



2023:KER:69032

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 8TH DAY OF NOVEMBER 2023 / 17TH KARTHIKA,

1945

WP(C) NO. 13181 OF 2023

PETITIONER/S:

M/S. PREMIER AUTO SALES & SERVICE,
NEAR GOVT. COLLEGE, MUNDUPARAMBA, MALAPPURAM
-676509 REPRESENTED BY ITS PARTNER, MOHAMMED
BASHEER KOOTHRADAN.

BY ADVS.
HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA
PARVATHY MENON

RESPONDENT/S:

- 1 THE ADDITIONAL COMMISSIONER,
CENTRAL GST & CENTRAL EXCISE, C R BUILDING,
MANANCHIRA, KOZHIKODE -673 001.
- 2 THE COMMISSIONER OF CENTRL TAX & CENTRAL EXCISE
CENTRAL GST & CENTRAL EXCISE, C R BUILDINGS,
MANANCHIRA, KOZHIKODE -673001
- 3 THE COMMISSIONER OF STATE TAXES,
STATE GOODS & SERVICES TAX DEPARTMENT, 9TH FLOOR,
TAX TOWER, KILLIPALAM, KARAMANA,
THIRUVANANTHAPURAM - 695002
- 4 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM-
695001



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5 UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI -110001

OTHER PRESENT:

SMT.JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 08.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**J U D G M E N T**

The present writ petition under Article 226 of the Constitution of India has been filed questioning Ext.P4 order dated 24.3.2023 passed by the first respondent under the provisions of Section 73 of the Central Goods and Services Tax Act, 2017 ('CGST Act', for short) and Kerala State Goods and Services Tax Act, 2017 ('Kerala SGST Act', for short) read with Section 20 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act', for short). Vide the impugned order, the demand of Rs.8,27,93,915/- in respect of the IGST, CGST and SGST and Cess, has been confirmed under the provisions of Section 73(1) of the CGST Act and Kerala SGST Act. Penalty of Rs.82,79,392/- has been imposed under Section 73(9) read with Section 73(11) of the CGST Act and Kerala SGST Act read with Section 20 of the IGST Act.

2. The petitioner, a partnership firm, is a registered dealer under the provisions of the CGST



Act and Kerala SGST Act for supply of “motor cars and other motor vehicles” falling under HSN 8703; “motor vehicles for transport of goods” falling under HSN 8704 and “parts and accessories of vehicles” falling under HSN 8714. The petitioner is an authorised dealer and service centre for Mahindra and Mahindra vehicles. It has branches at Tirur, Pulikkal, Ponnani, Perinthalmanna and Nilambur.

3. Intelligence gathered by the officers of CGST, Kozhikkode Commissionerate indicated that the petitioner had not filed statutory GSTR-3B returns for the months from May 2018 to January 2019 and had not discharged their GST liability. The petitioner was summoned by the Superintendent (Anti Evasion), Central Tax and Central Excise, Headquarters Office, Kozhikkode for investigation.

4. The petitioner's response was considered and having been dissatisfied with the response, show cause notice, Ext.P1, dated 6.6.2022 was issued to the petitioner asking the petitioner to



show cause as to why the amount of Rs.8,27,93,915/- towards IGST, CGST, SGST and Cess for the period from April, 2018 to March, 2019 as detailed in Annexure-A to the said notice should not be demanded and recovered from the petitioner under Section 73(1) of the CGST Act and Kerala SGST Act. It appears that the petitioner had filed GSTR-3B return thereafter and an amount of Rs.8,21,56,286/- was deposited. The petitioner was also demanded interest under the provisions of Section 50 and penalty under the provisions of Section 73(9) read with Section 73(11) of the CGST Act and Kerala SGST Act and Section 20 of the IGST Act, respectively. Admittedly, Ext.P4 order passed by the first respondent is an appealable order under Section 107 of the CGST Act. Instead of filing appeal as above, the petitioner has approached this Court impugning the order in Ext.P4.

5. This Court does not exercise appellate jurisdiction, but only exercise limited jurisdiction of judicial review. The order,



Ext.P4, passed by the first respondent cannot be said to be without jurisdiction or in violation of the principle of natural justice. The order passed is well within the jurisdiction of the first respondent. There has been full compliance of the principle of natural justice, that the petitioner was afforded opportunities of response to the show cause notice and of having been heard, and thereafter the impugned order has been passed. In view thereof, I do not find any ground to entertain the present writ petition and the same is hereby dismissed. However, it will be open to the petitioner to file appeal against the impugned order before the appellate authority under the provisions of Section 107 of the CGST Act, inasmuch vide notification No.53/23 issued by the Central Board of Indirect Taxes, Ministry of Finance, Government of India, the limitation for filing the appeal has been extended up to 31.1.2024 for the assessment years 2017-18 and 2018-19. Interim



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order, if any, granted in the present case shall stand vacated.

Pending interlocutory application , if any, in the writ petition stands dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

jg

