IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 1ST DAY OF OCTOBER 2024 / 9TH ASWINA, 1946

WP(C) NO. 28018 OF 2023

PETITIONER/S:

DEEPU PRASAD KINI, AGED 35 YEARS
PROPRIETOR M/S DEEPU STEELS, NEAR KSEV, ERUVA PO,
KAYAMKULAM PIN - 690572

BY ADV A.KRISHNAN

RESPONDENT/S:

1. **STATE TAX OFFICER,STATE GOODS & SERVICE TAX DEPARTMENT, MINI CIVIL STATION, KAYAMKULAM PIN - 690502**

2. **THE JOINT COMMISSIONER (APPEALS) II**
STATE GOODS & SERVICE TAX DEPARTMENT,1ST FLOOR, COLLECTORATE, KOTTAYAM, PIN - 686001

SMT. JASMINE M.M, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01.10.2024, ALONG WITH WP(C).19872/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 1ST DAY OF OCTOBER 2024 / 9TH ASWINA, 1946

WP(C) NO. 19872 OF 2023

PETITIONER/S:

NOUSHAD,AGED 54 YEARS
S/O.A. ALIYAR KUNJU, PROPRIETOR, M/S.AKS TRADERS,
MEDAMUKKU, KAYAMKULAM, PIN - 690502

BY ADV A.KRISHNAN

RESPONDENT/S:

1 **STATE TAX OFFICER,**
STATE GOODS & SERVICE TAX DEPARTMENT,
MINI CIVIL STATION, KAYAMKULAM, PIN - 690502

2 **THE JOINT COMMISSIONER (APPEALS)II,**
STATE GOODS & SERVICE TAX DEPARTMENT,
KOLLAM, PIN - 691002

BY ADV. JASMINE M.M, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.10.2024, ALONG WITH WP(C).28018/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

[WP(C) Nos.28018/2023, 19872/2023]

The issues raised in these writ petitions are intrinsically connected to each other and hence they are disposed of by a common judgment. The short issue is regarding the treatment of the amount of discount received by the petitioners from their suppliers.

2. Learned counsel appearing for the petitioner submits that there is no tax effect on account of the discount granted and that the matter has not been considered properly by the Appellate Authority or by the Assessing Authority and he will be satisfied if the matter is remanded to the appellate Authority for fresh consideration.

3. Though the learned Government Pleader attempted to establish that the remedy of the petitioner against the appellate order is to file a second appeal under Section 112 of the CGST/SGST Acts, considering the limited nature of relief now sought for by the petitioner, I am of the view that the matter can be remanded to the Appellate Authority for fresh consideration as it does not appear from the original order or

from the appellate order (in both cases) that this issue has been considered in a proper perspective. The fact that the grant of discount has no tax effect has not been considered. The fact that the supplier/or the petitioner have not sought for any refund of tax has also not been considered.

Accordingly, Ext.P2 order in W.P.(C.) No. 19872 of 2023 and Ext.P2 order in WP(C) Nos.28018 of 2023 are quashed and the respective appeals filed by the petitioners against Ext.P1 order of assessment (in both the cases) are restored to the file of the First Appellate Authority, who shall pass fresh orders, after affording an opportunity of hearing to the petitioners. It is made clear that orders (Ext.P2 in both cases) are set aside only to the extent that they consider the issue related to discount received by the petitioners and on no other issues.

The writ petitions are disposed of as above.

Sd/-

GOPINATH P.

JUDGE

ajt

APPENDIX OF WP(C) 19872/2023

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE ASSESSMENT ORDER DT.17.12.2021PASSED BY THE 1ST RESPONDENT**
Exhibit P2	**TRUE COPY OF THE APPEAL ORDER DATED 19.4.2022 PASSED BY THE 2ND RESPONDENT IN APPEAL NO. GSTA(ALPY)33/2022**

APPENDIX OF WP(C) 28018/2023

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE ORDER DATED 24.11.2022, NO.32AXMPP4202AIZ2/2017-18 ISSUED BY 1ST RESPONDENT**
Exhibit P2	**TRUE COPY OF THE ORDER DATED 19.06.2023, IN GSTA (ALPY)102/2023 (17-18) PASSED BY 2ND RESPONDENT**