - 683101

SMT THUSHARA JAMES, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
10.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



**C.S.DIAS, J.**

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**W.P.(C.) No.20038 of 2023**  
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**Dated this the 10<sup>th</sup> day of July, 2023**

**JUDGMENT**

The writ petition is filed to quash Exts.P1 proceedings, P1 (a) order and P1 (b) summary order passed by the 1<sup>st</sup> respondent.

2. The brief, relevant facts for the determination of the writ petition are:-

2.1. The petitioner is a partnership firm doing business in the supply of plastic tubes and fittings. The petitioner is a registered dealer under the Central Goods & Services Tax Act, 2017 and the Kerala State Goods & Services Tax Act, 2017 (in short, the 'GST Act').

2.2. The petitioner had filed its returns and discharged the tax liability under the GST Act



for 2017-18.

2.3. While so, the petitioner has been served with a notice in FORM GST ASMT – 10 and consequential notices in the GST portal. Although the petitioner submitted convincing replies, the first respondent passed Exts.P1 proceedings, P1 (a) order, and P1 summary order under Section 73 read with Rule 142 of the GST Rules.

2.4. The sole discrepancy pointed out by the first respondent in Exts.P1 to P1(b) is that the petitioner had availed excess Input Tax Credit ('ITC', in short) in GSTR-3B when compared to GSTR-2A, for an amount of Rs.1,12,862/-, in contravention of the provisions of Section 16 (2) (c) of the CGST Act.

2.5. The petitioner had not claimed or availed excess ITC as alleged by the



respondents. The petitioner is entitled to eligible credits under the IGST Act. But, due to inadvertence while filing form GSTR 3B, the above error occurred.

2.6. It is fairly well-settled, in cases of the above nature, the assesseees have no liability to remit the demanded amount or reverse the ITC wrongly availed.

2.7. Nonetheless, to avoid litigation and to purchase peace, the petitioner submitted Ext.P3 GST Form B in February 2020 and has reversed Rs.1,28,748.54. As per the reconciliation done by the petitioner, the excess ITC has been reversed.

2.8. Meanwhile, the second respondent has issued Ext.P4 revenue recovery notice, threatening to recover the amount covered by Exts.P1 to P1(b) through recovery proceedings.



2.9. Immediately on receipt of Ext.P4 notice, the petitioner submitted Ext.P5 letter. The mistake in availing of excess ITC occurred due to technical glitches and flaws in the GST portal. The petitioner has already remitted the disputed tax. The first respondent has passed Exts.P1 to P1(b) without conducting any proper scrutiny; therefore, Exts.P1 to P1(b) are liable to be quashed. Hence, the writ petition.

3. Heard; Sri.Aji V.Dev, the learned Counsel appearing for the petitioner and Smt.Thushara James, the learned Government Pleader, appearing for the respondents.

4. Sri.Aji V.Dev reiterated the contentions in the writ petition. He submitted that the petitioner has already paid the disputed amount covered by Exts.P1 to P1(b); therefore, the respondents may be directed to repay the



excess ITC to the petitioner.

5. Smt.Thushara James resisted the above submissions and argued that as the petitioner had failed to submit the ASMT 10 form within the stipulated time, the petitioner could not get the ITC reversed. Moreover, the petitioner could have rectified the alleged errors under Section 39 (9) of the CGST Act, which was also not done on time. Exts.P1 to P1(b) proceedings dated 28.05.2022 are appealable under Section 107 of the CGST Act, but the remedy is now time-barred. It is after a year that the petitioner has come up with the present challenge. The writ petition is meritless and may be dismissed.

6. Exts.P1 to P1 (b) orders were passed by the first respondent on 28.05.2022. The orders are appealable under Section 107 of the CGST Act.



7. The petitioner's grievance is that, as the time period prescribed under Section 107 (4) of the CSGT Act to challenge the impugned orders by way of a statutory appeal has lapsed, the petitioner is left remediless. Therefore, the present writ petition.

8. On an appreciation of the pleadings and materials on record, I find there is wilful negligence on the part of the petitioner because it has failed to submit the ASMT 10 form on time, avail the benefit of getting the alleged error rectified under Section 39 (9) of the CGST Act and has not challenged the impugned orders in appeal. Without taking recourse to the above statutory remedies, the petitioner has assailed the impugned orders in the writ petition, that too after a year.

9. Although there is no time period



prescribed in the Constitution of India to file a writ petition, it is trite that a writ petition is to be filed within a reasonable time.

10. What the petitioner has failed to do directly through a statutory remedy cannot be permitted to be done indirectly through a writ petition, that too at its own sweet will and pleasure. This Court is not impressed with the excuse put forth by the petitioner that because its statutory remedy is time-barred, this Court may exercise its discretionary powers and re-examine the impugned orders. A Constitutional Court is not an open Forum to be approached at the whims and caprice of a litigant. This Court's extraordinary power is to be exercised sparingly and in exceptional cases. I do not find any such circumstances in the present case to entertain the writ petition under Article 226 of





the Constitution of India.

The writ petition is groundless and is hence,  
consequently dismissed.

**Sd/-**  
**C. S. DIAS**  
**JUDGE**

SKP/10-07



APPENDIX OF WP(C) 20038/2023

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE PROCEEDINGS PASSED U/S. 73 OF THE GST ACTS FOR 2017-18 DATED: 28.05.2022
- EXHIBIT P1(A) TRUE COPY OF THE ORDER UNDER SECTION 73 RULE 142 OF THE GST ACTS FOR 2017-18 DATED: 28.05.2022
- EXHIBIT P1(B) TRUE COPY OF THE SUMMERY OF ORDER ISSUED IN FORM GST DRC-07 FOR 2017-18 DATED: 28.05.2022
- EXHIBIT P2 TRUE COPY OF STATEMENT CONTAINING THE DETAILS OF WRONG CLAIM OF IPT CREDIT
- EXHIBIT P3 TRUE COPY OF THE RETURN FILED IN GST FORM 3B FOR THE MONTH OF FEBRUARY,2020
- EXHIBIT P4 TRUE COPY OF THE RECOVERY NOTICE ISSUED DATED: 05.06.2023
- EXHIBIT P5 TRUE COPY OF THE LETTER FILED BY THE PETITIONER TO THE SECOND RESPONDENT DATED: 16.06.2023

RESPONDENTS' EXHIBITS:NIL

TRUE COPY

P.A.TO JUDGE