



2023:KER:71173

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 10<sup>TH</sup> DAY OF NOVEMBER 2023 / 19TH KARTHIKA, 1945

WP(C) NO. 24767 OF 2023

**PETITIONER:**

PARAMESWARAN E. C.,  
PROPRIETOR, M/S. LAKSHMI MARKETING,  
KAREKKAD, KAVALAPPARA, SHORANUR,  
PALAKKAD, PIN - 679523.

BY ADVS.

SRI. HARISANKAR V. MENON  
SMT. MEERA V. MENON  
SRI. R. SREEJITH  
SMT. K. KRISHNA  
SMT. PARVATHY MENON

**RESPONDENTS:**

- 1 THE ASSISTANT COMMISSIONER,  
STATE GOODS AND SERVICES TAX DEPARTMENT,  
TAXPAYER SERVICES CIRCLE, CIVIL STATION,  
OTTAPALAM, PALAKKAD, PIN - 679104.
- 2 THE STATE GST OFFICER,  
STATE GOODS AND SERVICES TAX DEPARTMENT,  
OTTAPALAM, PALAKKAD, PIN - 679104.
- 3 JOINT COMMISSIONER OF STATE TAX,  
STATE GOODS AND SERVICES TAX DEPARTMENT,  
TAXPAYER SERVICES CIRCLE, PALAKKAD, PIN - 678001.
- 4 UNION OF INDIA,  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE),  
NORTH BLOCK, NEW DELHI, PIN - 110001.
- 5 STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY,  
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001.



6 GOODS & SERVICES TAX NETWORK,  
REPRESENTED BY CHAIRMAN, WORLD MARK 1,  
AEROCITY, NEW DELHI, PIN - 110037.

BY ADV  
SRI. K. SUDHINKUMAR  
SMT. JASMINE M. M. - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 10.11.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No.24767 of 2023**

Dated this the 10<sup>th</sup> day of November, 2023

**JUDGMENT**

1. The present writ petition has been filed by the petitioner seeking to quash Exhibits P-3 and P-5 orders passed by the 1<sup>st</sup> respondent whereby the assessment order has been finalised.
2. The total tax liability under CGST, SGST along with CESS, interest and penalty has been determined to be 2,22,38,370/-. Vide Exhibit P-5 order, Exhibit P-4 rectification application has been rejected on the ground that the petitioner failed to avail the entire ITC on self assessment basis through his returns before the last date for availment of ITC under Section 16 (4) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and Section 11 of the Goods and Services Tax (Compensation to States) Act, 2017. the last date of availment of ITC in respect of the financial year 2017-18 was 20<sup>th</sup> April, 2019, which was subsequently extended to 30.09.2019 and therefore, the petitioner was held not be eligible for un-utilised ITC. It was held that the petitioner is eligible only for the credit of Rs. 83,77,861.17/- as ITC under Compensation CESS, rest will lapse. Petitioner's



application for rectification came to be dismissed vide Exhibit P-5 order. The impugned order i.e. Exhibits P-3 and P-5 are dated 02.12.2022 and 24.05.2023 respectively. The financial year involved is 2017-18. It is also not in dispute that against the orders impugned in this writ petition there is a remedy of appeal under Section 107 of the Central Goods and Services Tax Act, 2017. The limitation for filing of appeal in respect of the financial years 2017-18 and 2018-19 has been extended up to 31.01.2024 vide the notification No.53/2023 dated 02.11.2023 issued by the Central Board of Indirect Taxes and Customs.

3. In view thereof, the present writ petition is disposed of with liberty to the petitioner to approach the Appellate Authority under the provisions of the CGST/SGST Act, 2017 against the orders impugned in this writ petition within a month. The Appellate Authority would consider the appeal expeditiously in accordance with the law.

**Sd/-**

**DINESH KUMAR SINGH  
JUDGE**

Svn



**APPENDIX OF WP(C) 24767/2023**

**PETITIONER'S EXHIBITS**

- EXHIBIT P1 COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 28-09-2022
- EXHIBIT P2 COPY OF REPLY TO SHOW CAUSE NOTICE FILED BY THE PETITIONER DTD. 25-10-2022
- EXHIBIT P3 COPY OF ADJUDICATION ORDER ISSUED BY THE 1ST RESPONDENT DTD. 02-12-2022
- EXHIBIT P4 COPY OF REQUEST FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 09-03-2023
- EXHIBIT P5 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD. 24-05-2023
- EXHIBIT P6 COPY OF ANNUAL RETURN OF THE PETITIONER IN FORM GSTR-9 DTD. 07-08-2019
- EXHIBIT P7 COPY OF NOTIFICATION NO. 49/2019 - CENTRAL TAX ISSUED BY THE 4TH RESPONDENT DTD. 09-10-2019