



2024:KER:78415

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 22ND DAY OF OCTOBER 2024 / 30TH ASWINA, 1946

WP(C) NO. 35393 OF 2024

PETITIONER/S:

ELSY JOY, AGED 55 YEARS
NO. 1/609-A, CHOWWANNUR, THRISSUR, PIN - 680517

BY ADVS.
PADMANATHAN K.V.
R.SREEJITH

RESPONDENT/S:

- 1 THE DEPUTY COMMISSIONER OF STATE TAX,
STATE GOODS AND SERVICES TAX DEPARTMENT,
SPECIAL CIRCLE, POOTHOLE, THRISSUR, PIN - 680004
- 2 STATE TAX OFFICER, CHAVAKKAD,
STATE GOODS AND SERVICES TAX DEPARTMENT,
MINI CIVIL STATION, CHAVAKKAD, PIN - 680506
- 3 THE JOINT COMMISSIONER OF STATE TAX (APPEALS),
STATE GOODS AND SERVICES TAX DEPARTMENT, THIRD FLOOR,
STATE GST COMPLEX, POOTHOLE, THRISSUR, PIN - 680004
- 4 THE DEPUTY COMMISSIONER (ARREAR RECOVERY,
TAXPAYER SERVICE, STATE GST DEPARTMENT,
THRISSUR, PIN - 680004
- 5 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPT., GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001



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6 **CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
GST POLICY WING, NORTH BLOCK, NEW DELHI
REPRESENTED BY PRINCIPAL COMMISSIONER (GST), PIN -
110001**

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

**BY ADV DAYASINDHU SHREEHARI N.S., CGC
SMT. JASMIN M.M, GP**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**JUDGMENT**

Petitioner has approached this Court, challenging Ext.P4 order issued under the provisions of Section 73 of the CGST/SGST Acts, for the year 2017-18, on a short ground.

2. It is the case of the petitioner that, though by Ext.P2 notice dated 20.06.2023, the petitioner had given time till 21.07.2023 to file a reply, Ext.P4 order was passed on 11.07.2023, even before the time for filing reply had expired.

3. Learned Government Pleader and the learned Standing Counsel appearing for the 6th respondent would, however, contend that the petitioner has already availed the remedy of filing an appeal against Ext.P4 order, claiming the benefit of Ext.P10 notification (issued in the matter of limitation for filing appeals), which clearly, on its terms, was not applicable to the petitioner. It is submitted that, the appeal filed by the petitioner was also rejected by Ext.P7 order finding that it was barred by limitation. It is submitted that, in such circumstances, the only remedy of the petitioner is to file a second appeal and he has not made out any ground to approach this Court under Article 226 of the Constitution of India.



4. Having heard the learned counsel appearing for the petitioner, the learned Government Pleader and the learned Standing Counsel appearing for the 6th respondent, I am of the opinion that the petitioner is entitled to succeed. Though the petitioner may have filed an appeal against Ext.P4 order (which was rejected by Ext.P7 order as being time barred), the fact remains that Ext.P7 order was passed in violation of principles of natural justice. It is clear from Ext.P2 that the petitioner was given time till 21.07.2023 to reply to the show cause notice. Ext.P4 order appears to have been passed on 11.07.2023, even before the time for filing a reply had expired. Therefore, on this short ground, Ext.P4 order is liable to be set aside. The fact that the petitioner had filed an appeal against Ext.P4 is no ground to refuse relief to the petitioner as the original order was clearly issued in violation of principles of natural justice.

Accordingly, the writ petition is allowed by setting aside Ext.P4 order and restoring the assessment of the petitioner for the year 2017-18, to the file of the 2nd respondent, who shall pass fresh orders, after affording an opportunity of hearing to the petitioner. The petitioner shall file its reply to the show cause notice (if not already filed)



within a period of two weeks from today and thereafter, the matter shall be adjudicated by the 2nd respondent, as directed above, after hearing the petitioner. As a consequence of setting aside of Ext.P4, Ext.P7 order of the Appellate Authority also will stand set aside. Since the order has been set aside for reasons indicated above, it is directed that the time from the date of passing of Ext.P4 order till today shall be excluded for the purposes of determining any period of limitation within which such order had to be issued by the 2nd respondent.

Sd/-

GOPINATH P.

JUDGE

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APPENDIX OF WP(C) 35393/2024

PETITIONER EXHIBITS

- Exhibit P1** TRUE COPY OF THE SHOW CAUSE NOTICE DTD. 3-11-2022 ISSUED BY THE 1ST RESPONDENT HEREIN ALONG WITH THE SCREENSHOT OF THE PORTAL
- Exhibit P2** TRUE COPY OF THE SUMMARY OF SHOW CAUSE NOTICE IN FORM DRC-01 DTD. 20-06-2023
- Exhibit P3** TRUE COPY OF THE REMAINDER LETTER DTD. 26-06-2023
- Exhibit P4** TRUE COPY OF THE ORDER DTD. 11-07-2023 PASSED BY THE 2ND RESPONDENT
- Exhibit P5** TRUE COPY OF THE SUMMARY OF ORDER IN DRC-07 DTD. 12-07-2023
- Exhibit P6** TRUE COPY OF THE APPEAL MEMORANDUM IN FORM APL-01 DTD. 26-01-2024
- Exhibit P7** TRUE COPY OF THE ORDER DATED 31/07/2024 REJECTING APPEAL PASSED BY THE 3RD RESPONDENT
- Exhibit P8** TRUE COPY OF THE NOTICE OF RECOVERY DTD. 26-09-2024
- Exhibit P9** TRUE COPIES OF THE CERTIFICATE ISSUED BY SUPPLIERS DATED 15.01.2024
- Exhibit P10** TRUE COPY OF THE NOTIFICATION DTD. 02-11-2023