

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2020 / 21ST KARTHIKA, 1942

WP (C) .No.18308 OF 2020 (K)

PETITIONER:

M/S.DAMODAR CORPORATION
PB.NO.110, HOTEL PANKAJ, MG.ROAD, THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING PARTNER, MR.D.CHANDRASENAN
NAIR.

BY ADVS.
SRI.SHERRY SAMUEL OOMMEN
SRI.SUKUMAR NAINAN OOMMEN
SMT.ASHA ESTHER OOMMEN
SRI.MOBIN JACOB
SMT.NIDHI JACOB

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, ROOM NO.46, NORTH BLOCK, NEW
DELHI-110001.
- 2 GOODS AND SERVICES TAX COUNCIL,
THROUGH ITS SECRETARY, 5TH FLOOR, TOWER II, JEEVAN
BHARATI BUILDING, JANPATH ROAD, CANNAUGHT PLACE, NEW
DELHI-110001.
- 3 THE COMMISSIONER,
CENTRAL GOODS AND SERVICE TAX DEPARTMENT, PRESS CLUB
ROAD, STATUE JUNCTION, THIRUVANANTHAPURAM-695001.
- 4 THE COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPARTMENT, 9TH FLOOR, TAX
TOWER, KARAMANA P.O., THIRUVANANTHAPURAM-695002.
- 5 THE ADDITIONAL COMMISSIONER OF CENTRAL TAX,
PRESS CLUB ROAD, STATUE JUNCTION, THIRUVANANTHAPURAM-
695001.
- 6 THE ADDITIONAL COMMISSIONER OF STATE TAX,
OFFICE OF THE COMMISSIONER OF STATE GOODS AND SERVICES
TAX, THIRUVANANTHAPURAM- 695002.
- 7 STATE TAX OFFICER (INTELLIGENCE),
SQUAD NO.VII, STATE GST DEPARTMENT, THIRUVANANTHAPURAM-
695002.

8 THE SUPERINTENDENT OF CENTRAL TAXES,
STATUE RANGE, SOUTH DIVISION, THIRUVANANTHAPURAM-
695001.

BY ADV. MR.P.R.AJITH KUMAR, CGC

BY GOVERNMENT PLEADER DR.THUSHARA JAMES, ASG,
BY ADV.SRI.SREELAL N WARRIER, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P14 series of orders passed against him under the GST Act. In the Writ Petition, among the many grounds on which Ext.P14 series of orders are challenged, the primary contention is that before passing Ext.P14 series of orders, the petitioner was not heard. Taking note of the said submission and finding that in the absence of a hearing extended to the petitioner the impugned orders would be vitiated by a non-compliance with the rules of natural justice, I enquired with the learned Government Pleader as to whether there was actually a hearing extended to the petitioner or not. The learned Government Pleader would submit, on instructions, that while notices were issued to the petitioner calling him for a personal hearing, and the petitioner had submitted a reply and sought for an adjournment, the officer concerned had proceeded to consider the reply offered by the petitioner on merits and pass final orders, without granting a further opportunity of hearing to the petitioner.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that inasmuch as the impugned orders were passed without hearing the petitioner, the said orders cannot be legally sustained inasmuch as they have been passed in violation of the rules of natural justice. Accordingly, I quash Ext.P14 series of orders and direct the 7th respondent to pass fresh orders in lieu thereof, after hearing the petitioner. I also make it clear that the 7th respondent shall consider the objections raised by the petitioner with regard to jurisdiction, and the orders passed by him shall reflect a consideration of each of those objections raised by the petitioner on jurisdiction, as well as on the merits of the case. The 7th respondent shall pass fresh orders as directed within three months from the date of receipt of a copy of this judgment. To enable the 7th respondent to do so, I direct the petitioner to appear before the 7th respondent at his office at 11 am on 27.11.2020 either through physical appearance or through video conferencing as the case may be.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

APPENDIXPETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED IN FAVOUR OF THE PETITIONER DATED 17.07.2018 ALONG WITH THE SCREENSHOT EVIDENCING THE ALLOCATION TO THE 8TH RESPONDENT.
EXHIBIT P2	TRUE COPY OF THE AUTHORIZATION FOR INSPECTION DATED 04.07.2020 IN FORM GST INS 01 ISSUED BY THE 3RD RESPONDENT.
EXHIBIT P3	A COPY OF THE FORM GST INS 01, AS PER THE RULES.
EXHIBIT P4	A TRUE COPY OF THE CIRCULAR NO.3/3/2017 DATED 05.07.2017 (AS DULY AMENDED) ALONG WITH THE RELEVANT EXTRACTS OF THE AGENDA AND MINUTES OF THE 22ND MEETING OF THE GST COUNCIL.
EXHIBIT P5	TRUE COPY OF THE MAHAZAR ALONG WITH ITS ENGLISH TRANSLATION.
EXHIBIT P6	TRUE COPY OF THE ORDER OF SEIZURE DATED 06.07.2019 ISSUED BY THE 4TH RESPONDENT, WHICH WAS SERVED ON 06.07.2019.
EXHIBIT P7	TRUE COPY OF THE NOTICE DATED 21.08.2019 ISSUED BY THE 4TH RESPONDENT REQUIRING PRODUCTION OF ACCOUNTS, WHICH WAS SERVED ON 26.08.2019.
EXHIBIT P8	A COPY OF THE LETTER FILED BY THE PETITIONER DATED 03.09.2019.
EXHIBIT P9	A COPY OF THE NOTICE UNDER SECTION 39(1) OF THE ACT DATED 23.09.2019 ISSUED BY THE 4TH RESPONDENT, WHICH WAS SERVED ON 28.09.2019.
EXHIBIT P10	A COPY OF THE RETURNS FILED BY THE PETITIONER FOR THE PERIOD APRIL 2019 TO JULY 2019.
EXHIBIT P11	A COPY OF THE LETTER DATED 14.10.2019 FILED BY THE PETITIONER ENCLOSING CERTAIN BILLS.
EXHIBIT P12 (COLLY)	COPIES OF THE NOTICE UNDER SECTION 74 READ WITH SECTION 122(1) FOR THE PERIOD FY 2017-18

TO FY 2019-20 DATED 08.11.2019, WHICH WAS
SERVED ON 16.11.2019.

EXHIBIT P13 COPY OF THE REPLY FILED BY THE PETITIONER ON
19.12.2019.

EXHIBIT P14 (COLLY) COPY OF THE ORDERS ISSUED BY THE 4TH
RESPONDENT FOR THE PERIOD FY 2017-18 TO FY
2019-20 DATED 31.12.2019, WHICH WAS SERVED ON
16.01.2020.

EXHIBIT P15 EXTRACT OF CIRCULAR NO.31/2018 DATED
09.02.2018.

RESPONDENT'S/S EXHIBITS:

EXHIBIT R7 (A) TRUE COPY OF THE ORDER BEARING NO 24614/2017/CT DATED
6.7.2017

//TRUE COPY//

P.A TO JUDGE