



2023:KER:67191

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

WP(C) NO. 34049 OF 2023

PETITIONER:

M/S BROTHERS TRADE LINKS
AGED 68 YEARS
KOTTIYAM P.O, KOLLAM DISTRICT, PIN - 691 517
REPRESENTED BY ITS MANAGING PARTNER.

BY ADVS.
BOBBY JOHN
S.AJAYGHOSH KUMAR

RESPONDENTS:

- 1 THE STATE TAX OFFICER, CHATHANNOOR
STATE GOODS & SERVICES TAX DEPARTMENT, MINI CIVIL
STATION, CHATHANNOOR, KOLLAM DISTRICT, PIN - 691 572.
- 2 THE ASSISTANT COMMISSIONER
TAX PAYER SERVICES CIRCLE, CHATHANNOOR STATE GOODS
& SERVICES TAX DEPARTMENT, MINI CIVIL STATION,
CHATHANNOOR, KOLLAM DISTRICT, PIN - 691 572.
- 3 THE COMMISSIONER, KERALA STATE GOODS AND SERVICE TAX
DEPARTMENT, 9TH FLOOR, TAX TOWER, KILLIPPALAM,
KARAMANA P.O., THIRUVANANTHAPURAM, PIN - 695 002.
- 4 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695 001.
- 5 THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REPRESENTED BY THE PRINCIPAL COMMISSIONER GST,
GST POLICY WING, NO.503, B WING, 5TH FLOOR, CBIC,
HUDCO VISHALA BUILDING, BHIKAJI CAMA PLACE,
R. K. PURAM, NEW DELHI-, PIN - 110 066.



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6 UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, RAJPATH MARG, CENTRAL SECRETARIAT,
NEW DELHI, PIN - 110 001.

OTHER PRESENT:

JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



DINESH KUMAR SINGH, J.

WP(C) NO. 34049 OF 2023

Dated this the 17th day of October, 2023

J U D G M E N T

1. Heard Sri. Bobby John Pulickaparambil, Learned Counsel for the petitioner and Smt. Jasmine M.M, Learned Government Pleader.

2. The petitioner has approached this Court under Article 226 and 227 of Constitution of India impugning the orders in Ext.P14 and Ext.P15 passed by the 2nd respondent. The petitioner has further prayed for a writ in the nature of mandamus commanding the 2nd respondent to permit the petitioner to correct the uploading mistake in GSTR3B of the petitioner for the period February, 2018. The petitioner has also prayed to declare that the Circular No.26/26/2017-GST, dated 29.12.2017 issued by the 5th respondent (Ext.P16) is ultra vires to the provisions of Central Goods and Services Tax Act, 2017.



3. The petitioner is said to be a partnership firm engaged in the distribution of cosmetics, baby products etc. at Kollam. The petitioner is a registered dealer under the CGST/SGST Act. The petitioner was issued Ext.P6 Notice in Form GST ASMT-10 for tax period-financial year 2017-18 stating that during the scrutiny of the return for the tax period for the financial year 2017-18, certain discrepancies were noticed as mentioned in the notice itself. It was also stated that the petitioner has utilised ITC greater than 5 times cash. There was mismatch between GSTR1 and GSR3B for an amount of Rs.6,12,127.88. The petitioner did not file reply to the said show cause notice and therefore, Ext.P7 Form GST DRC-01A dated 29.06.2021 was issued to the petitioner, asking the petitioner to pay the difference amount of Rs.6,12,127.88 as per the GSTR1 and GSTR 3B return for the financial year 2017-2018. The petitioner was also assessed interest and penalty and the total amount in respect of SGST came to 5,29,138.78 and the same amount for CGST also.



The petitioner was asked to submit any explanation, if any, by 23.07.2021.

4. The petitioner submitted his reply to the GST DRC-01A by Ext.P8.

5. As per his reply to the show cause notice in Form GST DRC-01A took the plea that, there was an uploading mistake in GSTR 3B. Total taxable supply and related OPT liability disclosed was only Rs.29,940/- with OPT liability at Rs.4,193/- each under CGST and SGST as against actual total taxable turnover of Rs.47,03,844.53 with OPT liability at Rs.3,32,039.38 each under CGST and SGST. It was also stated that no such mistake was happened in the GSTR1 return. It was also stated in the reply to the show cause notice that during February 2018, the taxable supply turnover and OPT liability in respect of another taxable person with GSTIN 32CCFPR0040A1ZG was mistakenly uploaded as taxable supply turnover and OPT liability as that of the petitioner. Return uploading work of both the taxable persons had been undertaken in same



Akshaya Centre. Due to oversight from the part of the clerk who had undertaken the work is the reason behind the incorrect uploading of total taxable supply and OPT liability. The petitioner has also submitted copy of GSTR3B return for the month of February 2018 submitted by the dealer bearing GSTIN-32CCFPR0040A1ZG. In respect of the ITC available during February 2018 was Rs.6,74,585.26. (IGST Rs.30,365.06, CGST Rs.3,21,823.60 and SGST Rs.3,21,823.60). But mistakenly the petitioner had claimed ITC of Rs.14,525/- and the entire mistakes were happened due to incorrect uploading by adopting ITC and OPT of another dealer. These mistakes were rectified at the stage of filing GSTR9 and GSTR9C.

6. After considering the said reply, the notice under Section 74(1) of Central Goods and Services Tax Act, 2017, has issued to the petitioner. The petitioner claimed that the mistakes committed in affording return for February 2018 were rectified by filing GSTR9 and GSTR9C and were examined by the



assessing authority. It was said that on examination, much higher difference in OPT liability as per 9C than that mentioned in DRC 01A. From the data in respect of GSTR 9C and GSTR 3B of the petitioner, it was noticed that the petitioner had not conceded outward taxable supply for Rs.40,18,303/- with SGST liability of Rs.3,07,774/- and CGST liability of Rs.3,07,774/-. Even though the petitioner had conceded the taxable turnover in GSTR 9C which the petitioner had omitted the same in GSTR 3B. Thus, it was assessed that the petitioner had not remitted the connected tax liability with interest while filing either GSTR 9 or GSTR 9C and therefore, notice under Section 74 of GST Act was incorporated. The petitioner was therefore issued notice asking him to discharge the liability conceded as per GSTR 9C of Rs.62,24,004/- and interest of Rs.6,15,548/-. The petitioner was directed to pay Rs.6,15,548/-. The State GST and CGST in equal amount. In as much as the petitioner has conceded as per GSTR 9C (SGST + CGST) for the outward supply



Rs.62,24,004/-. The petitioner was issued show cause notice as to why the petitioner should not pay the amount specified in the notice issued under Section 74(1) of the GST Act along with interest thereon under Section 50 of the Act and penalty applicable under the provisions of the GST Act, subject to sub-sections 8,9 and 11 of Section 74 by 28.02.2022. The petitioner had also given an opportunity for personal hearing on 14.02.2022 at 11 a.m. The petitioner was thereafter issued another DRC 01 for Rs. 16,49,668/-. The petitioner filed reply in Ext.P11.

7. The assessing authority thereafter vide Ext.P15 impugned order assessed the liability under SGST and CGST as Rs.6,15,548/- with interest till the payment and applicable penalty as per statute.

8. Learned counsel for the petitioner submits that it was the initial stage when the GST regime was brought on. The petitioner committed mistake affording the returns for February 2018. The petitioner should have been allowed to correct the mistake and



the time limit prescribed in the circular dated 28.12.2017 in Circular No. 26/26/2017-GST by Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, GST Policy Wing should not have been created in view of the several judgments passed by different High Courts including the judgment passed by Gujarat High Court in ***Deepak Print Vs. Union of India in Civil Application No. 18157 of 2019 dated 09.03.2021***, wherein paragraph 4 of the Circular No. 26/26/2017-GST has been read down to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred. The Gujarat High Court has allowed and permitted the petitioner in that case to rectify Form GSTR-3B for the period to which the error relates, i.e., the relevant period from July, 2017 to September, 2017.

9. Learned Counsel for the petitioner submits that similar view has been taken by the Delhi High Court in its judgment in the case of ***Bharati Airtel***



Limited Vs. Union of India and Ors. in W.P. (C) 6345/2018 and CM Appl. 45505/2019 dated 05.05.2020.

10. Learned Counsel for the petitioner further submits that the petitioner may permitted to rectify the error in affording the Form GSTR-3B.

11. Smt. Jasmine M.M, learned Government Pleader submits that the petitioner can approach the appellate authority under Section 107 of the GST Act. Once the Circular No. 26/26/2017-GST has been read down, the appellate authority will take into consideration the law that has been declared by the Gujarat High Court and Delhi High Court.

12. Considering the facts that paragraph 4 of the circular No. 26/26/2017-GST has been read down and it has been stated that the assessee can rectify the mistake in respect of the period in which it is granted. Subsequently, this is the law which has been taken note in several judgments. Question here is of disputed question of fact and this Court cannot be



expected to decide the disputed question of fact within the jurisdiction under Article 226 of the Constitution of India.

13. Therefore, this writ petition is disposed of with liberty to the petitioner to approach the appellate authority under Section 107 of the GST Act against the impugned order Ext.P15. If the petitioner submits all the documents in his favour before the appellate authority, the authority will examine it in accordance with law and pass an order accordingly.

14. With aforesaid liberty to the petitioner, the present writ petition is disposed of.

Sd/-

**DINESH KUMAR SINGH
JUDGE**

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**APPENDIX OF WP(C) 34049/2023**

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE GSTR-3B OF THE PETITIONER FOR THE PERIOD FEBRUARY 2018, DATED 23.03.2018.
- Exhibit P2 TRUE COPY OF THE GSTR-3B OF MR. SHYAM RAJ, M/S PUNCHIRY MOTOLAMP FOR THE PERIOD FEBRUARY 2018, DATED 23.03.2018.
- Exhibit P 3 TRUE COPY OF THE GSTR 1 OF THE PETITIONER FOR THE PERIOD FEBRUARY, 2018, DATED 01.06.2018.
- Exhibit P4 TRUE COPY OF THE ANNUAL RETURN (FORM GSTR-9) OF THE PETITIONER, FOR THE PERIOD 2017-18, DATED 30.01.2020.
- Exhibit P5 TRUE COPY OF THE RECONCILIATION STATEMENT (FORM GSTR-9C) OF THE PETITIONER, FOR THE PERIOD 2017-18, DATED 31.01.2020.
- Exhibit P6 TRUE COPY OF THE DISCREPANCY NOTICE DATED 13.08.2020 ISSUED BY THE 1ST RESPONDENT.
- Exhibit P 7 TRUE COPY OF THE SAID NOTICE OF TAX ASCERTAINMENT IN DRC-01A ISSUED BY THE 1ST RESPONDENT.
- Exhibit P 8 TRUE COPY OF THE REPLY DATED 13.07.2021 (DATE SHOWN AS 14.07.2021 IN THE SECOND PAGE) SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.
- Exhibit P9 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 25.01.2022, ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- Exhibit P10 TRUE COPY OF THE SAID SHOW CAUSE NOTICE DATED 02.02.2022 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- Exhibit P 11 TRUE COPY OF THE REPLY DATED 20.07.2022,



- Exhibit P12 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.
TRUE COPY OF THE SAID REMINDER DATED 09.05.2023, ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- Exhibit P13 TRUE COPY OF THE REPLY DATED 21.06.2023, SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.
- Exhibit P14 TRUE COPY OF THE ORDER UNDER SEC.74 OF THE ACT ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- Exhibit P15 TRUE COPY OF THE ORDER ANNEXURE DOCUMENT TO THE ORDER UNDER SEC.74 OF THE ACT ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- Exhibit P 16 TRUE COPY OF THE CIRCULAR NO. 26/26/2017-GST, DATED 29.12.2017 ISSUED BY THE 5TH RESPONDENT