IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 9TH DAY OF JANUARY 2024 / 19TH POUSHA, 1945

WP(C) NO. 42245 OF 2023

PETITIONER/S:

GOODYEAR INDIA LIMITED,
AGED 33 YEARS
DOOR NO. V/382, WARD NO. 5, THRIKKAKARA MUNICIPALITY, COCHIN PUBLIC SCHOOL ROAD, THRIKKAKAFA -682 021, ERNAKULAM DISTRICT, PIN -682021.REPRESENTED BY MS. KANIHA LAIN.-'AUTHORISED SIGNATORY.

BY ADV JOSEPH JERARD SAMSON RODRIGUES

RESPONDENT/S:

THE STATE TAX OFFICER,
TAXPAYER SERVICE CIRCLE, THRIKKAKARA, STATE GOODS & SERVICES TAX DEPARTMENT, SECOND FLOOR, NEW BLOCK, CIVIL STATION, KAKKANAD, ERNAKULAM DISTRICT, PIN - 682030

OTHER PRESENT:

SMT.JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The present writ petition has been filed by the petitioner, who is a dealer under the Central Goods and Services Tax Act/State Goods and Services Tax Act, 2017 ('CGST/SGST Act', for short). The petitioner is engaged in trading of tyres and tubes falling under the Tariff Heading 4011. The petitioner was issued a show cause notice under Section 73(1) of the CGST/SGST Act in Ext.P1 stating that the petitioner had wrongly availed input tax credit under the CGST for Rs.2,61,335/-, which would attract interest and penalty, and the total demand was worked out to be Rs.5,18,317/-, including tax and interest. The petitioner was also asked to show cause as to why the said tax along with penalty equivalent to 10% or Rs.10,000/- should not be realised from him, in case of failure to make payment of the entire amount of tax as above. The petitioner filed reply in Ext.P2 to the said show cause notice and submitted that the petitioner had a closing stock report as on 30.6.2017, as per which the quantity claimed as per the transitional credit of input tax credit in TRAN-I-(A) was 5966, besides the quantity disclosed in TRAN-2 for the goods sold was 628. It is further said that the petitioner had appropriately transitioned the credit amounting of Rs.2,61,335/- in GST as per the provisions of Section 140(3) of the CGST Act. Hence, the petitioner requested to drop the said show cause notice.

2. The assessing authority, however, did not agree with Ext.P2 reply to the show cause notice and vide the assessment order dated 20.10.2023 in Ext.P5 held that the petitioner had registration under the provisions of the Kerala Value Added Tax regime (Central Excise and Service Tax) and availing of ITC under Rule 117(4)(a)(1) of the CGST Rules, 2017 on goods held in stock on the appointed day is violation of the Act and the Rules. Therefore, the petitioner could not have availed TRAN-II credit under the CGST and the said

availment of the TRAN-II credit under the CGST was irregular, and that the matter should be remitted back to the Government. The demand in the show cause notice was upheld.

3. Learned counsel for the petitioner submits that the petitioner had availed the correct credit, which is evident from the subsequent returns filed by the petitioner in which the TRAN-II credit was allowed to the petitioner.

4. The petitioner has remedy of statutory appeal under the provisions of the CGST/SGST Act. Therefore, the petitioner ought to have filed appeal, instead of approaching this Court.

5. Considering the availability of alternate remedy of statutory appeal, this Court is not inclined to examine the assessment order. Therefore, the present writ petition is disposed of with liberty to the petitioner to file appeal under Section 107 of the CGST/SGST Act before the appellate authority. If the petitioner approaches the appellate authority in appeal within a period

of three weeks from today, the appeal shall be decided on merits without going into the question of limitation. However, the petitioner should deposit 10% of the tax assessed without interest and penalty. If the petitioner deposits 10% of the assessed tax as above, the remaining demand shall be kept in abeyance till finalisation of the appeal by the appellate authority.

Pending interlocutory application, if any, in the present writ petition stands dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

jg

APPENDIX OF WP(C) 42245/2023

PETITIONER EXHIBITS

Exhibit P 1	TRUE COPY OF THE SHOW CAUSE NOTICE U/S 73 (I) OF THE C GST/KERALA SGST ACT, 2017 , B EARING 13-16 NO.TKKR/STO/32AAACG35 I I H IZ9/2017-18 DATED 18.09.2023, ISSUED BV THE RESPONDENT.
Exhibit P 2	TFUE COPY OF THE REPLY LETTER DATED 25TH SEPTEMBER, 2023, ALONG WITH CERTAIN DOCUMENTS CONTAINING 55 PAGES TO THE RESPONDENT.
Exhibit P 2a	THE COPIES OF THE PRE-GST RETURNS FOR THE PERIOD FROM JANUARY 20 17 TO JUNE 201 7
Exhibit P 2b	TLUE COPY OF THE GST REGISTRATION CERTIFICATE OF GOODYEAR INDIA LTD DATED 01.07.2017 WITH GSTIN 32AAACG351 I H I Z9.
Exhibit P 2c	TRUE COPY OF THE STATEMENT OF THE GOODS SOLD FOR THE MONTHS OF JULY 2017 .TO DECEMBER 2017 FOR CLAIM OF TEN-II.
Exhibit P 2d	TRUE COPY OF THE UPLOADED TRAN II STATEMENT FOR THE PERIOD 2017 - 2018
Exhibit P 2e	TILE COPY OF THE STOCK REPORT MAINTAINED IN ERP SHOWING THE QUANTITY OF CLOSING STOCK AS ON JUNE 30,2017.
Exhibit P 2f	TRUE COPY OF THE SUMMARY OF CGST TRANSITIONAL CREDIT CLAIMED
Exhibit P 3	TRUE COPY OF THE ADDITIONAL REPLY DATED 04.10.2023 ALONG WITH THE COPIES OF TAX INVOICES FOR THE PERIOD FROM JULY 2017 TO

DECEMBER 2017 TO THE RESPONDENT

Exhibit P 4	TRUE COPY OF THE SUBSEQUENT REPLY DATED 17.10.2023, REQUESTING TO GRANT AN OPPORTUNITY OF PERSONAL HEARING TO THE RESPONDENT.
Exhibit P 5	TRUE COPY OF THE ORDER NO. 32AAACG3511HIZ9 2017-18 DATED 20.10.2023 ISSUED BY THE RESPONDENT
Exhibit P 6	TRUE COPY OF THE JUDGMENT DATED APRIL 05, 2023 OF THE HON'BLE HIGH COURT OF]HARKHAND [2023] IL8GSTR 331 JHARKHAND].