2024:KER:82677

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 6TH DAY OF NOVEMBER 2024 / 15TH KARTHIKA, 1946

WP(C) NO. 28896 OF 2024

PETITIONER:

ARANGATH PARAMBIL MOHAMMED MOHAMMED SHABEER,
PROPRIETOR,
M/S. FIRDOUSE INTERNATIONAL TRADING COMPANY,
1/394, KUNNAMKULAM, KUMARANELLUR, THRISSUR,
PIN – 680 590.

BY ADVS.
K.KRISHNA
ACHYUTH MENON

RESPONDENTS:

1. **THE STATE TAX OFFICER,**
TAX PAYER SERVICES CIRCLE,
STATE GOODS AND SERVICE TAX DEPARTMENT,
WADAKKANCHERY, THRISSUR, PIN – 680 582.

2. **THE DEPUTY COMMISSIONER (ARREAR RECOVERY),**
OFFICE OF THE JOINT COMMISSIONER,
TAX PAYER SERVICES CIRCLE, STATE GOODS AND SERVICE TAX DEPARTMENT POOTHOLE, THRISSUR, PIN – 680 004.

BY ADV. THUSHARA JAMES (SR GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This writ petition has been filed challenging Ext.P6 order issued under the provisions of Section 74 of the Central Goods and Services Tax/State Goods and Services Tax Acts (CGST/SGST Acts).

2. The brief facts of the case are as follows:

The petitioner is a registered person under the CGST/SGST Acts. In respect of some transactions of the petitioner for the year 2018-2019, a notice in Form GST ASMT-10 was issued to the petitioner on 22-01-2021. The petitioner did not submit any reply to the said notice, prompting the issuance of a reminder on 26-08-2023. On 15-09-2023, the petitioner submitted a reply. It is stated that on 26-08-2023, the petitioner appeared before the officer and was personally heard as well. After considering the reply filed by the petitioner on 15-09-2023 and following the personal hearing held on 26-08-2023, the officer proceeded to issue a show cause notice under Section 73 of the CGST/SGST Acts on 22-12-2023. In reply to the said notice, the petitioner submitted his response on 17-01-2024. The proceedings under Section 73 of the CGST/SGST Acts culminated in an order issued on 18-01-2024 by dropping one of the issues raised in the show cause notice and stating that in respect of the other issue, proceedings under Section 74 of the CGST/SGST Acts are being issued, as it was felt that the case of the petitioner was one of suppression. A notice under Section 74 of the CGST/SGST Acts was issued to the petitioner on 08-01-2024, to which admittedly the petitioner did not file any reply. The proceedings under Section 74 of the CGST/SGST Acts culminated in Ext.P6 order.

3. The learned counsel appearing for the petitioner would submit that Ext.P6 order is liable to be set aside on a short ground. It is pointed out that the issue raised in the Section 73 notice is identical to the issue raised in the Section 74 notice. It is submitted that while concluding the proceedings under Section 74 of the CGST/SGST Acts, the officer has proceeded on the basis that the petitioner had not submitted any reply. While the petitioner had submitted replies to the notice issued in Form GST ASMT-10 as also to the show cause notice under Section 73 of the CGST/SGST Acts. It is submitted that the Section 74 notice was issued barely 16 days after the issuance of the notice under Section 73, and the petitioner was therefore of the belief that the reply submitted by the petitioner to the Section 73 notice

will suffice insofar as the Section 74 proceedings are concerned. It is submitted that since the petitioner had already submitted a reply touching upon the very same issue in reply to the proceedings initiated under Section 73 of the CGST/SGST Acts, the officer could not have proceeded to finalise the proceedings under Section 74 of the CGST/SGST Acts on the basis that the petitioner had not submitted any reply. He submits that on the short ground, Ext.P6 order is liable to be set aside, and the petitioner has to be given an opportunity to file a reply and take part in the proceedings initiated under Section 74 of the CGST/SGST Acts.

4. The learned Senior Government Pleader refers to the sequence of events leading to the issuance of the order under Section 74 of the CGST/SGST Acts. It is pointed out that in Ext.P5 notice issued under the provisions of Section 73 of the CGST/SGST Acts itself, it has been stated that fresh proceedings have been initiated under Section 74 of the CGST/SGST Acts. It is submitted that proceedings under Section 74 of the CGST/SGST Acts were found warranted as there was clear suppression warranting the initiation of proceedings under Section 74 of the CGST/SGST Acts. It is submitted that

admittedly the petitioner did not file any reply to the show cause notice issued under Section 74 of the CGST/SGST Acts, and therefore the officer cannot be found fault with for concluding the proceedings under Section 74 of the CGST/SGST Acts on the basis that the petitioner had not submitted any reply. It is submitted that there is no illegality in dropping the proceedings under Section 73 of the CGST/SGST Acts and initiating proceedings on the same subject matter under Section 74 of the CGST/SGST Acts.

5. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader, I am of the view that technically the learned Senior Government Pleader may be right in contending that since the petitioner did not submit any reply to the notice issued under Section 74 of the CGST/SGST Acts, the officer proceeded to complete the proceedings on the basis that the petitioner had not submitted any reply. However, in the peculiar facts and circumstances of this case, it must be noticed that the show cause notice under Section 73 of the CGST/SGST Acts was issued on 22-12-2023, to which the petitioner had filed a reply on 17-01-2024. In the meanwhile, on 08-01-2024, a fresh notice had been issued invoking the

provisions of Section 74 of the CGST/SGST Acts. Since the notice was issued by the same officer and on the same issue and since the petitioner had submitted a reply on 17-01-2024, which was after the date on which the show cause notice under Section 74 of the CGST/SGST Acts was issued, I am of the view that the officer could not have proceeded on the basis that no reply had been submitted by the petitioner to the show cause notice issued under Section 74 of the CGST/SGST Acts. I am inclined to hold so in view of the peculiar facts of this case where, as already mentioned, the show cause notice under Section 74 of the CGST/SGST Acts was issued barely 16 days after the show cause notice under Section 73 of the CGST/SGST Acts had been issued, and on account of the fact that a reply had been submitted by the petitioner on 17-01-2024, that is, after the issuance of the show cause notice under Section 74 of the CGST/SGST Acts. The proceedings were also initiated by the same officer.

6. Taking this into consideration, I set aside Ext.P6 order on the short ground that it proceeds on the basis that the petitioner had not submitted any reply to the show cause notice issued under Section 74 of the CGST/SGST Acts. The proceedings initiated against the petitioner under Section 74 of the

CGST/SGST Acts shall stand restored to the file of the 1st respondent, who shall pass fresh orders after affording to the petitioner an opportunity of filing a detailed reply and after affording an opportunity of hearing to the petitioner. The petitioner shall appear before the 1st respondent at 11. 00 A.M on 19-11-2024 and submit his reply to the show cause notice issued under Section 74 of the CGST/SGST Acts, and thereafter the matter shall be adjudicated as directed above. I make it clear that I have not expressed any opinion on the merits of the matter.

Writ petition is disposed of as above.

Sd/-
GOPINATH P.
JUDGE

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APPENDIX OF WP(C) 28896/2024

PETITIONER'S EXHIBITS

Exhibit P1	COPY OF NOTICE IN FORM GST ASMT-10 ISSUED BY THE 1ST RESPONDENT DTD. 13-09-2023
Exhibit P2	COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 15-09-2023
Exhibit P2 (a)	COPY OF INVOICE NO. 10 OF THE PETITIONER DTD. 19-03-2019
Exhibit P2 (b)	COPY OF E-WAY BILL NO. 581093563666 OF THE PETITIONER DTD. 19-03-2019
Exhibit P2 (c)	COPY OF INVOICE NO. 09 OF THE PETITIONER DTD. 11-03-2019
Exhibit P2 (d)	COPY OF E-WAY BILL NO. 531091668942 OF THE PETITIONER DTD. 11-03-2019
Exhibit P2 (e)	COPY OF INVOICE NO. 08 OF THE PETITIONER DTD. 08-03-2019
Exhibit P2 (f)	COPY OF E-WAY BILL NO. 561091435923OF THE PETITIONER DTD. 09-03-2019
Exhibit P2 (g)	COPY OF INVOICE NO. 07 OF THE PETITIONER DTD. 08-03-2019
Exhibit P2 (h)	COPY OF E-WAY BILL NO. 581091434955 OF THE PETITIONER DTD. 09-03-2019
Exhibit P3	COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 22-12-2023
Exhibit P4	COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 08-01-2024
Exhibit P5	COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 18-01-2024

Exhibit P6	COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD. 20-02-2024
Exhibit P7	COPY OF NOTICE NO. AR/GST/32AQNPM7319R1Z3/92/2024-25 ISSUED BY THE 2ND RESPONDENT DTD. 18-06-2024