

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 10TH DAY OF JANUARY 2024 / 20TH POUSHA, 1945

WP(C) NO. 1060 OF 2024

PETITIONER:

M/S. KOCHI MEDICALS,
180-T,10, VANDANAM P. O., ALAPPUZHA DISTRICT,
REPRESENTED BY ITS PROPRIETOR, SAJEEV,
S/O. GANGADHARAN K., KULATHIL HOUSE, POONTHOPU WARD,
AVALUKUNNU P. O., ALAPPUZHA DISTRICT, PIN - 688005.

BY ADVS.

SRI. K. J. ABRAHAM
SRI. ARAVINDAKSHAN K. R.
SRI. NIKHIL JOHN
SRI. S. VINODKUMAR

RESPONDENTS:

- 1 STATE TAX OFFICER,
KERALA STATE GST DEPARTMENT, 1ST CIRCLE,
ALAPPUZHA DISTRICT, PIN - 688001.
- 2 JOINT COMMISSIONER,
(APPEALS)-II, KERALA STATE GST DEPARTMENT,
STATE GST COMPLEX, BAPUJI NAGAR,
ASRAMAM P. O., KOLLAM DISTRICT, PIN - 691002.

BY ADV.

SMT. RESHMITA RAMACHANDRAN - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10.01.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DINESH KUMAR SINGH, J.

W.P.(C) No.1060 of 2024

Dated this the 10th day of January, 2024

JUDGMENT

1. Heard Mr. Abraham K. J., learned Counsel for the petitioner and Ms. Reshmita Ramachandran, learned Government Pleader.
2. Petitioner is a registered dealer under the provisions of CGST/SGST Act, 2017. After the GST regime was rolled out w.e.f. 01.04.2017, the petitioner filed return for the period from July, 2017 to March, 2018 in GSTR – 3B. A notice in Form GST ASMT – 10 dated 08.07.2020 was issued to the petitioner in respect of his claim for input tax credit on supplies received by the him from the supplier/dealer. The ground for issuing the said notice was that there was a mismatch in the GSTR – 3B filed by the petitioner and GSTR – 2A in respect of the input tax credit claimed by him. The assessing authority on the ground of mismatch between GSTR – 3B filed by the petitioner and GSTR – 2A disallowed the input tax credit paid by the petitioner to the extent of mismatch. Aggrieved by the said order, the petitioner had filed an appeal. However, the same came to be dismissed by the impugned order in Exhibit P-6.

3. The learned Counsel for the petitioner submits that this was initial stage of implementation of the GST provisions and the dealers faced difficulties in understanding, uploading and correctly filing returns. The Central Board of Indirect Taxes and Customs considered these difficulties and issued Circular No. 183/15/2022-GST dated 27.12.2022 giving relaxation to the dealers in respect of the financial years 2017-18 and 2018-19. It is provided in the said Circular that where a supplier has filed Form GSTR – 1 as well as return in Form GSTR – 3B for a tax period, but had failed to report particular supply in Form GSTR – 1 and due to the said failure on the part of the supplier/dealer, the supply received by the recipient dealer did not get effected in Form GSTR – 2A, in such cases returns in ITC claimed by the registered person in the Form of GSTR – 3B and that available in Form GSTR – 2A is to be handled as per the procedure prescribed in para 4 of the said Circular. It is further provided that where a supply was made to a registered person and invoice was issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier had wrongly reported the said supply as B2C supply, instead of B2B supply, in his Form GSTR – 1 due to which the said supply did not get reflected in Form GSTR – 2A of the said registered person, in such cases, the difference in ITC claimed by the registered person in his return in Form GSTR – 3B and that available in Form GSTR – 2A should be handled by following the procedure as provided in para 4 of the said Circular.

4. The learned Counsel for the petitioner submits that the petitioner would have filed the 2nd appeal before the Tribunal but, in absence of constitution of the said Tribunal, the petitioner has approached this Court. It is further submitted that this writ petition should be treated as the appeal and the matter may be remanded back to the assessing authority to consider the case of the petitioner in the light of the Circular No. 183/15/2022-GST dated 27.12.2022 as the petitioner's case squarely falls within the parameters as detailed in the said Circular. Ms. Reshmita Ramachandran, learned Government Pleader does not dispute the fact that the petitioner's case may come within the scope of the Circular No. 183/15/2022-GST dated 27.12.2022.

5. Considering above facts and provision of the Circular mentioned above, the present writ petition is allowed. The impugned orders in Exhibits P-4 and P-6 are set aside and the matter is remitted back to the assessing authority to consider the case of the petitioner afresh in the light of the Circular No. 183/15/2022-GST dated 27.12.2022. The petitioner should be afforded an opportunity of personal hearing before finalising the fresh assessment on remand.

**Sd/-
DINESH KUMAR SINGH
JUDGE**

Svn

APPENDIX OF WP(C) 1060/2024

PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE NOTICE IN FORM GST ASMT-10 DATED 08.07.2020 WITH ANNEXURE FOR THE PERIOD JULY 2017 TO MARCH 2018 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P2 TRUE COPY OF THE REPLY FILED IN FORM GST ASMT-11 DATED 12.10.2020
- EXHIBIT P3 TRUE COPY OF SHOW CAUSE NOTICE U/S.73 DATED 22.12.2021 FOR THE PERIOD JULY 2017 TO MARCH 2018
- EXHIBIT P4 TRUE COPY OF THE ASSESSMENT ORDER U/S.73 FOR THE PERIOD JULY 2017 TO MARCH 2018 PASSED BY THE 1ST RESPONDENT
- EXHIBIT P5 TRUE COPY OF THE APPEAL MEMORANDUM IN FORM GST APL-01 DATED 10.05.2022 FILED BEFORE THE 2ND RESPONDENT
- EXHIBIT P6 TRUE COPY OF THE APPELLATE ORDER IN GSTA (ALPY) NO-83/2022 DATED 29.11.2022 PASSED BY THE 2ND RESPONDENT