IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 7TH DAY OF DECEMBER 2023 / 16TH AGRAHAYANA, 1945

WP(C) NO. 41019 OF 2023

PETITIONER/S:

THE KERALA MINERALS AND METALS LTD.,
SANKARAMANGALAM, CHAVARA KOLLAM, KERALA
REPRESENTED BY ITS DEPUTY GENERAL MANAGER
(FINANCE), MR.ANIL KUMAR, PIN - 691583

BY ADVS.
ANIL D. NAIR
TELMA RAJU
AADITYA NAIR

RESPONDENT/S:

THE STATE TAX OFFICER
TAX PAYERS SERVICES CIRCLE, KOLLAM WEST, STATE
GOODS AND SERVICE TAX DEPARTMENT, TAX COMPLEX,
ASRAMAM, KOLLAM, PIN - 691002

OTHER PRESENT:

SMT.JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The present writ petition has been filed impugning order dated 30.10.2023 passed by the State Tax Officer, Tax Payer Services Circle, Kollam West, GST Department (Kerala) under the provisions of the Kerala Value Added Tax Act, 2003, and the Rules framed thereunder.

2. The petitioner, a Government of Kerala undertaking and a Company registered under the Companies Act, 1956, was a registered dealer under the jurisdiction of the Assistant Commissioner (Assessment), Special Circle, Kollam. The petitioner had filed an application in Form No.25 claiming input tax credit on purchase of capital goods for the assessment years 2014-15 to 2016-17. The said application was disposed of by the jurisdictional State Tax Officer denying the claim of the petitioner for input tax credit on the ground that the capital goods purchased were found

for the use of power generating and were not eligible for input tax credit. It was also held that it was not proved that the purchases effected were for the sole use of plant and production, and therefore, the request for input tax credit was rejected.

3. Aggrieved by the said order, the petitioner had approached this Court earlier by filing WP(C) No.28322/2020(M). The said writ petition came to be disposed of vide judgment dated 18.1.2021, Ext.P6. This Court while disposing of the aforesaid writ petition set aside the order passed by the Deputy Commissioner-II, SGST Department denying the input tax credit to the petitioner for the assessment years 2014-15 to 2016-17. The assessing authority was directed to decide the application in Form No.25 filed by the petitioner by making compliance of Rule 13(3) of the Kerala Value Added Tax Rules by granting an opportunity of hearing to the petitioner and pass orders thereon, in accordance with law.

4. In compliance with the direction issued by this Court in the judgment in WP(C) No.28322/2020, notice dated 13.7.2023 came to be issued to the petitioner calling upon them to show cause as to why the claim for input tax credit on purchase of capital goods for electricity production for the assessment years 2014-15 to 2016-17 should not be rejected. The petitioner, thereafter, filed their objections. It was after considering said objections and submissions, the impugned order, Ext.P9, has been passed.

5. There is a provision for appeal against Ext.P9 impugned order, if the petitioner is aggrieved by the same. Therefore, this Court would not like to entertain the present writ petition in exercise of its power of judicial review conferred under Article 226 of the Constitution of India. There is no error of jurisdiction committed by the State Tax Officer, while passing the impugned order, Ext.P9, in the present writ petition. The questions whether the order is correct or not and

whether the petitioner is entitled for input tax credit for the assessment years 2014-15 to 2016-17 or not, can be looked into by the appellate authority, while examining the impugned order in Ext.P9. This Court absolutely finds on ground to entertain the present writ petition, which is hereby dismissed with liberty to the petitioner to approach the appellate authority against Ext.P9 impugned order, if the petitioner is so advised.

Pending interlocutory application, if any, in the present writ petition stands dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

jg

APPENDIX OF WP(C) 41019/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF LETTER DATED 19.07.2018 SENT BY RESPONDENT TO THE PETITIONER
Exhibit P2	TRUE COPY OF LETTER DATED 12.09.2018 ISSUED BY THE PETITIONER TO THE RESPONDENT
Exhibit P3	TRUE COPY OF LETTER DATED 5.10.2020 SENT BY RESPONDENT TO THE PETITIONER
Exhibit P4	TRUE COPY OF LETTER DATED 21.10.2020 ISSUED BY THE PETITIONER TO THE RESPONDENT
Exhibit P5	TRUE COPY OF ORDER DATED 23.11.2020 PASSED BY DEPUTY COMMISSIONER II, SPECIAL CIRCLE, KOLLAM
Exhibit P6	TRUE COPY OF JUDGMENT DATED 18.1.2021 IN W.P.(C) NO.28322 OF 2020 OF THIS HON'BLE COURT
Exhibit P7	TRUE COPY OF THE LETTER/NOTICE DATED 13.07.2023 ISSUED BY THE RESPONDENT
Exhibit P8	TRUE COPY OF THE LETTER DATED 27.7.2023 SENT BY PETITIONER TO THE RESPONDENT
Exhibit P9	TRUE COPY OF THE ORDER DATED 30.10.2023 PASSED BY THE RESPONDENT