2024:KER:22431

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 19TH DAY OF MARCH 2024 / 29TH PHALGUNA, 1945

WP(C) NO. 4468 OF 2024

PETITIONER/S:

AHAMED USMAN
AGED 56 YEARS
PROP. PARY ASSOCIATES , CALICUT ROAD, MALAPPURAM , KERALA, PIN - 676519

BY ADVS.
P.RAGHUNATHAN
PREMJIT NAGENDRAN
RISHAL.K

RESPONDENT/S:

1 DEPUTY COMMISSIONER-1
SPECIAL CIRCLE, STATE GST DEPARTMENT MALAPPURAM, PIN - 676505

2 GOODS AND SERVICE TAX NETWORK,
THRO' ITS CHAIRMAN EAST WING , 4TH FLOOR, WORLD MARK - 1, AEROCITY, NEW DELHI, PIN - 110037

3 GOODS AND SERVICE TAX COUNCIL, REP BY SECRETARY,
5TH FLOOR, TOWER II, JEEVAN BHARATH BUILDING,
JANPATH ,CONNAUGHT PLACE, NEW DELHI, PIN - 110001

4 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
REP BY, CHAIRMAN DEPARTMENT OF REVENUE, MINISTRY OF FINANCE ,NORTH BLOCK, NEW DELHI, PIN - 110001

5 STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT , FINANCE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

BY ADV RAJESH. K.RAJU

OTHER PRESENT:

RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

# JUDGMENT

## Dated this the 19th day of March, 2024

The present writ petition has been filed with the following prayers:-

> "It is therefore prayed that this Hon'ble Court may be pleased to call for the records leading to the issue of Ext. P-1 order by the First Respondent, peruse the same, hear arguments on behalf of the Petitioner and:
> A: Issue a WRIT OF CERTIORARI quashing the original of Ext. P-1 order issued by First Respondent:
> B: In the alternative, issue a WRIT OF MANDAMUS directing the First Respondents to permit the Petitioner to revise the Returns in GSTR 3B where mistakes have been committed and regularise the claim of input tax credit made against CGST/SGST output liability:
> C: Pass such other orders as the Petitioner may pray for and this Hon'ble Court may deem fit to grand in the circumstances of the case:
> D: Award costs of the Petitioner."

2.The petitioner has filed an application to revise Form GSTR 3B for the period from August 2017, January 2018 and February 2018 for the financial year 2017-2018 towards the end of January 2024. This application has been filed on 19.01.2024. Section 39(9) of the CGST/ SGST Act, 2017 specifically provides that no rectification or error or omission in respect of the details furnished under Section 39(1) of the Act shall be allowed after furnishing the return for the month of September following the end of the financial year to which such details pertains or furnishing of the relevant annual return, whichever is earlier.

3.Section 39(9) which is relevant for the purposes of the present writ petition is reproduced hereunder:-

> “(9) [Where]any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars [in such form and manner as may be prescribed], subject to payment of interest under this Act:
>
> **Provided** that no such rectification of any omission or incorrect particulars shall be allowed after the [thirtieth day of November] following [the end of the financial year to which such details pertain], or the actual date of furnishing of relevant annual return, whichever is earlier.”

4.The Government, after taking into consideration the initial difficulties faced by the dealers under the provisions of the GST Act, extended the time for rectification in respect of the returns of July 2017 to March 2018 till March 2019 by Ext.R1(a) dated 31.12.2018. During this extended period the petitioner has not filed any rectification application. After March 2019, that is the extended period, ASMT 10 notice was issued to the petitioner on 21.08.2020. Once ASMT 10 was issued under Section 61 of the Act, no rectification application is permitted in view of the expressed provision of Section 39(9).

5.Considering the statutory prescription and the fact that the petitioner has filed the rectification application only in January 2024, in respect of the returns of August 2017, January, 2018 and February 2018, this court finds no ground to entertain this writ petition, which does not only suffer from delay and latches but also prayer in the writ petition is barred by the express provision of Section 39(9) of the Act.

The writ petition is hereby dismissed for the aforesaid reasons.

**Sd/-**
**DINESH KUMAR SINGH**
**JUDGE**

SJ

## APPENDIX OF WP(C) 4468/2024

**PETITIONER EXHIBITS**

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|---|---|
| EXHIBIT-P-1 | PHOTOCOPY OF ORDER DT. 18.07.2022 U/S 73[09] FOR 2017.18 |
| EXHIBIT-P-2 | PHOTOCOPY OF ORDER IN WP(C) NO. 41219/2023 DT 08.12.2023 |
| EXHIBIT-P-3 | PHOTOCOPY OF ORDER IN WP(C) NO. 29769/2023 DT 12.09.2023 |
| EXHIBIT-P-4 | PHOTOCOPY OF REQUEST DT 19.01.2024 FOR REVISING GSTR 3B FOR 2017.18 |

**RESPONDENT EXHIBITS**

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|---|---|
| EXHIBIT R1 [a] | True copy of the order No.02/2018 - Central Tax dated 31.12.2018 |