



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 25<sup>TH</sup> DAY OF SEPTEMBER 2023 / 3RD ASWINA, 1945

WP(C) NO. 31184 OF 2023

PETITIONER/S:

NAHASSHUKOOR, AGED 32 YEARS S/O ABDUL SHUKOOR,  
PROPRIETOR M/S N. S. METALS, JAMEELAMANZIL, SANATHANAM  
WARD, ALAPPUZHA, PIN - 688001

BY ADV A.KRISHNAN

RESPONDENT/S:

- 1 ASSISTANT COMMISSIONER SECOND CIRCLE, STATE GOODS &  
SERVICE TAX DEPARTMENT, COLLECTORATE, ALAPPUZHA, PIN -  
688001
- 2 UNION OF INDIA REPRESENTED BY SECRETARY TO GOVERNMENT,  
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,  
NEW DELHI, PIN - 110001
- 3 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, GST POLICY  
WING, NORTH BLOCK, NEW DELHI - 110001, REPRESENTED BY  
PRINCIPAL COMMISSIONER (GST), PIN - 110001
- 4 STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT,  
TAXES DEPT., GOVT. SECRETARIAT, THIRUVANANTHAPURAM, PIN -  
695001
- 5 STATE TAX OFFICER, (ARREAR RECOVERY) OFFICE OF JOINT  
COMMISSIONER, TAX PAYER SERVICES, STATE GOODS & SERVICE  
TAX DEPARTMENT, ALAPPUZHA, PIN - 688001

RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
25.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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### J U D G M E N T

Heard Mr A Krishnan, learned Counsel for the petitioner, Mr Akhil Shaji, holding for Mr Sreelal Warriar learned Standing Counsel for the Central GST and Ms Rasmitha Ramachandran, learned Government Pleader.

2. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner, who is running a proprietorship firm by the name and style 'M/s N S Metals'. The Assessing Authority, in assessment proceedings under the provisions of the GST Act, denied the claim of the petitioner for an input tax credit of Rs.46997/- under the CGST and the same amount under the SGST. The Assessing Authority has levied interest of Rs.43,618/- under the CGST and the same amount under the SGST, and Rs.10,000/- each penalty has been imposed under the CGST and SGST. The total



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tax, interest and penalty has been assessed at Rs.2,01,230/-.

The petitioner was issued a show cause notice under Section 73(1) of the CGST/SGST Act 2017 on 11.08.2021. The petitioner did not reply to the said show cause notice, nor did the petitioner appear for a personal hearing, which was fixed on 15.02.2022. The Assessing Authority verified the input tax credit as per GSTR 2A and return as per GSTR 3B for the tax period 2017-18.

3. As the petitioner did not appear in pursuance of the show cause notice nor did he provide any document or evidence to discharge his burden under Section 155 of the GST Act, the Assessing Authority has no other material before them except for Form GSTR 2A and GSTR 3B. The Assessing Authority, therefore, denied the claim of input tax credit of the petitioner.



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4. Section 16 of the CGST/SGST Act 2017 prescribes the conditions for being eligible to claim input tax credit. Sub-section (2) of Section 16 begins with a *non-obstante* clause, and it provides thus:

**“16. Eligibility and conditions for taking input tax credit.—**

xxx

xxx

xxx

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;



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(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under Section 38 has not been restricted;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through the utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on a reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount



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towards the value of supply of goods or services or both along with tax payable thereon. ....”

4.1 There is another provision, i.e., Section 155 of the GST Act, which is in respect of the burden on the dealer for claiming input tax credit. Section 155 on reproduction reads as under:

“155. Burden of proof.—Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.”

If there is a difference between GSTR 2A and GSTR 3B, then it is for the assessee/dealer to prove his claim of input tax credit by leading cogent and credible evidence for his claim regarding input tax credit.

5. In the present case, the petitioner, despite show cause notice, chose not to provide any evidence in respect of his claim for the input tax credit, nor did he appear for a hearing on the date fixed. When the petitioner himself has



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given up his right to prove his claim for the input tax credit, this Court cannot help such an assessee by entertaining this writ petition. Therefore, I find no substance in the present writ petition, which is hereby rejected.

Sd/-

DINESH KUMAR SINGH

JUDGE

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APPENDIX OF WP(C) 31184/2023

PETITIONER EXHIBITS

|            |                                                                                                        |
|------------|--------------------------------------------------------------------------------------------------------|
| Exhibit P1 | TRUE COPY OF THE ASSESSMENT ORDER DATED<br>15.12.2022, PASSED BY THE 1ST RESPONDENT                    |
| Exhibit P2 | THE TRUE COPY OF THE NOTICE DATED 02.08.2023<br>ISSUED BY 5TH RESPONDENT WITH TRANSILATION             |
| Exhibit P3 | THE TRUE COPY OF THE INTERIM ORDER DATED<br>6.7.2023 IN W.P.(C) NO.36054/2022 OF THIS HON'BLE<br>COURT |