

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 20TH DAY OF AUGUST 2020 / 29TH SRAVANA, 1942

WP(C).No.13647 OF 2020(E)

PETITIONER:

K.U.NIYAS
AGED 33 YEARS
PROPRIETOR, M/S.GOLD WOOD ENTERPRISES, NANGELIL TOWER,
P.P.ROAD, PERUMBAVOOR.

BY ADVS.
SRI.P.S.SOMAN
SMT.T.RADHAMANY

RESPONDENTS:

- 1 THE ASSISTANT COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT, SPECIAL CIRCLE,
PERUMBAVOOR-683542.
- 2 THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, GOVT.
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 THE COMMISSIONER OF STATE TAX,
STATE GOODS AND SERVICE TAX DEPARTMENT, TAX TOWER,
KARAMANA P.O., THIRUVANANTHAPURAM-695002.

R1-3 BY GOVERNMENT PLEADER DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court impugning Ext.P2 series of demand cum recovery notices issued to him under the GST Act. It would appear that Ext.P2 series of demand notices were issued to the petitioner, pursuant to assessment orders that were passed as early as on 25.11.2019 and 27.11.2019 respectively, for the assessment period April 2018 and May 2018 to May 2019. It is the case of the petitioner that the assessment orders were not served on him but, immediately on receipt of the demand notices, he took the necessary steps and filed returns for the said period, within thirty days from the date of receipt of the demand notices, so as to get the benefit of withdrawal of the assessment orders as contemplated under S.62 of the GST Act.

2. It is borne out from the statement filed on behalf of the respondents that the assessment orders were uploaded on the web portal of the department on the same dates, namely, 25.11.2019 and 27.11.2019 as they were passed. As per the provisions of Section 62 of the GST Act, the assessee had an option to file returns for the period concerned, within 30 days from the date of receipt of the orders passed on best judgment basis by the assessing authority, for getting the orders withdrawn. In the instant case, while the assessment orders passed on best judgment basis were uploaded on the web portal of the department on 25.11.2019 and 27.11.2019, the petitioner did not file his returns for

the period covered by the said orders within 30 days from the said date. On the contrary, the returns pertaining to the said period were filed within 30 days from the date of receipt of the demand notices that followed the assessment orders.

3. On consideration of the facts and circumstances of the case and the submissions made across the bar, I note that as per Section 169(c) and (d) of the GST Act the service of any communication to the e-mail address provided by an assessee at the time of registration, as also by making available the communication in the common portal of the department, is to be treated as an effective communication under the statute. I find, therefore, that the petitioner cannot wish away the fact that the assessment orders were brought to his notice on 25.11.2019 and 27.11.2019 respectively. Inasmuch as the returns filed by the petitioner for the period covered by the assessment orders were belated in that they were filed more than 30 days after the date of service of the orders on the petitioner via the web portal of the department, he cannot aspire for the benefit of withdrawal of the assessment orders as mandated under Section 62 of the GST Act. The Writ Petition in the challenge to the assessment orders and demand notices therefore fails and is accordingly dismissed.

4. Taking note of the submission of learned counsel for the petitioner that he would require some time to prefer appeals against the

assessment orders, I direct that recovery proceedings for recovery of amounts confirmed against the petitioner, by the assessment orders and demand notices impugned in the Writ Petition, shall be kept in abeyance for a period of six weeks so as to enable the petitioner to move the appellate authority through statutory appeals in the meanwhile.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/20.8.2020

APPENDIXPETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF APRIL, 2018 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (A)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF MAY, 2018 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (B)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF JUNE, 2018 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (C)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF JULY, 2018 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (D)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF AUGUST, 2018 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (E)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF SEPTEMBER, 2018 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (F)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF OCTOBER, 2018 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (G)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF NOVEMBER, 2018 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (H)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF DECEMBER, 2018 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (I)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF JANUARY, 2019 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (J)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF FEBRUARY, 2019 ALONG WITH ACKNOWLEDGMENT.
EXHIBIT P1 (K)	TRUE COPY OF THE MONTHLY RETURN FILED FOR THE MONTH OF MARCH, 2019 ALONG WITH ACKNOWLEDGMENT.

EXHIBIT P2	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF APRIL, 2018 DATED 26.12.2019.
EXHIBIT P2 (A)	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF MAY, 2018 DATED 30.12.2019.
EXHIBIT P2 (B)	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF JUNE, 2018 DATED 30.12.2019.
EXHIBIT P2 (C)	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF JULY, 2018 DATED 30.12.2019
EXHIBIT P2 (D)	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF AUGUST, 2018 DATED 30.12.2019
EXHIBIT P2 (E)	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF SEPTEMBER, 2018 DATED 30.12.2019
EXHIBIT P2 (F)	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF OCTOBER, 2018 DATED 30.12.2019
EXHIBIT P2 (G)	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF NOVEMBER, 2018 DATED 30.12.2019
EXHIBIT P2 (H)	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF DECEMBER, 2018 DATED 30.12.2019
EXHIBIT P2 (I)	TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE IN FORM GST DRC-07 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF JANUARY, 2019 DATED 30.12.2019

IN FORM GST DRC-07 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF FEBRUARY, 2019
DATED 30.12.2019

- EXHIBIT P2 (K) TRUE COPY OF THE DEMAND CUM RECOVERY NOTICE
IN FORM GST DRC-07 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF MARCH, 2019 DATED
30.12.2019
- EXHIBIT P3 TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
ASMT-13 DATED 25.11.2019 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF APRIL, 2018.
- EXHIBIT P3 (A) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
ASMT-13 DATED 27.11.2019 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF MAY, 2018.
- EXHIBIT P3 (B) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
ASMT-13 DATED 27.11.2019 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF JUNE, 2018.
- EXHIBIT P3 (C) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
ASMT-13 DATED 27.11.2019 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF JULY, 2018.
- EXHIBIT P3 (D) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
ASMT-13 DATED 27.11.2019 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF AUGUST, 2018.
- EXHIBIT P3 (E) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
ASMT-13 DATED 27.11.2019 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF SEPTEMBER, 2018.
- EXHIBIT P3 (F) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
ASMT-13 DATED 27.11.2019 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF OCTOBER, 2018.
- EXHIBIT P3 (G) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
ASMT-13 DATED 27.11.2019 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF NOVEMBER, 2018.
- EXHIBIT P3 (H) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
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RESPONDENT FOR THE MONTH OF DECEMBER, 2018.
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RESPONDENT FOR THE MONTH OF JANUARY, 2019.
- EXHIBIT P3 (J) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST
ASMT-13 DATED 27.11.2019 ISSUED BY THE 1ST
RESPONDENT FOR THE MONTH OF FEBRUARY, 2019.

EXHIBIT P3 (K) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 DATED 27.11.2019 ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF MARCH, 2019.

EXHIBIT P4 TRUE COPY OF THE LETTER NO.A1-1089/2020 DATED 7.2.2020 ISSUED BY THE 1ST RESPONDENT UNDER THE RIGHT TO INFORMATION ACT, 2005.

EXHIBIT P5 THE TRUE COPY OF THE SCREEN SHOT OF ALL THE E-MAIL COMMUNICATION RECEIVED BY THE PETITIONER IN THE REGISTERED E-MAIL ID FROM 23.11.2019 TO 1.1.2020

RESPONDENTS EXHIBITS:

ANNEXURE R1 (A) :TRUE COPY OF THE SCREEN SHOTS OF THE GSTR-3A NOTICES

ANNEXURE R1 (B) :TRUE COPY OF THE SCREEN SHOT OF THE ASMT 13

//TRUE COPY//

P.A TO JUDGE