



2023:KER:53397

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 5TH DAY OF SEPTEMBER 2023 / 14TH BHADRA,

1945

WP(C) NO. 28911 OF 2023

PETITIONER:

JULIE JOSE,
AGED 47 YEARS, PROPRIETRIX,
M/S. T & J ASSOCIATES, ST. MARY'S CHURCH
SHOPPING COMPLEX, AYYANTHOLE,
THRISSUR, PIN - 680003.

BY ADVS.

SRI. HARISANKAR V. MENON
SMT. MEERA V. MENON
SRI. R. SREEJITH
SMT. K. KRISHNA
SMT. PARVATHY MENON

RESPONDENTS:

- 1 THE STATE TAX OFFICER,
TAX PAYER SERVICES CIRCLE, NATTIKA,
STATE GOODS & SERVICES TAX COMPLEX,
POOTHOLE, THRISSUR, PIN - 680004.
- 2 THE COMMISSIONER OF STATE GST,
STATE GOODS & SERVICES TAX DEPARTMENT,
TAX TOWERS, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM, PIN - 695002.
- 3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.

BY ADV

SMT. JASMINE M.M. -GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 05.09.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No.28911 of 2023**

Dated this the 5th day of September, 2023

JUDGMENT

1. Heard Mr. Harisankar V. Menon, Learned Counsel for the petitioner and Ms. Jasmine M. M., Learned Government Pleader for the respondents.

2. The present writ petition has been filed by the petitioner, who is the assessee under the provisions of the CGST and SGST challenging Exhibit P-4 assessment order made under Section 73 of the Kerala GST Act. The only ground which has urged in this writ petition is that the petitioner is not afforded with an opportunity of hearing as mandated under Section 75 of the GST Act. The Learned Government Pleader fairly has not disputed the said contention of the Learned Counsel for the petitioner. Sub-Section (4) of Section 75 of the GST Act provides as under.

“(4). An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.”



3. The petitioner has requested for a personal hearing in the matter resulted from the impugned order itself. Despite the contention which is made by the petitioner for personal hearing, the assessment has been completed under Section 73 of the Kerala GST Act without affording an opportunity of personal hearing.

4. Considering the aforesaid provision and facts, I find there has been violation of Sub Section 4 of Section 75 of the GST Act and, therefore, the impugned order is hereby set aside and the matter is remitted back to the file of the 1st respondent for passing fresh assessment order after affording an opportunity of personal hearing to the petitioner. The petitioner is directed to appear before the 1st respondent on 20.09.2023 and make his submission with respect to the Show Cause Notice issued to him for finalization of the assessment order. It is made clear that no notice of hearing shall be given to the petitioner.

With the aforesaid directions the writ petition is allowed and the impugned order is set aside without cost.

Sd/-
DINESH KUMAR SINGH
JUDGE

Svn



APPENDIX OF WP(C) 28911/2023

PETITIONER'S EXHIBITS

- | | |
|------------|---|
| EXHIBIT P1 | COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 21-08-2020 |
| EXHIBIT P2 | COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 22-06-2023 |
| EXHIBIT P3 | COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 06-07-2023 |
| EXHIBIT P4 | COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2017-18 DTD.11-08-2023 |