



2024:KER:18330

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 7TH DAY OF MARCH 2024 / 17TH PHALGUNA, 1945

WP(C) NO. 9312 OF 2024

PETITIONER/S:

M/S. PHILIPS AUTO AGENCIES (INDIA) PVT. LTD,
AGED 79 YEARS
29/1044-A, GROUND FLOOR,
PHILIPS SQUARE,
TB JUNCTION,
M C ROAD,
KOTTAYAM,
REPRESENTED BY ITS MANAGING DIRECTOR,
SRI. T.J.PHILIP,
PIN - 686001

BY ADV TOMSON T.EMMANUEL

RESPONDENT/S:

- 1 STATE TAX OFFICER,
STATE GST DEPARTMENT,
TAX PAYER SERVICES CIRCLE,
KOTTAYAM TOWN,
NAGAMPADAM,
KOTTAYAM,
PIN - 686001
- 2 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
NEW DELHI,
REPRESENTED BY ITS UNDER SECRETARY,
PIN - 110023
- 3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF TAXES, SECRETARIAT,
THIRUVANANTHAPURAM,
PIN - 695001



4 COMMISSIONER OF STATE TAX,
STATE GOODS AND SERVICE TAX DEPARTMENT,
9TH FLOOR, TAX TOWER,
KILLIPALAM,
KARAMANA P O.,
THIRUVANANTHAPURAM,
PIN - 695002

OTHER PRESENT:

SRI. RESHMITHA RAMACHANDRAN (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07.03.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

The petitioner has approached this Court being aggrieved by the fact that he has been denied Input Tax Credit in the assessment of the Goods and Services Tax Act for the year 2018-19.

2. The learned counsel appearing for the petitioner would submit that, the denial of Input Tax Credit was on account of mismatch between GSTR-2A and GSTR-3B. It is submitted that GSTR-2A was introduced only in the month of September 2018 and therefore, the Input Tax Credit could not have been denied on account of such mismatch. It is also pointed out that, in terms of Section 73(3) of the Goods and Services Tax Act, 2017, the statement of mismatch should have been provided to the assessee and this has not been done. It is submitted that, if such a statement had been provided, the petitioner would



have been able to substantiate its claim for Input Tax Credit in terms of Circular No183/15/2022-GST dated 27.12.2022.

3. Heard the learned Government Pleader also.

4. Having heard the learned counsel for the petitioner and the learned Government Pleader and having regard to the facts and circumstances of the case, I am of the view that the claim of the petitioner can be directed to be reconsidered by the Assessing Authority also having regard to the provisions of the Circular dated 27.12.2022 referred to above. If the petitioner requests for a statement in terms of the provisions contained in Section 73(3) of the Goods and Services Tax Act, the same should also be provided to him.

Therefore, this writ petition is disposed of setting aside Ext.P4 order of assessment of the petitioner for the year 2018-19 and remitting the matter for a fresh consideration of the first respondent. The first respondent shall consider the claim of the petitioner as directed above also keeping in mind in terms of the Circular dated 27.12.2022 and after affording an opportunity of hearing to



the petitioner. The petitioner shall appear before the first respondent at 11.00 a.m. on 20.03.2024 and thereafter, the matter shall be reconsidered as directed above. I make it clear that I have not expressed any opinion on the merits of the matter.

Sd/-

GOPINATH P., JUDGE

rkj

**APPENDIX OF WP(C) 9312/2024****PETITIONER EXHIBITS**

Exhibit P1 TRUE COPY OF GSTR 1 AND GSTR-3B MONTHLY ONLINE RETURNS SUBMITTED FOR THE MONTHS APRIL 2018 TO MARCH 2019.

Exhibit P2 TRUE COPY OF DRC - 03 DATED 22.12.2023 FOR VOLUNTARY PAYMENT OF IGST AND PAYMENT RECEIPT.

Exhibit P3 TRUE COPY OF ONLINE SHOW CAUSE NOTICE DATED 23.12.2023 ISSUED U/S.73(1) OF THE GST ACT BY 1ST RESPONDENT FOR 2018-19 UNDER REFERENCE ID NO.DRC-01 DATED 22.12.2023.

Exhibit P4 TRUE COPY OF ONLINE ORDER DATED 17.02.2024 ALONG WITH DRC-07 ISSUED BY 1ST RESPONDENT FOR 2018-19.

Exhibit P5 TRUE COPY OF THE COPY OF THE PRESS RELEASE DATED 04.05.2018 ISSUED BY THE CBIC.

Exhibit P6 TRUE COPY OF THE PRESS RELEASE DATED 18.10.2018 ISSUED BY THE CBIC.

Exhibit P7 TRUE COPY OF THE CIRCULAR BEARING NO.123/42/2019-GST DATED 11.11.2019 ISSUED BY THE MINISTRY OF FINANCE, GOVERNMENT OF INDIA.

Exhibit P8 TRUE COPY OF JUDGMENT OF THE HON'BLE MADRAS HIGH COURT IN W.P(MD). 2127/2021 (M/S. D.Y. BEATHEL ENTERPRISES VERSUS THE STATE TAX OFFICER (DATA CELL), (INVESTIGATION WING) COMMERCIAL TAX BUILDINGS, TIRUNELVELI).



Exhibit P9

TRUE COPY OF INTERIM ORDER DATED 04.07.2022 IN WP(C) NO. 21545 OF 2022, PASSED BY THIS HON'BLE COURT IN SIMILAR SET OF FACT.

Exhibit P10

TRUE COPY OF JUDGMENT DATED 12.09.2023 IN WP(C) NO. 29769 OF 2023, PASSED BY THIS HON'BLE COURT IN SIMILAR SET OF FACT.

SAG[®]
SCHEIDT & AGNEW