



2023:KER:74852

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 23RD DAY OF NOVEMBER 2023 / 2ND AGRAHAYANA, 1945

WP(C) NO. 25069 OF 2023

PETITIONER:

M/S. HILTON GARDEN INN,
UNIT OF MPG HOTELS AND INFRASTRUCTURE
VENTURES PVT. LTD., PUNNEN ROAD,
THIRUVANANTHAPURAM-695039, REPRESENTED BY ITS
DEPUTY VICE PRESIDENT, FINANCE AND ACCOUNTS,
MS. SUBHA JOSEPH.

BY ADVS.

SRI. ANIL D. NAIR

SMT. TELMA RAJU

SMT. AADITYA NAIR

RESPONDENTS:

- 1 THE COMMISSIONER OF KERALA GOODS AND
SERVICE TAX DEPARTMENT,
THIRUVANANTHAPURAM, PIN - 695001.
- 2 SUPERINTENDENT,
CENTRAL GST AND CENTRAL EXCISE, STATUE RANGE,
3RD FLOOR, GST BHAVAN, PRESS CLUB ROAD,
THIRUVANANTHAPURAM, PIN - 695001.

BY ADV.

SRI. AKHIL SHAJI - SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No.25069 of 2023**

Dated this the 23rd day of November, 2023

JUDGMENT

1. The present writ petition has been filed to set aside Exhibit P-14 order whereby petitioner has been directed to remit the interest payable under Section 50 (1) of the CGST/SGST Act, 2017, immediately, failing which the respondent should be constrained to initiate action under Section 79 of the CGST Act. The interest calculated for the period from July, 2017 to March, 2018 is Rs. 5,30,919/- in respect of the delayed remission of the tax due on the petitioner.
2. petitioner was a registered dealer under the Kerala Value Added Tax Act, 2003 and under the provisions of Kerala Tax on Luxuries Act, 1957. The petitioner become dealer under the provisions of CGST Act which came into force w.e.f. 01.07.2017.
3. Petitioner had several vertical businesses for which he has filed separate GSTIN registration and the same were granted as mentioned in paragraph 4 of the writ petition on different dates. Hilton Garden



Inn, the petitioner herein was granted registration number, GSTIN 32AAECM1840M3ZI dated 28.06.2017. Same GSTIN was also issued to another company i.e. The Muthoot Skychef (Airline Catering Unit) on 25.07.2017. As the petitioner herein and the Muthoot Skychef (Airline Catering Unit) were having the same GSTIN registration number, GST Help Desk was contacted . The Muthoot Sky Chef applied for new registration on 26.07.2017, and consequently, on 02.08.2017 and Muthoot Sky Chef (Airline Catering Unit) was allotted new registration number as GSTIN – 32AAECM1840M7ZE. According to the petitioner, for the month of July, 2017, the petitioner remitted the GST of Rs. 29,24,100/- on 21.08.2017 which was the last date for filing Form 3B return for July, 2017. However, on account of technical problem in the GST network, the tax remitted by the petitioner could not get reflected in the cash ledger appearing in the return module, and thus, the petitioner could not complete the e-filing of the return on the same day, i.e. on 21.08.2017. the petitioner sent an e-mail on 24.08.2017 to helpdesk@gst.gov.in citing the issue and seeking advise/assistance to get the credit of tax paid in the cash ledger and for filing the return. A response was received by the petitioner to the aforesaid e-mail on 05.10.2017 stating that “Transaction of Rs. 29,24,100/- on 21.08.2017 against CPIN 17083200013355 dated



18.08.2017 has been credited to your cash ledger". The petitioner found out that the petitioner's GSTIN was cancelled on 24.08.2017 without any notice to him. The petitioner brought this matter to the notice of the concerned authority by e-mail on 24.08.2017 itself. Applications dated 30.08.2017 and 26.09.2017 were filed before the Deputy Commissioner, Kerala SGST Department, Tax Towers, Karamana, Thiruvananthapuram to reactivate the GSTIN of the petitioner. The petitioner finally received response on 15.11.2017 informing the petitioner to contact the respective tax authorities for the grievance, and the authority would have assist the petitioner in that regard.

4. On account of the cancellation of the GSTIN on 24.08.2017, petitioner could not file return for the month of July, 2017 for which he had already paid tax on 21.08.2017, and thereafter, for the months of August, September, October and November, 2017 petitioner approached this Court by filing W.P.(C) No. 41314 of 2017. This Court on 21.12.2017 passed an interim order directing the respondent to take expeditious action, either to restore the registration already given to the establishment of the petitioner or provide them an alternative registration, within a week.



5. According to the petitioner, after the said interim order was passed, the site was made available to the petitioner only on 26.12.2017 and due to non-availability of login ID or any other functionality, the petitioner could not file any return in GSTR3B or GSTR 1 for the period from July, 2017 to December, 2017. Once the site was enabled, the petitioner filed return for the month of July, 2017 on 01.01.2018, for the month of August, 2017 on 16.01.2018, for the month of September, 2017 on 17.01.2018, for the month of October, 2017 on 17.01.2018 and for the month of November, 2017 on 18.01.2018. There was only delay of two days in filing the return for the month of January, 2018 and delay of four days in filing the return for the month of March, 2018.

6. Though no penalty has been imposed for delay in filing return, but the interest has been levied by Exhibit P-14 for remitting the tax with delay after filing return. Learned Counsel for the petitioner submits that when the petitioner's GSTIN has been cancelled without any due process having been followed illegally, and the same was restored only in pursuance to the interim order passed by this Court in W.P.(C) No. 41314 of 2017 dated 21.12.2017, the petitioner cannot be held liable for remitting the GST with some delay inasmuch as the



petitioner could not have remitted the tax without the site being made available to him for remitting the tax. Filing of the return as well as remission of tax is only online through GST portal against the GSTIN. When the petitioner's GSTIN stood canceled, the petitioner had no means to remit the tax and file the return, until the same was made available in pursuance to the interim order dated 21.12.2017 passed in W.P.(C) No.41314 of 2017. The learned Counsel for the petitioner therefore, submits that the petitioner is liable for payment of interest, if any, only after twenty days from the date of restoration of the GSTIN, and not for any other period. The Department may impose the interest for any delay after 20th day from the date of restoration of the GSTIN, i.e. 126.12.2017. it is therefore submitted that the demand of interest for alleged delay in remitting the tax for the period from July, 2017 to March, 2018 is wholly unjustified and liable to be set aside.

7. On the other hand, Mr. Akhil Shaji, learned Standing Counsel submits that under Section 50 of the CGST /SGST Act, 2017 any person who is liable to pay the tax in accordance with the provisions of the Act and the Rules made under but, fails to make or any part thereof to the Government for the period prescribed is liable to pay



interest up to 18% for the delay period. He further submits that the petitioner after collecting the tax from its customers did not pay to the Government and he used the said amount for his own business purposes and, therefore, the petitioner is liable to pay interest for the delayed payment of the tax amount due to the Government.

8. However, there is averment in the statement filed on behalf of the respondents regarding cancellation fo the GSTIN of the petitioner on 24.08.2017 and same being restored only on 26.12.2017. It cannot be denied that without there being GSTIN, the petitioner could not have paid the tax or filed the return. The petitioner cannot be held responsible for cancellation of the GSTIN on 24.08.2017. The petitioner immediately approached to the GST authorities on 24.08.2017 itself by way of an e-mail bringing into the notice of the authorities about the cancellation of the GSTIN and on such request no action was taken till the petitioner filed W.P.(C) No.41314 of 2017 before this Court, and only in pursuance of the interim order passed by this Court on 21.12.2017 the GSTIN of the petitioner got restored. The petitioner had thereafter, filed return for the months of July, 2017 to December, 2017 and paid tax. Thus, the demand for interest for delay in filing the returns and payment of tax due for the period



from July, 2017 to December, 2017, this Court is of the view that the it is highly inequitable to impose interest under Section 50 of the Income Tax Act, 2017 on the petitioner, and petitioner can not be said to have made any default in not remitting the tax inasmuch as he could not have remitted the tax without there being a valid GSTIN. However, if the petitioner had failed to remit the tax after 26.12.2017, within twenty days thereafter, the petitioner would be liable to pay the interest under Section 50 of the CGST/SGST Act, 2017.

9. In the above circumstances, the present writ petition is disposed of. The impugned order is set aside and the authorities are given liberty to impose fine for delayed payment of GST after 20th day from 26.12.2017 for the period up to December, 2017. for subsequent months, if there is any delay, the petitioner is liable to pay the interest. Let a fresh notice be issued to the petitioner accordingly, and on receipt of the notice, the petitioner should remit the interest if there has been any delay as pointed out in the reply affidavit.

Sd/-
DINESH KUMAR SINGH
JUDGE

**APPENDIX OF WP(C) 25069/2023****PETITIONER'S EXHIBITS**

- EXHIBIT P1 TRUE COPY OF THE CERTIFICATE OF PROVISIONAL REGISTRATION DATED 28-06-2017 GRANTED TO THE PETITIONER
- EXHIBIT P2 TRUE COPY OF REGISTRATION CERTIFICATE DATED 25-07-2017 GRANTED TO MUTHOOT SKYCHEF
- EXHIBIT P3 TRUE COPY OF E MAIL DATED 26-07-2017
- EXHIBIT P4 TRUE COPY OF THE NEW REGISTRATION CERTIFICATE DATED 02-08-2017 GRANTED TO MUTHOOT SKYCHEF
- EXHIBIT P5 TRUE COPY OF THE E-MAIL ON 24-08-2017 TO HELPDESK@GST.GOV.IN
- EXHIBIT P6 TRUE COPY OF THE E-MAIL DATED 5.10.2017
- EXHIBIT P7 TRUE COPY OF THE E-MAIL DATED 24-08-2017
- EXHIBIT P8 TRUE COPY OF THE PETITIONS DATED 30-8-2017 BEFORE THE DEPUTY COMMISSIONER, KERALA SGST DEPARTMENT, TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM
- EXHIBIT P9 TRUE COPY OF THE PETITION DATED 26.9.2017 BEFORE THE DEPUTY COMMISSIONER, KERALA SGST DEPARTMENT, TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM
- EXHIBIT P10 TRUE COPY OF THE PETITION DATED 24.10.2017 BEFORE THE SPECIALLY CONSTITUTED GST CELL OF THE STATE GST DEPARTMENT
- EXHIBIT P11 TRUE COPY OF THE E-MAIL DATED 15.11.2017 FROM DONOTREPLY@GST.GOV.IN
- EXHIBIT P12 TRUE COPY OF THE ORDER DATED 21.12.2017 IN W.P.(C) NO.41314 OF 2017
- EXHIBIT P13 TRUE COPY OF THE FORM NO.9C FOR THE PERIOD FROM 1.7.2017 TO 31.3.2018 FILED BY THE AUDITORS OF THE PETITIONER
- EXHIBIT P14 TRUE COPY OF THE NOTICE DATED 12.6.2023 ISSUED BY 2ND RESPONDENT