IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 1ST DAY OF NOVEMBER 2023 / 10TH KARTHIKA, 1945

WP(C) NO. 36029 OF 2023

PETITIONER:

GOKUL ENTERPRISES
NEAR CORPORATION DIVISIONAL OFFICE, PALLIKUNNU, PANNEENPARA, KANNUR
REPRESENTED BY ITS PROPRIETOR O.N. PRAKASH,
PIN – 670 004.

BY ADVS.
RAJESH NAMBIAR
SINDHU K.NAMBIAR

RESPONDENTS:

1. DEPUTY COMMISSIONER OF STATE TAX
OFFICE OF THE DEPUTY COMMISSIONER OF STATE TAX, STATE GOODS AND SERVICE TAX DEPARTMENT, SPECIAL CIRCLE, KANNUR, PIN – 670 002.

2. DEPUTY COMMISSIONER (ARREAR RECOVERY)
OFFICE OF THE JOINT COMMISSIONER TAX PAYER SERVICE, STATE GOODS AND SERVICE TAX DEPARTMENT, ADDITIONAL CIVIL STATION , KANNUR, PIN – 670 002.

3. UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE(DEPARTMENT OF REVENUE) GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI, PIN – 110 001.

4. CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS
GST POLICY WING, NORTH BLOCK, NEW DELHI REPRESENTED BY PRINCIPAL COMMISSIONER (GST), PIN – 110 001.

5. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,
PIN – 695 001.

OTHER PRESENT:

JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DINESH KUMAR SINGH, J.

WP(C) NO. 36029 OF 2023

Dated this the 1st day of November, 2023

JUDGMENT

1. The present writ petition has been field for the following reliefs:-

"(i) Issue a Writ or certiorari or any other appropriate writ, order or direction, quashing Ext.P1 assessment order and Ext.P2 recovery notice.

(ii) To declare section 16(2)(c) of the Central Goods and Service Tax Act, 2017 and the Kerala State Goods and Service Tax Act, 2017and Sub Rule (4) of Rule 36 of the Central Goods and Service Tax Rules and Kerala State Goods and Service Tax Rules as unconstitutional, arbitrary, discriminatory and violative of Article 14, Article 19(1)(g) and Article 300A of the constitution of India.

(iii) Declaring / reading down Section 16(2)(c) of the Central Goods and Service Tax Act

2017 being ultra vires Section 16(1) and objective of the Central Goods and Services Tax Act, 2017.

(iv) Grant such other relief as may be prayed for and as this Hon'ble Court may deem fit in the circumstances of the case."

2. The learned counsel for the petitioner submits that issue involved in the present writ petition is covered by the judgment of this Court dated 03.10.2023 passed in WP (C) No. 30949 of 2023 as well as in WP (C) No. 33214 of 2023.

3. Mrs. Jasmin M.M, learned Government Pleader does not dispute the said contention of the learned counsel for the petitioner.

4. In view thereof, the present writ petition is allowed and the impugned Ext.P1 order and Ext.P2 notice are set aside. The petitioner is directed to appear before the assessing authority within ten days with all relevant documents. The

assessing authority will examine the documents and if satisfies that the petitioner’s claim for the Input Tax Credit is bonafide, a revised order should be passed.

Sd/-

DINESH KUMAR SINGH
JUDGE

rpr

APPENDIX OF WP(C) 36029/2023

PETITIONER’S EXHIBITS

Exhibit P1	TRUE COPY OF THE ASSESSMENT ORDER DATED 30.08.2022 UNDER THE STATE GOODS AND SERVICE TAX ACT FOR THE YEAR 2017-18.
Exhibit P2	TRUE COPY OF THE RECOVERY NOTICE DATED 14.09.2023 WITH ENGLISH TRANSLATION.
Exhibit P3	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C) 29769 OF 2023 DATED 12.09.2023.
Exhibit P4	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P. (C) 30949/2023 DATED 3.10.2023.
Exhibit P5	TRUE COPY OF THE INTERIM ORDER IN W.P. (C) 25475/2023 DATED 4.08.2023.