IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 20TH DAY OF SEPTEMBER 2023 / 29TH BHADRA, 1945

WP(C) NO. 30538 OF 2023

PETITIONER:

PRAVEEN BHASKARAN (PROPRIETOR)
AGED 44 YEARS
M/S.GALAXY TRADERS, POOPANY ROAD, MUKKANAMCHERRY BUILDING, PERUMBAVOOR, PIN - 683542

BY ADVS.
P.N.DAMODARAN NAMBOODIRI
HRITHWIK D. NAMBOOTHIRI

RESPONDENTS:

1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEWDELHI, PIN - 110023

2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF TAXES , SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

3 THE COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT, 9TH FLOOR, TAX TOWER, KILLIPALAM, KARAMANA.P.O, THIRUVANANTHAPURAM, PIN - 695001

4 THE STATE TAX OFFICER
STATE GST DEPARTMENT, FIRST CIRCLE, MINI CIVIL STATION, PERUMBAVOOR, PIN - 683542

5 THE DEPUTY COMMISSIONER OF STATE TAX (ARREAR RECOVERY)
TAX PAYERS SERVICES, STATE GST DEPARTMENT, MINI CIVIL STATION, ALUVA, PIN - 683101

ARUN AJAY SANKAR-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 20th day of September, 2023

1. The present writ petition has been filed under Article 226 of the Constitution of India impugning Ext.P5 assessment order, whereby the petitioner claims for Input Tax Credit to the extent of Rs.1,04,342/- ie.,CGST of Rs.52,171/- and same amount of SGST has been denied on the ground that the Input Tax Credit to such an extent claimed by the petitioner-assessee was not effected in Form GSTR-2A and the supply dealer has not mentioned the supplies involved in the petitioner-dealer in form GSTR -1.

2. Section 155 of the GST Act, 2017, takes care of such a situation wherein the fact that the assessee/dealer has taken inward supply, and the dealer has prepaid the admissible GST to the supplier-dealer and the supplier-dealer has not deposited the said tax amount to the Government,

in such a situation the burden is on the person who claims the Input Tax Credit to prove his claim. The paid person in such a situation is required to furnish documentary evidence to prove that such tax has been paid by him. The assessing authority has denied the claim of the petitioner on the ground that the Input Tax Credit claimed by the petitioner was not reflected in GSTR-2A and he did not submit any proof of the payment of the GST to the Government. This Court by dealing with such a situation in the case of **Diya Agencies v. The State Tax Officer** in its judgment dated 12.09.2023 and after taking note of the judgment of the Supreme Court in the case of **Union of India (UOI) v. Bharti Airtel Ltd and Others reported in** [2022(4) SCC 328] and **Suncraft Energy Private Limited and Another v. The Assistant Commissioner, State Tax, Ballygunge Charge and others** [MAT 1218 of 2023] passed by the

Calcutta High Court and the judgment of the Supreme Court in the case of **The State of Karnataka v. M/s.Ecom Gill Coffee Trading Private Limited** [2023 (3) TMI 533 SC] has held that the assessing officer is required to give an opportunity to the assessee in respect of his claim for Input Tax Credit, if there is difference between GSTR- 2A and GSTR-3B. If on examination of the evidence submitted by the assessee, the assessing officer is satisfied that the claim is bonafide and genuine, the assessee should be given the Input Tax Credit. Merely on the ground that in Form GSTR-2A the tax to an extent of Input Tax Credit being claimed by the petitioner is not reflected should not be a sufficient ground to deny the claim of the assessee for Input Tax Credit. The assessing authority is required to independently examine the evidence regarding the claim of the assessee for Input Tax Credit irrespective of the fact that tax is

not reflected in Form GSTR-2A for which the assessee claims Input Tax Credit.

2. Considering the aforesaid facts of the case and the judgment in the case of **Diya Agencies** (supra), the impugned assessment order so far as the denial of Input Tax Credit to the petitioner to the extent of Rs.1,04,342/- is set aside. The case is remitted back to the file of the assessing authority to examine the evidence in possession of the petitioner as such irrespective of the difference in GSTR -2A and GSTR- 3B and on examination of the evidence, if the assessing authority is satisfied with the claim of the petitioner for Input Tax Credit to the extent of Rs.1,04,342/- which is denied by the Assessing Authority shall pass orders in accordance with law.

3. The petitioner is directed to appear before the assessing authority along with the judgment and all relevant documents/evidence in

his possession within a period of fifteen days from today. The assessing authority will examine the evidence and pass a fresh order expeditiously.

4. With the aforesaid directions, this writ petition is finally disposed of.

Sd/-

DINESH KUMAR SINGH
JUDGE

AP

APPENDIX OF WP(C) 30538/2023

PETITIONER EXHIBITS

Exhibit - P1	TRUE COPY OF THE NOTICE ASMT-10 REF.NO. 32APWPP4106K1ZK/ 2017-18 DATED 17.07.2020 FOR THE PERIOD JULY-2017 TO MARCH 2018 ISSUED BY THE 4TH RESPONDENT.
Exhibit - P2	TRUE COPY OF THE REPLY IN ASMT-11 DATED 04.08.2020 SUBMITTED BY THE PETITIONER THROUGH THE ONLINE PORTAL.
Exhibit - P3	TRUE COPY OF THE SHOW CAUSE NO.32APWPP4106K1ZK/DRC-01/SCN/2017-18 DATED 26.02.2022 IN FORM GST DRC-01 ISSUED BY THE 4TH RESPONDENT.
Exhibit - P4	TRUE COPY OF THE REPLY DATED 26.03.2022 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.
Exhibit - P5	TRUE COPY OF THE ORDER UNDER SECTION 73 OF THE ACT ALONG WITH DRC-07 BEARING NO. 32APWPP4106K1ZK/DRC 07/2017-18 DATED 30.11.2022 FOR THE PERIOD OF 07/2017 TO 03/2018 TO THE PETITIONER.
Exhibit - P6	TRUE COPY OF THE CIRCULAR BEARING NO.123/42/2019-GST DATED 11.11.2019, ISSUED BY THE MINISTRY OF FINANCE, GOVERNMENT OF INDIA.
Exhibit - P7	TRUE COPY OF CIRCULAR NO.122/41/2019-GST DATED 05.11.2019 ISSUED BY THE CENTRAL BOARD OF DIRECT TAXES AND CUSTOMS.
Exhibit - P8	TRUE COPY OF THE CIRCULAR NO.8/2020 DATED 04.08.2020 ISSUED BY COMMISSIONER OF STATE TAX.
Exhibit - P9	TRUE COPY OF THE PRESS RELEASE DATED 04.05.2018, ISSUED BY THE CBIC.
Exhibit - P10	TRUE COPY OF THE PRESS RELEASE DATED 18.10.2018, ISSUED BY THE CBIC.
Exhibit - P11	TRUE COPY OF THE REVENUE RECOVERY NOTICE NO.B3/32APWPP4106K1ZK DATED 07.09.2023 ISSUED BY THE 5TH RESPONDENT.
Exhibit - P12	TRUE COPY OF THE INTERIM ORDER IN W.P. (C).NO.28479/2023 DATED 24.08.2023.