

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 3RD DAY OF NOVEMBER 2023 / 12TH KARTHIKA, 1945

WA NO. 1853 OF 2023

AGAINST THE JUDGMENT WP(C) 31184/2023 OF HIGH COURT OF

KERALA

APPELLANT/PETITIONER:

NAHASSHUKOOR,
AGED 32 YEARS
S/O ABDUL SHUKOOR, PROPRIETOR M/S N. S. METALS,
JAMEELAMANZIL, SANATHANAM WARD,
ALAPPUZHA, PIN - 688001

BY ADV A.KRISHNAN

RESPONDENTS/RESPONDENTS:

- 1 ASSISTANT COMMISSIONER
SECOND CIRCLE, STATE GOODS & SERVICE TAX
DEPARTMENT, COLLETORATE, ALAPPUZHA, PIN - 688001
- 2 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI, PIN - 110001
- 3 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
GST POLICY WING, NORTH BLOCK, NEW DELHI - 110001,
REPRESENTED BY PRINCIPAL COMMISSIONER (GST).,
PIN - 110001



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WA Nos.1853 & 1857/2023

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- 4 STATE OF KERALA
REPRESENTED BY GOVERNMENT PLEADER, HIGH COURT OF
KERALA, PIN - 682031
- 5 STATE TAX OFFICER, (ARREAR RECOVERY)
OFFICE OF JOINT COMMISSIONER, TAX PAYER SERVICES,
STATE GOODS & SERVICE TAX DEPARTMENT, ALAPPUZHA,
PIN - 688001

BY ADV K.MALINI

OTHER PRESENT:

SR GP SRI V K SHAMSUDHEEN AND SC : SRI SREELAL N
WARRIER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
03.11.2023, ALONG WITH WA.1857/2023, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:



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WA Nos.1853 & 1857/2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 3RD DAY OF NOVEMBER 2023 / 12TH KARTHIKA, 1945

WA NO. 1857 OF 2023

AGAINST THE JUDGMENT WP(C) 31165/2023 OF HIGH COURT OF
KERALA

APPELLANT/PETITIONER:

ANSIL IBRAHIM,
AGED 43 YEARS
S/O IBRAHIM, PROPRIETOR M/S LIGHT HOUSE,
CHERAKKULAM, POWER HOUSE ROAD, ALAPPUZHA, PIN -
688007

BY ADV A.KRISHNAN

RESPONDENTS/RESPONDENTS:

- 1 ASSISTANT COMMISSIONER
SECOND CIRCLE, STATE GOODS & SERVICE TAX
DEPARTMENT, COLLETORATE, ALAPPUZHA, PIN - 688001
- 2 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI, PIN - 110001



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- 3 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
GST POLICY WING, NORTH BLOCK, NEW DELHI - 110001,
REPRESENTED BY PRINCIPAL COMMISSIONER (GST)., PIN
- 110001
- 4 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES
DEPT., GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 5 STATE TAX OFFICER,
(ARREAR RECOVERY) OFFICE OF JOINT COMMISSIONER,
TAX PAYER SERVICES, STATE GOODS & SERVICE TAX
DEPARTMENT, ALAPPUZHA, PIN - 688001

BY ADV ANILKUMAR C.R.

OTHER PRESENT:

SR GP SRI V K SHAMSUDHEEN AND SC : SRI SREELAL N
WARRIER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
03.11.2023, ALONG WITH WA.1853/2023, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:



J U D G M E N T

Dr. Kauser Edappagath, J.

As common questions of law and facts are involved in the above writ appeals, we dispose of the same together by a common judgment.

2. The issue involved is with respect to the entitlement of the purchasing dealer to take credit of input tax levied on the goods he purchased from the supplying dealer under section 16 of the Central Goods and Services Tax Act (for short, 'the CGST Act'). Incidentally, the provisions of Section 16(2)(c) of the CGST Act and Rule 36(4) of the Central Goods and Services Tax Rules (for short, 'the CGST Rules') are challenged as unconstitutional.

3. The appellant in WA No. 1853/2023 is the petitioner in WP(C) No.31184/2023, and the appellant in WA No.1857/2023 is the petitioner in WP(C) No.31165/2023. The former is doing business in the name and style of M/s. N.S Metals, while the latter is doing business in the name and style of M/s.Light House. The



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Assessing Authority, in the assessment order for the year 2017-18, denied the appellants' claim for input tax credit under the CGST Act and the SGST Act because of the difference in GSTR 2A and GSTR 3B returns. Consequently, the Assessing Authority levied interest, imposed penalty and initiated recovery proceedings against them. The appellants approached the writ court challenging the assessment order as well as the constitutional validity of Section 16(2)(c) of the CGST Act and Rule 36(4) of the CGST Rules. As per the impugned judgments, the learned single Judge dismissed the writ petitions. They are under challenge in these Writ Appeals.

4. We have heard Sri. A. Krishnan, the learned counsel for the appellants, Sri. Sreelal N. Warriar, the learned standing counsel for the Central GST and Sri.V.K.Shamsudheen, the learned Senior Government Pleader.

5. It is settled that input tax credit is in the nature of a benefit/concession and not a right extended to the dealer under the statutory scheme. The said benefit can accrue to the assessee only as per the scheme of the statute {See **ALD**



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Automotive Private Ltd. v. Commercial Tax Officer and Others [(2019) 13 SCC 225]}. It is equally settled that the rule-making authority can provide restrictions in extending the concession (***Godrej and Boyce Manufacturing Company Pvt. Ltd. and Others v. Commissioner of Sales Tax and Others*** [(1992) 3 SCC 624]. The benefit of an input tax credit can be availed by a purchasing dealer who sells or manufactures goods using raw materials on which tax has been paid only on satisfaction of the conditions for such availment enumerated in the statute. Section 16 of the CGST Act deals with eligibility and conditions for taking input tax credit. It reads as follows:

“16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or



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both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.- *For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-*

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided *that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:*

Provided *further that where a recipient fails to pay to the*



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*supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable under section 50, in such manner as may be prescribed: **Provided** also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.....”*

The above provision makes it clear that the existence of a tax invoice or debit note issued by the supplying dealer, proof of receipt of goods or services or both, and the tax charged in respect of such supply having been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply are the conditions to be satisfied for enabling the benefit of input tax credit.

6. Rule 36 of the CGST Rules provides for documentary requirements and the conditions for claiming input tax credit. It reads as follows:



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“36. Documentary requirements and conditions for claiming input tax credit.-

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person;

Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN



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of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”

7. Sub Rule (4) makes it clear that the purchasing dealer will be eligible for input credits as against purchases from the registered selling dealers to the extent of 20% (later reduced to 5%) of the details of the invoices uploaded by the selling dealer with respect to the cases where he did not fully upload the details of the sales effected to the purchasing dealer.

8. One of the preconditions for the purchasing dealer to claim input tax credit under section 16 of the CGST Act is that he must produce the tax invoice issued by the supplying dealer.



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Coming to the facts of the cases, the appellants failed to produce the tax invoices despite sufficient opportunities extended. The appellants were issued a show cause notice under section 73(1) of the CGST/SGST Act. The appellants were called for a personal hearing. They did not appear for personal hearing either. As per section 155 of the CGST Act, the burden is on the dealer who claims the benefit of input tax credit to prove that he is eligible for such benefit. The appellants did not discharge the said burden. They failed to produce any evidence to prove that they are entitled to the benefit of input tax credit. That apart, the appellants rushed to the writ court without exhausting the alternative appellate remedy.

9. The appellants also challenged the constitutional validity of Section 16(2)(c) of the CGST Act and Rule 36(4) of the CGST Rules. It is contended that those provisions are violative of Article 14 of the Constitution of India since they are discriminatory against the purchasing dealers. It is further contended that those provisions which insist that the purchasing dealer must ensure the compliance of the statutory provisions by



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the supplying dealer is arbitrary and illegal.

10. It is now well settled that any tax legislation may not be easily interfered with. The court must show judicial restraint to interfere with tax legislation unless it is shown and proved that such taxing statute is manifestly unjust or glaringly unconstitutional. Taxing statutes cannot be placed, tested or viewed on the same principles as laws affecting civil rights such as freedom of speech, religion, etc. The test of taxing statutes would be viewed on more stringent tests [*State of Himachal Pradesh v. Goel Bus Service, Kullu* (2023 Livelaw (SC) 27)]. The vires of section 16(2)(c) of the CGST Act or Rule 36(4) of the CGST Rules is not under challenge on the ground of legislative incompetence. The challenge of the constitutional validity of the provisions on the grounds of violation of Article 14 of the Constitution is vague. Nothing in the impugned provisions indicates that they discriminate between the purchasing and selling dealers. As stated already, the input tax credit is in the nature of a benefit or concession conferred under the statute. The impugned provisions prescribe certain conditions for the



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purchasing dealers to avail of the benefit. It is up to the purchasing dealer to avail of the said benefit/concession following those conditions. The prescription of the conditions cannot be considered discriminatory to contravene Article 14. So far as the second point urged by the appellants is concerned, it is settled that legislation or provision in a statute cannot be challenged only on the grounds of arbitrariness or unreasonableness. Manifest arbitrariness must be established to strike down a provision in the statute as violative of Article 14 of the Constitution. The test to determine manifest arbitrariness is whether the enactment is drastically unreasonable, capricious, irrational, or without adequate determining principle {See *Shayara Bano v. Union of India* [(2017) 9 SCC 1]}. Nothing indicates that the impugned provisions satisfy the said test and thus manifestly arbitrary and glaringly unconstitutional. Under these circumstances, the challenge to the constitutional validity of the impugned provisions must fail.

We see no illegality or impropriety in the impugned judgments. Hence, we dismiss both appeals without prejudice to



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the right of the appellants to challenge the assessment orders in accordance with law.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp



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APPENDIX OF WA 1853/2023

PETITIONER ANNEXURES

Annexure A

CERTIFIED COPY OF JUDGEMENT DATED
25.09.2023 IN W. P. (C) NO. 31184 OF
2023 OF THIS HON'BLE COURT



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APPENDIX OF WA 1857/2023

PETITIONER ANNEXURES

Annexure A

CERTIFIED COPY OF THE JUDGEMENT DATED
25.09.2023, IN W. P. (C) NO. 31165 OF
2023 OF THIS HON'BLE COURT

