



2024:KER:74733

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 8TH DAY OF OCTOBER 2024 / 16TH ASWINA, 1946

WP(C) NO. 23487 OF 2024

PETITIONER:

**KRISHNA AGENCIES,
18/495A, PALLARIMANGALAM, MAVELIKARA,
ALAPPUZHA, PIN - 690 107,
REPRESENTED BY ITS PROPRIETOR
SHRI. G. KRISHNA PILLAI.**

BY ADVS.

**AJI V.DEV
H.ABDUL LATHIEF
ALAN PRIYADARSHI DEV**

RESPONDENTS:

- 1 THE SUPERINTENDENT,
CENTRAL TAX & CENTRAL EXCISE, KAYAMKULAM RANGE,
B.S.N.L, TELEPHONE EXCHANGE, KAYAMKULAM,
PIN - 690 502.**
- 2 THE SUPERINTENDENT,
CENTRAL TAX & CENTRAL EXCISE, AUDIT CIRCLE -III,
JOYEES ARCADE, YMCA ROAD, KOTTAYAM, PIN - 686 001.**
- 3 THE COMMISSIONER [AUDIT],
CENTRAL TAX & CENTRAL EXCISE CENTRAL REVENUE
BUILDING, I S PRESS RD., KACHERIPADY, KOCHI,
ERNAKULAM, KERALA, PIN - 682 018.**

BY ADV P.R.SREEJITH (Sr.SC)

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



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JUDGMENT

The petitioner has approached this Court being aggrieved by Ext.P4 order rectifying certain alleged mistakes in Ext.P2 order issued under Sections 73/74 of the CGST/SGST Acts for the year 2017-2018. The petitioner has challenged Ext.P4 on a short ground. It is submitted that the competent authority proceeded to rectify Ext.P2 order without informing the petitioner as to the reason that prompted the exercise of the power of rectification. Specific reference is made to Ext.P3 notice, which only calls upon the petitioner to appear for personal hearing on 11-03-2024 at 11.30 A.M.

2. The learned Senior Standing Counsel appearing for the respondents refers to the statement filed by the respondents and attempted to justify Ext.P4 order on the basis of the provisions contained in Section 161 of the Central Goods and Services Tax/State Goods and Services Tax Acts, 2017 (CGST/SGST Acts).

3. Having heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents, I am of the view that the petitioner is entitled to succeed. Ext.P2 order is dated 26-12-2023. The same was communicated to the petitioner along with Ext.P2(a) on 29-12-2023. Thereafter, on 06-03-2024, Ext.P3



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notice was issued to the petitioner. Ext.P3 notice reads as follows:

*"OFFICE OF THE SUPERINTENDENT OF COST & CENTRAL EXCISE
KAYAMKULAM RANGE
B.S.N.L. TELEPHONE EXCHANGE, KAYAMKULAM-690 502
Tel: 0479-2442086
e-mail: cgst.kayamkulamrng@gmail.com*

*NATION
TAX
MARKET*

*OC No.93/2023**Dated: 6 March 2024**To,*

*Sri. Krishnapillai Gopala Pillai
Krishna Agencies, 18/495A
Pallarimangalam, Mavelikkara.
Alappuzha-690107*

Gentlemen,

*Sub: GST- Order in Orginal No. 22/2023-24/GST/SUPDT dated
26/12/2023-Intimation of Personal Hearing-reg.*

*.....
The above case is posted for hearing on 11-03-2024 at 11.30 AM*

*You are requested to appear for a personal hearing before the
Office of the Superintendent Central Tax & Central Excise,
Kayamkulam Range, BSNL Telephone Exchange, Kayamkulam-690502
on **11.03.2024 at 11.30 A.M.***

*You or your authorized representative (with proper authorization)
may appear for personal hearing at the stipulated date and time for a
clarification regarding the above order.*

Yours faithfully.

*Sd/-
Superintendent
Central Tax and Contral Excise
KAYAMKULAM RANGE"*

A perusal of Ext.P3 does not indicate that any reason justifying the exercise of power of rectification was pointed out to the petitioner.

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Therefore, the learned counsel for the petitioner is right in contending that Ext.P4 rectification order cannot be sustained in law.

4. In the light of the above finding, Ext.P3 notice and Ext.P4 order are quashed, reserving the liberty of the competent authority to issue fresh notice after setting out the reasons for exercising the power of rectification and permitting the competent officer to pass fresh orders after affording to the petitioner an opportunity of filing a reply and an opportunity of being heard. Taking into consideration the time limit in Section 161 of the CGST/SGST Acts, it is directed that the period from the date of issuance of Ext.P3 notice till today (08-10-2024) shall be excluded for the purposes of determining any period of limitation within which the power of rectification under Section 161 of the CGST/SGST Acts should have been exercised by the competent authority.

Writ petition ordered accordingly.

Sd/-
GOPINATH P.
JUDGE

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APPENDIX OF WP(C) 23487/2024

PETITIONER'S EXHIBITS

- | | |
|----------------------|---|
| Exhibit P1 | COPY OF THE SHOW CAUSE NOTICE ISSUED BY
THE 2ND RESPONDENT DATED: 21.09.2023. |
| Exhibit P2 | COPY OF THE PROCEEDINGS OF ASSESSMENT
PASSED U/S. 73 OF THE GST ACTS DATED:
26.12.2023. |
| Exhibit P2(a) | COPY OF THE SUMMARY OF ORDER/DEMAND NOTICE
ISSUED IN FORM GST DRC-07 DATED:
29.12.2023 RELATING TO THE YEAR 2017-18. |
| Exhibit P3 | COPY OF THE NOTICE ISSUED BY THE 1ST
RESPONDENT DATED: 06.03.2024. |
| Exhibit P4 | COPY OF THE RECTIFICATION ORDER PASSED
DATED: 26.03.2024. |
| Exhibit P5 | COPY OF INSTRUCTION NO. 04/2023-GST
(F.NO.20016/41/2023-CBIC) DATED:
23.11.2023. |