

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 18TH DAY OF SEPTEMBER 2023 / 27TH BHADRA, 1945

WP(C) NO. 29096 OF 2023

PETITIONER/S:

JOSE PAUL, PROPRIETOR, ALPHA AGENCIES, CHAPPARA,
KODUNGALLOOR, THRISSUR DISTRICT, PIN - 680664

BY ADVS. TOMSON T.EMMANUEL
JENSON FRANCIS PAYANKAN

RESPONDENT/S:

- 1 STATE TAX OFFICER, SGST DEPARTMENT, MINI CIVIL STATION,
KODUNGALLUR, THRISSUR DISTRICT, PIN - 680664
- 2 STATE OF KERALA, DEPARTMENT OF TAXES, SECRETARIAT,
THIRUVANANTHAPURAM REPRESENTED BY ITS SECRETARY TO
GOVERNMENT, PIN - 695001
- 3 DEPUTY COMMISSIONER (ARREAR RECOVERY) TAX PAYER
SERVICES, SGST DEPARTMENT, POOTHOLE, THRISSUR, PIN - 680004

OTHER PRESENT:

RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The present writ petition has been filed seeking to quash the show cause notice at Ext.P3 and Ext.P5 order completed by the 1st respondent.

2. The petitioner is a registered dealer under the SGST and CGST Acts. The petitioner filed a statement of sales in GSTR-1, monthly returns in GSTR-3B, and annual returns in GSTR-9, along with the Reconciliation statement in GSTR-9C with audited financial statements for the year 2017-18. It appears that there was a mismatch between the GSTR-1 and GSTR-3B. The petitioner was issued notice, and a personal hearing date was fixed on 07.03.2022.

2.1 However, on the said date, the 1st respondent was on leave, and no notice for further hearing was fixed. Without providing an opportunity for a hearing, the impugned order at

Ext.P5 has been passed in pursuance of the Ext.P3 notice issued.

3. On the last date of listing of the writ petition, i.e., on 05.09.2023, learned Government Pleader was directed to have instructions on whether the petitioner was afforded an opportunity of hearing before passing the impugned order in Ext.P5.

3.1 On instructions, Ms Rasmitha Ramachandran learned Government Pleader submits that no opportunity for a hearing was given to the petitioner as required under Section 73 of the GST Act.

4. Considering the aforesaid fact and admitted position, the present writ petition is allowed. The impugned order in Ext.P5 and the notice in Ext.P3 are hereby set aside. The petitioner is directed to appear before the 1st respondent on **29.09.2023 at 11.00 a.m.** with all the records in his

possession for finalising the fresh assessment order in accordance with the law.

Sd/-

DINESH KUMAR SINGH

JUDGE

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APPENDIX OF WP(C) 29096/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF ANNUAL RETURN IN FORM GSTR - 9 DATED 08.01.2021 SUBMITTED BY THE PETITIONER FOR 2017-18.
- Exhibit P2 TRUE COPY OF RECONCILIATION STATEMENT IN FORM GSTR - 9C DATED 28.01.2021 SUBMITTED BY THE PETITIONER FOR 2017-18
- Exhibit P3 TRUE COPY OF SHOW CAUSE NOTICE IN FORM GST DRC-01 DATED 23.02.2022 ISSUED BY 1ST RESPONDENT FOR 2017-18
- Exhibit P4 TRUE COPY OF COMMUNICATION SUBMITTED BY THE PETITIONER BEFORE 1ST RESPONDENT IN FORM GST DRC-06 DATED 08.03.2022, SEEKING PERSONAL HEARING, AGAINST EXT P3
- Exhibit P5 TRUE COPY OF ORDER NO.32AFVPA0100R1ZL/2017-18 DATED 29.07.2022 UPLOADED BY 1ST RESPONDENT IN GSTIN PORTAL, WITHOUT CONSIDERING EXT P1 AND P2
- Exhibit P6 TRUE COPY OF NOTICE DATED 02.08.2023 ISSUED BY 3RD RESPONDENT, FOR REVENUE RECOVERY PURSUANT TO EXT P5 DEMAND ALONG WITH ENGLISH TRANSLATED COPY
- Exhibit P7 TRUE COPY OF DECISION OF THIS HON'BLE COURT IN C U MATHAI VS. COMMERCIAL TAX OFFICER, REPORTED IN (2012) 51 VST 243 (KER.)