

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

2024:KER:22426

THURSDAY, THE 21ST DAY OF MARCH 2024 / 1ST CHAITHRA, 1946WP(C) NO. 7731 OF 2024PETITIONER:

M TRANS CORPORATION,
2ND FLOOR, 66//3692, DD JACOB MALL,
M G ROAD, ERNAKULAM,
REPRESENTED BY ITS PROPRIETRESS SMT. SUMI MOHAN,
PIN - 682035

BY ADVS.

SRI. AJI V. DEV
SRI. ALAN PRIYADARSHI DEV
SRI. S. SAJEEVAN

RESPONDENTS:

- 1 THE STATE TAX OFFICER,
TAX PAYER SERVICES CIRCLE, STATE G.S.T. DEPARTMENT,
STATE G.S.T. COMPLEX, THEVARA, PERUMANOOR P. O.,
ERNAKULAM, PIN - 682015.
- 2 THE COMMISSIONER OF STATE TAX,
THE STATE G.S.T DEPARTMENT TAX TOWER,
KARAMANA P. O., THIRUVANANTHAPURAM, PIN - 673006.
- 3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO FINANCE,
SECRETARIAT, THIRUVANANTHAPURAM G.P.O.,
THIRUVANANTHAPURAM, PIN - 695001.
- 4 THE 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.
- 5 THE GST COUNCIL THROUGH ITS CHAIRPERSON,
DEPARTMENT OF FINANCE, NORTH BLOCK,
DELHI G.P.O., PIN - 110001.
- 6 THE GOODS AND SERVICES TAX NETWORK
EAST WING 4TH FLOOR, WORLD MARK - I AERO CITY,
NEW DELHI REPRESENTED BY ITS CHAIRMAN, PIN - 110037.

BY ADV. SMT. JASMIN M. M. - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No. 7731 of 2024**Dated this the 21st day of March, 2024**JUDGMENT**

1. The petitioner is a registered dealer under the provisions of the CGST Act and Kerala SGST Act, 2017 and the Rules made thereunder. The petitioner filed returns under the provisions of the GST Act pertaining to the year 2017-18. However, the show cause notice was issued to the petitioner in Form GST ASMT 10 dated 02.08.2020 and show cause notice dated 10.11.2022 followed. The petitioner filed the reply to the said Show Cause Notice, however, the Assessing Authority rejected the contention of the petitioner and found that the petitioner had availed excess input tax credit in the financial year 2017-18 to an extent of Rs. 47,048/- as SGST and same amount as CGST. On the said amount the petitioner has been directed to pay the tax, interest and penalty etc.

2. The learned Counsel for the petitioner submits that the petitioner instead of claiming the CGST/SGST claimed IGST and it was not a bonafide mistake committed by the petitioner. Therefore, for this bonafide mistake, disallowance of the input tax credit claimed by the petitioner does not appear to be correct. The



learned Counsel for the petitioner had placed reliance on the Judgment of the Karnataka High Court in ***M/s. Orient Traders v. The Deputy Commissioner of Commercial Taxes & Another [2023 (1) TMI 838 – Karnataka HC]***, would submit that for bonafide mistake the dealer/assessee should not be punished and the ITC claimed wrongly availed as IGST instead of CGST should be allowed.

3. I have considered the submissions advanced by the learned Counsel for the petitioner and the learned Government Pleader. Section 54 read with Section 49 prescribes for refund of excess tax etc., paid by the registered dealer by moving an application within the period of two years from the last date of filing the returns for the relevant year. In the present case, the financial year is of 2017-18 for which the due date for filing the application for correcting the mistake or claiming the refund of the IGST was 23.04.2019. Admittedly, the petitioner did not move any application within the time prescribed and even the extended time. This Court, in exercise of its limited jurisdiction cannot amend the statute, prescribes different time limit for moving such an application and, therefore, I do not find much substance in this writ petition.

4. So far as the Judgment of the Karnataka High Court (*supra*) relied on by the learned Counsel for the petitioner is concerned, in



the said Judgment, the statutory provisions have not been taken. The said Judgment does not have any binding precedent. In view thereof, the present writ petition is hereby dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

Svn



APPENDIX OF WP(C) 7731/2024

PETITIONER'S EXHIBITS

- EXHIBIT P1** TRUE COPY OF THE REPLY FILED DATED: 29.11.2022 IN RESPONSE TO THE SHOW CAUSE NOTICE ISSUED U/S. 73 OF THE GST ACTS PERTAINING TO THE YEAR 2017-18
- EXHIBIT P2** TRUE COPY OF THE PROCEEDINGS OF ASSESSMENT PASSED FOR THE AY 2017-18 DATED: 14.10.2023
- EXHIBIT P2(A)** TRUE COPY OF THE SUMMARY OF ORDER ISSUED IN FORM GST DRC-07 DATED: 14.12.2023
- EXHIBIT P3** TRUE COPY OF THE APPLICATION FOR RECTIFICATION OF RETURNS FILED IN GSTR 3B IN 2017-18 DATED: 31.01.2024
- EXHIBIT P4** TRUE COPY OF THE JUDGMENT IN M/S ORIENT TRADERS VS. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES & ANR (2023 (1) TMI 838 - KARNATAKA HC)
- EXHIBIT P5** TRUE COPY OF THE JUDGMENT IN IN CHUKKATH KRISHNAN PRAVEEN VS. STATE OF KERALA & ORS IN WPC NO. 41219 OF 2023/08.12.2023