



2023:KER:78414

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 4TH DAY OF DECEMBER 2023 / 13TH AGRAHAYANA, 1945

WPC) NO. 15680 OF 2023

PETITIONER/S:

M/S. N.T.K. JEWELLERS,
MM 20/134, PANDIKKAD ROAD, MANJERI, MALAPPURAM,
REPRESENTED BY ITS MANAGING PARTNER, K. JALEEL.,
PIN - 676121

BY ADVS.

HARISANKAR V. MENON

MEERA V.MENON

R.SREEJITH

K.KRISHNA

PARVATHY MENON

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPARTMENT, MINI CIVIL
STATION, KACHERIPADI, MANJERI, MALAPPURAM DISTRICT., PIN -
676121
- 2 DEPUTY COMMISSIONER (ARREAR RECOVERY),
TAX PAYER SERVICES, B2 BLOCK, CIVIL STATION, MALAPPURAM -
676505., PIN - 676505
- 3 DEPUTY COMMISSIONER OF STATE TAX,
STATE GOODS AND SERVICES TAX DEPARTMENT, MALAPPURAM AT
MANJERI, MANJERI, MALAPPURAM DISTRICT-676 121., PIN - 676121
- 4 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -695001., PIN - 695001

OTHER PRESENT:

MITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

1. The present writ petition has been filed impugning Ext.P5 order issued by the 3rd respondent under Section 73 of the CGST/SGST Act, 2017.

2. The petitioner has been assessed for the tax liability of Rs.6,36,995/-. Instead of filing statutory appeal against the said order, the petitioner has approached this Court in the present writ petition. The ground for approaching this Court is violation of the principles of natural justice.

3. The assessment order would itself disclose that the petitioner was issued the show-cause notice, to which the petitioner had not filed reply. Pointing out the discrepancies in the return, the petitioner had been issued



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Ext.P1 notice dated 30th July, 2020. The petitioner filed reply to the said notice in GST ASMT-10 vide Ext.P2. After considering the reply, the notice under Section 73(1) of the KGST Act, 2017 has been issued to the petitioner vide Ext.P4. However, no reply was filed to the said notice in DRC-01. The Assessing Authority in the impugned order itself has mentioned that after intimation in DRC-01, which was served on the petitioner, the petitioner failed to file reply, and therefore, whatever material was available, including the reply filed to the notice in GST ASMT-10, the petitioner has been assessed for the tax as mentioned above.

4. This Court has no reason to believe that the authority would record an incorrect finding of fact regarding service of notice to the petitioner in the order impugned herein. If the petitioner is aggrieved by the order passed,



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he ought to have filed an appeal instead of approaching this Court on the ground of violation of principles of natural justice, which does not appear to be correct.

5. In view thereof, the present writ petition is disposed of, with liberty to the petitioner to file the appeal against the said order issued by the 3rd respondent. Vide Circular No.53/2023, the limitation for filing the appeal has been extended till 31st January 2024.

Sd/-

DINESH KUMAR SINGH

JUDGE

JS



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APPENDIX OF WP(C) 15680/2023

PETITIONER EXHIBITS

- | | |
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| Exhibit P1 | COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2017-18 DTD. 30-07-2020 |
| Exhibit P2 | COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 20-08-2020 |
| Exhibit P3 | COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT DTD. 25-04-2023 |
| Exhibit P4 | COPY OF NOTICE ISSUED BY THE 3RD RESPONDENT DTD. 18-01-2022 |
| Exhibit P5 | COPY OF ORDER ISSUED BY THE 3RD RESPONDENT DTD. 18-02-2022 |
| Exhibit P6 | COPY OF ANNUAL RETURN IN FORM GSTR-9 OF THE PETITIONER DTD. 06-07-2019 |
| Exhibit P7 | COPY OF CIRCULAR NO. 183/15/2022-GST DTD. 27-12-2022 |