



2024:KER:4845

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 17TH DAY OF JANUARY 2024 / 27TH POUSHA, 1945

WP(C) NO. 26883 OF 2023

PETITIONER:

TYRE INDIA SPARE INDIA,
PP/II/33,34,35/36/37, AVANI BUILDING,
PALLIMUKKU, KANNETTY, KOLLAKA,
KARUNAGAPPALLY, KOLLAM, PIN - 690536.
REPRESENTED BY ITS PROPRIETOR SRI. SANOSH S.

BY ADVS.

SRI. K. S. HARIHARAN NAIR
SMT. G. REMADEVI
SMT. HARIMA HARIHARAN
SRI. RAJATH R NATH
SRI. DHEERAJ SASIDHARAN

RESPONDENTS:

- 1 STATE TAX OFFICER,
SGST DEPT., MINI CIVIL STATION,
KARUNAGAPPALLY, KOLLAM, PIN - 690518.
- 2 DEPUTY COMMISSIONER (ARREAR RECOVERY),
TAXPAYER SERVICES, SGST DEPT.,
ASRAMOM, KOLLAM, PIN - 691002.
- 3 UNION OF INDIA,
REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, NORTH BLOCK,
NEW DELHI, PIN - 110001.

BY ADV.

SRI. JASMINE M. M. - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



DINESH KUMAR SINGH, J.

W.P.(C) No. 26883 of 2023

Dated this the 17th day of January, 2024

JUDGMENT

1. The present writ petition has been filed for the following reliefs;

(i) issue a writ of mandamus or other appropriate writ or orders directing to set aside Ext. P1 order as Ext. P-1 Order was issued without considering the essence of Notification No. 19/2021 -Central Tax dated 01.06.2021 and Notification No. 33/2021 – Central Tax dated 29.08.2021.

(ii) issue a writ of mandamus or other appropriate writ or orders declaring that Section 16(4) shall not be applicable to cases in which return was belatedly filed due to reasons beyond the control of the assessee;

(iii) issue a writ of mandamus or other appropriate writ or orders declaring Section 16(4) of CGST Act and Section 16(4) of Kerala State GST Act to be illegal, arbitrary, unconstitutional and invalid to the extent it seeks to deny Input Tax Credit if it is not taken within the due date of furnishing of the return for the month of September following the end of the financial year to which any invoice



or debit note pertains or furnishing of annual return, whichever is earlier;

(iv) issue a writ of mandamus or other appropriate writ or orders declaring the due dates mentioned in Section 16(4) of CGST Act and Section 16(4) of Kerala GST Act to have been automatically extended for the time periods and category of assessee mentioned in Notification No. 19/2021 – Central Tax dated 01.06.2021 and Notification No. 33/2021 – Central Tax dated 29.08.2021, to such date to which the due date for filing GSTR – 3B was extended by the aforementioned Notifications;

(v) issue a writ of mandamus or other appropriate writ or orders declaring Ext. P-1 Order to be *void ab initio* as they seek to deny eligible ITC of the petitioner based on a misinterpretation of Section 16(4) of the CGST and Kerala State GST Acts;

(vi) Dispense with production of English translation of documents in vernacular languages; and

(vii) Issue any other writ, direction or order found fit and proper by this Honorable Court on the facts and in the circumstances of this case.

2. The learned Counsel for the petitioner submits that the time limit for filing the appeal against the impugned assessment order in Exhibit



P-1 has been extended till 31.01.2024 and the petitioner would like to withdraw the writ petition and take recourse to remedy of appeal under Section 107 of the CGST/KGST Act, 2017 against the impugned order.

3. Considering the above submission of the learned Counsel for the petitioner, the present writ petition is dismissed as withdrawn with liberty as prayed above.

**Sd/-
DINESH KUMAR SINGH
JUDGE**

Svn



APPENDIX OF WP(C) 26883/2023

PETITIONER'S EXHIBITS

EXHIBIT P1 COPY OF THE ORDER DATED 03-11-2022 ISSUED BY
1ST RESPONDENT

EXHIBIT P2 COPY OF THE REVENUE RECOVERY NOTICE DATED 07-
06-2023 ISSUED BY THE 2ND RESPONDENT

EXHIBIT P3 COPY OF THE INTERIM ORDER IN WP(C) NO. 23085
OF 2023 DATED 19-07-2023 PASSED BY THE HON'BLE
HIGH COURT OF KERALA

