



2024:KER:5414

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 18<sup>TH</sup> DAY OF JANUARY 2024 / 28TH POUSHA, 1945

WP(C) NO. 2205 OF 2024

**PETITIONER:**

METALEX AGENCIES,  
REPRESENTED BY ITS PARTNER, SYED MOHAMMED ZAHEER,  
XLI/1552, TA BEERANKUNJU ROAD,  
ERNAKULAM, KERALA, PIN - 682018.

BY ADVS.

SRI. M. P. SHAMEEM AHAMED  
SRI. AKHIL PHILIP MANITHOTTIYIL  
SMT. DANIYA RASHEED PALLIYALIL  
SRI. NAEEM M. M.

**RESPONDENTS:**

- 1 STATE TAX OFFICER,  
TAX PAYER SERVICE CIRCLE, ERNAKULAM NORTH,  
GOODS AND SERVICE TAX DEPARTMENT, 3RD FLOOR,  
SGST OFFICE COMPLEX, PERUMANOOR P. O.,  
THEVARA, ERNAKULAM, KOCHI, PIN - 682015.
- 2 DEPUTY COMMISSIONER,  
TAX AND CENTRAL EXCISE, ERNAKULAM DIVISION,  
OFFICE OF THE DEPUTY COMMISSIONER OF CENTRAL TAX AND  
CENTRAL EXCISE, 4TH FLOOR, CENTRAL EXCISE BHAVAN,  
KOCHI, PIN - 682018.
- 3 SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE,  
ERNAKULAM - 4 RANGE, 4TH FLOOR,  
CENTRAL EXCISE BHAVAN, CBI ROAD, KATRIKADAVU,  
KALLOOR, KOCHI, PIN - 682017.

BY ADV.

SRI. THOMAS MATHEW NELLIMOOTTIL  
SMT. JASMINE M. M. - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
18.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No. 2205 of 2024**Dated this the 18<sup>th</sup> day of January, 2024**JUDGMENT**

1. Heard Mr. Shameem Ahamed for the petitioner, Ms. Jasmine M. M., learned Government Pleader for the 1<sup>st</sup> respondent and Mr. Thomas Mathew Nellimoottil, learned Senior Standing Counsel for the respondent Nos. 2 and 3.

2. The present writ petition has been filed impugning the Exhibit P-7 assessment order under the provisions of KSGST/CGST Act, 2017.

2. The petitioner is a registered dealer under the provisions of the KSGST Act, 2017 and Rules made thereunder. The petitioner filed its returns for the financial year 2017-18 which were examined. Certain discrepancies in respect of the transitional credit claimed by the petitioner in the return were noticed for which the petitioner was issued Show Cause Notice. On verification of the electronic credit ledger it was noticed that the petitioner had availed CGST amount of Rs. 62,38,303/- as transitional credit for TRAN – 1 on 19.09.2017 as as per the Column No. 6(K) of the GSTR 9, petitioner had availed CGST amount of Rs. 62,38,303 as transitional credit *supra*. The Bill No. 15538 was not found and it was noticed the



incorrect amount was claimed against other bills. Some bills were not clearly visible. *Prima facie*, it was observed that the petitioner had violated Section 140 read with Rule 117 of the CGST Act and Rules made thereunder in respect of his claim for transitional credit. The petitioner was issued notice asking him to produce the documents, bills, etc., to support his claim for transitional credit. The 3<sup>rd</sup> respondent examined the documents submitted by the petitioner and submitted a report before the 1<sup>st</sup> respondent for proceeding with the assessment proceedings. Again, the petitioner was issued notice under Section 73 of the CGST/KSGST Act, 2017 to support his claim for the TRAN credit availed by him as mentioned in the show cause notice. The 1<sup>st</sup> respondent took note of the report submitted by the 3<sup>rd</sup> respondent and, thereafter has passed the order. The petitioner has been disallowed the trans credit of Rs. 8,63,813/- for which interest and penalty has been levied under the Act.

3. Learned Counsel for the petitioner submits that though there is a provision for filing appeal under the provisions of Section 107 of the CGST/KSGST Act, 2017 against the impugned order in Exhibit P-7, the petitioner has approached this Court invoking writ jurisdiction under Article 226 of the Constitution of India against the



said order as the appeal could be futile exercise inasmuch as the claim of the petitioner is in respect of the excise duty component allegedly paid by the petitioner.

4. This Court does not find any substance in the submission of the learned Counsel for the petitioner. The appellate authority will examine all the documents and evidence submitted by the petitioner/assessee while deciding the appeal. Therefore, I am unable to agree with the contention of the learned Counsel for the petitioner that since there is no express provision for remanding the matter back to the assessing authority, the appeal would be futile exercise.

5. Hence, considering the provision of statutory appeal available to the petitioner against the impugned order in Exhibit P-7, the present writ petition is dismissed on the ground of availability of alternative remedy. However, if the petitioner files the appeal, the same shall be decided on its own merit.

**Sd/-  
DINESH KUMAR SINGH  
JUDGE**

Svn



**APPENDIX OF WP(C) 2205/2024**

**PETITIONER'S EXHIBITS**

- EXHIBIT P1 A COPY OF THE EMAIL DATED 07.02.2019
- EXHIBIT P2 COPY OF THE EMAIL DATED 22.06.2023 SENT BY THE 3RD RESPONDENT
- EXHIBIT P3 COPY OF THE EMAIL DATED 26.06.2023 SENT BY THE PETITIONER TO THE ERNAKULAM RANGE IV
- EXHIBIT P4 COPY OF THE EMAIL DATED 11.07.2023 SENT BY SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE, ERNAKULAM RANGE IV
- EXHIBIT P5 A COPY OF THE SHOW CAUSE NOTICE DATED 19.09.2023 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT 6 A COPY OF THE REPLY DATED 27.09.2023 FILED BY THE PETITIONER
- EXHIBIT P7 A COPY OF THE ORDER NO.32AAEFM0555A1Z1/2017-18 DATED 14.12.2023 REFERENCE NO. ZD320923011245T ALONG WITH SUMMARY OF THE ORDER IN DRC - 07
- EXHIBIT P8 PRINT OUT FROM GST PORTAL SHOWING THE DETAILS OF GST REGISTRATION FOR THE PAN AAACG3511H
- EXHIBIT P9 A COPY OF THE CIRCULAR NO. 182/14/2022-GST DATED 10.11.2022