



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 15TH DAY OF NOVEMBER 2023/24TH KARTHIKA, 1945

WA NO. 1971 OF 2023

AGAINST THE JUDGMENT WP(C) 12899/2023 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

M/S. MALABAR CEMENTS LTD., WALAYAR DAM POST,
PALAKKAD, REPRESENTED BY ITS MANAGER (FINANCE)
I/C, RAMESH BALAGOPALAN, PIN - 678624

BY ADVS.
HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA
PARVATHY MENON

RESPONDENTS/RESPONDENTS:

- 1 THE ASSISTANT COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE, PALAKKAD DIVISION,
CR BUILDINGS, METTUPALAYAM STREET,
PALAKKAD, PIN - 678001
- 2 THE COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE, C R BUILDINGS,
MANANCHIRA, KOZHIKODE, PIN - 673001
- 3 THE DEPUTY COMMISSIONER, CENTRAL TAX AND CENTRAL
EXCISE. PALAKKAD DIVISION, C R BUILDINGS,
METTUPALAYAM STREET, PALAKKAD, PIN - 678001



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4 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI, PIN - 110001

BY ADV P.G. JAYASHANKAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
15.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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J U D G M E N T

Dr.Kauser Edappagath, J.

This writ appeal has been filed challenging the judgment of the learned Single Judge in WP(C) No.12899/2023 dated 19th October, 2023.

2. The appellant is a public limited company wholly owned by the Government of Kerala, engaged in the manufacture and supply of cement. It is an assessee under the provisions of the GST Statutes. It was also registered under the erstwhile Service Tax, Excise Duty and Kerala VAT Laws.

3. The appellant availed transitional credit of excise duty and Kerala Value Added Tax paid on inputs and service tax paid under RCM for input services such as telephone charges, manpower services, etc., under GST to the extent of ₹1,80,07,615/-. Some of the input services were received after 1st July 2017, i.e., appointed day for introduction of GST, but the duty and tax in respect of the same were paid under the existing laws.



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The appellant availed transitional credit of the duty and tax paid in respect of the said inputs and input services in accordance with Sub-section (5) of Section 140 of the CGST Act, 2017 to the extent of ₹10,10,998/- and entered the details in the books of accounts within the additional period of thirty days granted by the proviso to Section 140(5). However, the appellant did not make an appropriate application for condonation of delay before the Commissioner as laid down under the said proviso. The appellant submitted such an application belatedly before the 2nd respondent on 19/1/2022 (Ext.P1). The 2nd respondent, as per Ext.P4 order, rejected Ext.P1 application for condonation of delay and issued Ext.P5 order raising a demand representing the ineligible transitional credit availed by the appellant. The appellant challenged Exts.P4 and P5 before the learned Single Judge. The learned Single Judge dismissed the writ petition, holding that the Commissioner did not commit any error of law or jurisdiction in rejecting the Ext.P1 application, which had been filed belatedly after five years from the prescribed date. It is challenging the judgment of the learned Single Judge, the appellant is before us.



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4. We have heard Sri.Harisankar V. Menon, the learned counsel for the appellant and Sri.P.G.Jayasankar, the learned Senior Government Pleader.

5. Section 140 of the CGST Act enables a registered person to take in its electronic credit ledger, the amount of CENVAT credit/input tax credit carried forward in the return for the period up to 30/6/2017. Sub-section (5) of Section 140 prescribed a condition for taking transitional credit. The condition is that the invoice or any other duty or tax paying document pertaining to the transitional credit has to be recorded in the books of account of the registered person within thirty days from the appointed day. i.e., within 30th July, 2017. Proviso to the said Section permits such entry of invoice in the books of account beyond the thirty days period by a further period of thirty days upon permission to be obtained from the Commissioner concerned. The appellant has entered the invoices within the said extended period of sixty days. But admittedly, it did not obtain any order from the Commissioner extending the limitation period beyond thirty days. From a perusal of Sub-section (5) of Section 140 of the CGST Act, it is evident that beyond the period of thirty



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days, an assessee can claim the transitional credit of input tax within another thirty days only on production of an order passed by the Commissioner. In other words, unless the order is passed by the Commissioner extending the limitation period, an assessee cannot claim the input tax credit in respect of the inward supply taken before 1/07/2017. The appellant filed the application for extending the time of limitation, claiming transitional credit only after five years. The Commissioner, therefore, rightly rejected the application. As the Commissioner did not extend the limitation period, the appellant cannot claim the benefit of transitional credit regarding input tax.

We find no illegality or impropriety in the impugned judgment of the learned Single Judge. The writ appeal accordingly stands dismissed.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp