

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE T.R.RAVI

WEDNESDAY, THE 05TH DAY OF AUGUST 2020 / 14TH SRAVANA, 1942

WA.No.1765 OF 2019

AGAINST THE JUDGMENT IN WP(C) 9081/2018(I) OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

C.PRASANNAKUMARAN UNNITHAN,
PROPRIETOR, M/S. C.B ELECTRICALS,
NOORANADU, ALAPPUZHA DISTRICT.

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS/RESPONDENTS:

- 1 GST COUNCIL,
REPRESENTED BY ITS REVENUE SECRETARY AND EX-OFFICIO
SECRETARY TO THE GST COUNCIL SECRETARIATE,
5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING, JANPATH
ROAD, CONNAUGHT PALACE, NEW DELHI 100 001.
- 2 THE COMMISSIONER,
OFFICE OF THE GST COUNCIL SECRETARIAT, 5TH FLOOR,
TOWER II, JEEVAN BHARATI BUILDING, JANPATH ROAD,
CONNAUGHT PALACE, NEW DELHI 100 001
- 3 COMMISSIONER OF STATE TAX,
TAX TOWERS, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM 695 002

R1-2 BY ADV. MR.P.R.AJITH KUMAR, CGC
R1-2 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE
AND CUSTOMS
R3 BY SRI.MOHAMMED RAFIQ, SR. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05.08.2020,
ALONG WITH WA.1775/2019, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE T.R.RAVI

WEDNESDAY, THE 05TH DAY OF AUGUST 2020 / 14TH SRAVANA, 1942

WA.No.1775 OF 2019

AGAINST THE JUDGMENT IN WP(C) 9067/2018(G) OF HIGH COURT OF
KERALA

APPELLANT/PETITIONER:

LEENA P.NAIR, PROPRIETRIX,
M/S. C.B ELECTRICALS,
MARY GIRI SHOPPING CENTRE,
OPPOSITE B.S.N.L BHAVAN, THIRUVALLA

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS/RESPONDENTS:

- 1 GST COUNCIL, REPRESENTED BY ITS REVENUE SECRETARY
AND EX-OFFICIO SECRETARY TO THE GST COUNCIL
SECRETARIATE, 5TH FLOOR, TOWER II,
JEEVAN BHARATI BUILDING, JANPATH ROAD,
CONNAUGHT PALACE, NEW DELHI 100 001
- 2 THE COMMISSIONER, OFFICE OF THE GST COUNCIL
SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI
BUILDING, JANPATH ROAD, CONNAUGHT PALACE,
NEW DELHI 100 001

3 COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWERS, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM 695 002

R1-2 BY ADV. MR.M.A.SHAJI, CGC

R1-2 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF
EXCISE AND CUSTOMS

R3 BY SR. GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05.08.2020,
ALONG WITH WA.1765/2019, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Vinod Chandran, J.

The controversy in the Writ Appeals and the Writ Petitions arose on the Goods and Services Tax regime coming into effect from 01.07.2017. The dealers who were covered under the earlier regime were required to upload FORM GST TRAN 1 within the time stipulated, to avail input tax credit in respect of the stock of goods held by them.

2. The two dealers filed Writ Petitions numbered as W.P. (C). Nos.9081/2018 and 9067/2018 seeking a mandamus to reopen the portal of the Department, to facilitate uploading of FORM GST TRAN 1. They argued that the last date to upload was preponed and they had uploaded certain details but not the Form as such. The Department submitted before the learned Single Judge that Circular No.39/13/2018-GST dated 03.04.2018 has been issued by the Government of India to take care of the technical glitches that occurred in uploading the Form. The learned Single Judge directed consideration under the aforesaid Circular, which was rejected by the State Goods and Services Tax Authorities by orders, which were impugned in W.P.(C). Nos.18014/2019 and

18032/2019. The impugned orders in the writ petitions, now before us, found that the dealer had uploaded the Form and claimed input of excise duties paid for the stock held, purchased directly from the manufacturers and hence they do not come under the ambit of the Circular.

3. The assessees herein, who are the identical appellants and writ petitioners, now admit that they uploaded FORM GST TRAN 1. They sought input tax credit relatable to the Excise Duty paid insofar as the stock retained with them which they purchased from the manufacturers directly. Insofar as the local purchases made paying Value Added Tax, there was no form uploaded nor was it included in the FORM GST TRAN 1 filed before the Authorities. The learned Counsel for the appellants/petitioners submits that they filed the earlier Writ Petitions on the mistaken belief that for Excise Duty and Value Added Tax, there should be different FORM GST TRAN 1 filed under the Central Goods and Services Tax Act and the Kerala Goods and Services Tax Act. It was hence, they filed Writ Petitions seeking a relief for consideration under the aforesaid Circular. Now the assessees realise their folly in having not included the Value Added Tax component for which they have a valid claim for input tax, along with FORM GST TRAN

1, which showed their Excise Duty component for the purpose of input tax credit.

4. The situation now faced by the assesseees, is insofar as their earlier Writ Petitions itself filed on a wrong premise, which they submit was on a bonafide error. The assesseees having subjected to the Circular, are estopped from raising contentions to enable them to avail the input tax claim, which they submit was only on account of an inadvertent omission. Learned Counsel for the assesseees would contend that the issue is covered by a judgment of this Court in **Goods and Services Tax Network V. Leo Distributors (2020 (4) KLT 45)**.

5. The learned Standing Counsel however submits that, the Circular only refers to technical glitches resulting in the facilitation of uploading not having become successful despite the attempts so to do, which are easily traceable from the portal itself. The situation is not relatable to gross delay in raising the claim or omission to include the correct details. Even the cited judgment is with reference to the details having been uploaded in a wrong column.

6. We are of the opinion that the issue has to be considered first by the learned Single Judge. Considering the

stalemate now occasioned by reason of the earlier Writ Petitions numbered as W.P.(C). 9081/2018 and W.P.(C). 9067/2018, the learned Counsel seeks for withdrawing these writ petitions, without prejudice to their contentions. We are of the opinion that Writ Petition Nos. 9081/2018 and 9067/2018 can be permitted to be withdrawn. We dispose of the Writ Appeals recording the prayer for withdrawal and our permission so to do, with the reservation that it would be without prejudice to their contentions in the later writ petition, as raised to allow the input tax claim on the stock where tax has been paid under the VAT Act.

7. We make it clear that the assessees cannot claim under the Circular and their case has to be considered on the other contentions raised independently. The order impugned in those orders need not detain the learned Single Judge in considering the merits of the contentions raised. But the department would be entitled to resist the claim of the petitioners on the very same reasoning that their default cannot be rectified. We leave it to the learned Single Judge to also consider whether the cited decision will be applicable in the subject case. The contentions of either parties for and against the prayer made by the assessees are left open to be considered by the learned Single Judge.

We dispose of the Writ Appeals with the above observation and direct the Registry to post the Writ Petitions before the learned Single Judge.

Sd/-

K.VINOD CHANDRAN
JUDGE

Sd/-

T.R.RAVI
JUDGE

APPENDIX OF WA 1765/2019

PETITIONER'S/S EXHIBITS:

ANNEXURE A	COPY OF DECLARATION IN FORM GST TRAN-1 FILED BY THE APPELLANT.
ANNEXURE B	COPY OF THE STATEMENT GIVING THE DETAILS OF STOCK OF THE APPELLANT
ANNEXURE C	COPY OF CIRCULAR NO. 39/13/2018-GST ISSUED BY THE GOVERNMENT OF INDIA
ANNEXURE D	COPY OF ORDER ISSUED BY THE NODAL OFFICER, GST INFO TEAM, O/O COMMISSIONER OF STATE TAX, THIRUVANANTHAPURAM

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