

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 03RD DAY OF JULY 2020 / 12TH ASHADHA, 1942

WP(C).No.12930 OF 2020(M)

PETITIONER/S:

M/S.VELIYATH HARDWARES
MADAPARAMBIL CHAMBERS T.B. JUNCTION, MOOVATTUPUZH
686 661, REPRESENTED BY ITS MANAGING PARTNER SRI.
ISSAC. V. KORATH.

BY ADVS.
SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD
SHRI.JOB ABRAHAM
SRI.AJAY V.ANAND

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE), NO. 137, NORTH BLOCK, NEW
DELHI 110 001.
- 2 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE,
GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM 695 001.
- 3 THE GST COUNCIL,
REPRESENTED BY SECRETARY, 5TH FLOOR TOWER II, JEEVAN
BHARTI BUILDING, JANPATH ROAD, CONNACUGHT PLACE, NEW
DELHI 110 001.
- 4 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
REPRESENTED BY ITS SECRETARY (REVENUE), DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE, NO. 137, NORTH BLOCK,
NEW DELHI 110 001.
- 5 GOODS AND SERVICES TAX NETWORK
EAST WING, 4TH FLOOR, WORLD MARK 1, AEROCITY, NEW
DELHI 110 037.

- 6 THE COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPT, GOVERNMENT OF
KERALA, SECRETARIAT, THIRUVANANTHAPURAM 695 001.
- 7 THE NODAL OFFICER,
GOODS AND SERVICES TAX NETWORK, EAST WING 4TH
FLOOR, WORLD MARK I, AEROCITY, NEW DELHI 110 037.
- 8 STATE TAX OFFICER,
STATE GOODS AND SERVICE TAX DEPARTMENT, MUDAVOOR
P.O. MOOVATTUPUZHA 686 669.

R5 BY ADV. SRI.P.R.SREEJITH

OTHER PRESENT:

SMT. THUSHARA JAMES GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03.07.2020, ALONG WITH WP(C).12943/2020(P), WP(C).12949/2020(P),
WP(C).12951/2020(T), THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 03RD DAY OF JULY 2020 / 12TH ASHADHA, 1942

WP(C).No.12943 OF 2020(P)

PETITIONER/S:

M/S. TOMLUKES INDIA,
PROPRIETOR BIJU K. THOMAS, NEDIYUZHATHIL TOWERS,
T.C. 20/15-2, KILLIPALAM KARAMANA,
THIRUVANANTHAPURAM-695002.

BY ADV. SRI.A.KUMAR

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE), NO.137, NORTH BLOCK, NEW
DELHI-110001.
- 2 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 THE GST COUNCIL,
REPRESENTED BY SECRETARY, 5TH FLOOR, TOWER II,
JEEVAN BHARTI BUILDING, JANPATH ROAD, CANNAUGHT
PLACE, NEW DELHI-110001.
- 4 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
REPRESENTED BY ITS SECRETARY (REVENUE) DEPARTMENT
OF REVENUE, MINISTRY OF FINANCE, NO.137, NORTH
BLOCK, NEW DELHI-110001.
- 5 GOODS AND SERVICES TAX NETWORK,
EAST WING, 4TH FLOOR, WORLD MARK 1, AEROCITY, NEW
DELHI-110037.
- 6 THE COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPARTMENT, GOVERNMENT

OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695001.

7 THE NODAL OFFICER,
GOODS AND SERVICES TAXES NETWORK, EAST WING, 4TH
FLOOR, WORLD MARK 1, AEROCITY, NEW DELHI-110037.

8 ASSISTANT COMMISSIONER-II,
SPECIAL CIRCLE, TAX TOWER, KARAMANA,
THIRUVANANTHAPURAM-695002.

R5 BY SHRI.P.R.SREEJITH, SC, GSTN

OTHER PRESENT:

SMT. THUSHARA JAMES GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03.07.2020, ALONG WITH WP(C).12930/2020(M), WP(C).12949/2020(P),
WP(C).12951/2020(T), THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 03RD DAY OF JULY 2020 / 12TH ASHADHA, 1942

WP(C).No.12949 OF 2020(P)

PETITIONER/S:

THOMSON HOME DEPOT
T.C.20/15/-2, NEDIYUZHATHIL TOWERS, KILLIPALAM,
KARAMANA, THIRUVANANTHAPURAM-695002, REPRESENTED BY
ITS MANAGING PARTNER, SRI. BIJU K.THOMAS

BY ADVS.
SRI.A.KUMAR
SRI.P.J.ANILKUMAR (A-1768)
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD
SHRI.JOB ABRAHAM
SRI.AJAY V.ANAND

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF
FINANCE(DEPARTMENT OF REVENUE), NO.137, NORTH
BLOCK, NEW DELHI-110001
- 2 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001
- 3 THE GST COUNCIL
REPRESENTED BY SECRETARY, 5TH FLOOR, TOWER II,
JEEVAN BHARATI BUILDING, JANPATH ROAD, CONNAUGHT
PLACE, NEW DELHI-110001
- 4 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REPRESENTED BY ITS SECRETARY(REVENUE) DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE, NO.137, NORTH BLOCK,
NEW DELHI 110001

- 5 GOOD AND SERVICE TAX NETWORK
 EAST WING, 4TH FLOOR, WORLD MARK 1, AEROCITY, NEW
 DELHI-110037
- 6 THE COMMISSIONER,
 STATE GOODS AND SERVICE TAX DEPT. GOVERNMENT OF
 KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695001
- 7 THE NODAL OFFICER
 GOODS AND SERVICE TAX NETWORK, EAST WING, 4TH
 FLOOR, WORLD MARK 1, AEROCITY, NEW DELHI-110037
- 8 ASSISTNAT COMMISSIONER-II
 SPECIAL CIRCLE, TAX TOWER, KARAMANA,
 THIRUVANANTHAPURAM-695002

R5 BY SHRI.P.R.SREEJITH, SC, GSTN

OTHER PRESENT:

SMT. THUSHARA JAMES GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.07.2020, ALONG WITH WP(C).12930/2020(M), WP(C).12943/2020(P), WP(C).12951/2020(T), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 03RD DAY OF JULY 2020 / 12TH ASHADHA, 1942

WP(C).No.12951 OF 2020(T)

PETITIONER/S:

MS/.VELIYATH STEEL AGENCIES
HIGH SCHOOL JUNCTION, EDAPPALY, ERNAKULAM 682 024,
REPRESENTED BY ITS MANAGING APARTNESS SRI. ISSAC V.
KORATH.

BY ADVS.
SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD
SHRI.JOB ABRAHAM
SRI.AJAY V.ANAND

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NO.
137, NORTH BLOCK, NEW DELHI 110 001.
- 2 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, MINISTER OF FINANCE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.
- 3 THE GST COUNCIL,
REPRESENTED BY SECRETARY, 5TH FLOOR, TOWER II,
JEEVAN BHARTHI BUILDING, JANPATH ROAD, CONNAGUTH
PLACE, NEW DELHI 110 001.
- 4 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
REPRESENTED BY ITS SECRETARY (REVENUE), DEPARTMENT
OF REVENUE MINISTRY OF FINANCE, NO. 137, NORTH
BLOCK, NEW DELHI 110 001.

- 5 GOODS AND SERVICES TAX NETWORK,
 EAST WING , 4TH FLOOR, WORLD MARK 1, AEROCITY, NEW
 DELHI 110 037.
- 6 THE COMMISSIONER,
 STATE GOODS AND SERVICES TAX DEPT, GOVERNMENT OF
 KERALA, SECRETARIAT, THIRUVANANTHAPURAM 695 001.
- 7 THE NODAL OFFICER,
 GODS AND SERVILES TAX NETWORK, EAST WING 4TH FLOOR,
 WORLD MARK 1, AEROCITY , NEW DELHI 110 037.
- 8 ASSISTANT COMMISSIONER,
 STATE GOODS AND SERVICES TAX DEPARTMENT , ALUVA ,
 ERNAKULAM 683 101.

R5 BY SHRI.P.R.SREEJITH, SC, GSTN

OTHER PRESENT:

SMT. THUSHARA JAMES GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.07.2020, ALONG WITH WP(C).12930/2020(M) , WP(C).12943/2020(P) , WP(C).12949/2020(P) , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

**[WP (C) .12930/2020, WP (C) .12943/2020, WP (C) .12949/2020,
WP (C) .12951/2020]**

Dated this the 3rd day of July 2020

This order of mine shall dispose of four writ petitions bearing Nos.12930/2020, 12943/2020, 12949/2020 and 12951/2020, whereby raising identical question and prayer has been sought. The facts are being taken from W.P.(C)No.12930 of 2020 except for the difference in the notice, which are Exts.P2 and P4 in W.P(C).12930/20 whereas in other matters it is Ext.P2. On promulgation of the Central Goods and Services Tax, 2017, many businessmen adjusted with the erstwhile Kerala Value Added Tax, 2003, attempted to transit as per the transition provisions prescribed under Section 143 read with Rule 117(4) of the CGST Act and Rules framed thereunder. Petitioner filled the form TRAN-1 on 24.10.2017 within the prescribed period and in other connected matters, before the due date. The mistake

while submitting the aforementioned form TRANS-1 was that, instead of filing it under the Central GST, it was filed under the State GST. Petitioner was not aware of such intrication. However, the State GST Department, vide communication dated 26.12.2019 Ext.P2, informed the petitioner to file an explanatory reply within seven days, as the stock disclosed by them in TRAN-2 return of cement and steel was not eligible for transition credit owing to non reference of CGST. The aforementioned intimation was on the basis of an audit objection ie., irregular claim of SGST transition credit.

2. Petitioner vide Ext.P3 communication dated 17.01.2020, informed the State Tax Officer that they had filed GST TRAN-1 as well as GST TRAN-2 within the stipulated time frame to avail the transitional credit and opening stock held as on 30.06.2017, purchases which has not been considered at the level of revenue. In response to the aforementioned reply, the petitioner received another notice dated 07.02.2020 as Ext.P4 in

W.P.(C)No.12930 of 2020 and Ext.P2 in other connected matters, giving the details of filing of TRAN-1 as per the provisions of Section 143 of Kerala State GST Act, 2017 read with Section 117(4), giving the details of the stock of cement and steel unsold on the appointed date to be not supported by any invoice or documents evidencing payment of tax. It also mentioned that on 22.03.2020, in W.P.(C)No.12930 of 2020, filed TRAN-2 as per the provisions of Rule 117(4)(a)(iii) of 2013 rules, for the months of July and August 2017, and claimed SGST input tax credit during the aforementioned period. Whereas the aforementioned provisions envisage that the registered person holding stock of goods which have suffered tax at the first point of their sale in the State and subsequent sale were not subject to tax in the State and in accordance with the proviso to subsection (3) of Section 140 shall be allowed to avail input tax credit on goods held in stock on the appointed day. Office of the Accountant General, Kerala, in their order dated 24.12.2019, objected to

the aforementioned SGST claim regarding the stock which were not supported by invoice or documents and referred to the letter Ext.P2 dated 26.02.2019 seeking explanation. It informed that as per the claim of input credit on Central Excise Portion there was no such registration under Central Excise Act and therefore the GST input credit could not be granted. The petitioner was given a chance to submit reply, failing which notice under Section 73(1) of 2017 would be issued.

3. Mr. A.Kumar, learned counsel appearing on behalf of the petitioners submits that, vide Ext.P5 in W.P.(C)No.12930 of 2020 and Ext.P3 in other connected matters has sought rectification of the mistake, though the expression used in the aforesaid request is a revision, which is provided under Rule 120A of 2017 Rules. The apprehension expressed is that it may not be considered being barred by law of limitation in view of limitation prescribed under Rule 117. As far as the rectification is concerned as per the amended

provisions of Rule 117A, it is permitted. In support of the aforementioned contentions, the judgment of Division Bench of this court in Writ Appeal No.511 of 2020, arising out of an order of Single Bench Judgment dated 06.12.2019 rendered in W.P.(C). No.11424 of 2019, wherein on account of difficulties faced by the assesses under the GST owing to the transition period, revision was permitted and appeal preferred by the Central Government was dismissed. The attention of this Court has been drawn to paragraphs 9 and 10 of the judgment.

4. Sri. P.R.Sreejith, learned counsel appearing on behalf of the Central Board for Indirect Taxes and Customs submits that, there is no scope for seeking revision of form TRAN-2 owing to the fact that the period of 190 days as prescribed under Rule 17 are already over for the reason that TRAN-1 form was filed way back on 2017 and TRAN-2 in 2018. The ratio decidendi culled out in the referred judgment was pertaining to non filling of column 7(a) instead of

7(b), which was not arrested by any period of limitation. It was submitted that as per the circular, the proper officer would send such request to GST network. On consideration by the GST network, it would be sent to ITGRC. He further submits that, this case would not even fall within the provisions of Section 117(a) of 2017 Act, as the alleged error cannot be construed to falling within the expression 'rectification'. Petitioner ought to have filled FORM after understanding the provisions as the claim was not falling under the provisions of the SGST, but under the provisions of the CGST. Petitioner is thus required to seek refund of the credit along with the interest as per the provisions of the Act, and urged this court for dismissal of the writ petition.

5. Dr.Tushara James, learned Government Pleader supports the contentions of Mr. Sreejith and submits that the alleged impression of the petitioner to the rectification or revision is preposterous and would not be brought under the provisions of Act and Rules. As a

necessary corollary, petitioner is required to refund the amount along with the interest.

6. In rebuttal Mr.Kumar did not dispute regarding adoption of procedure on submission of any such request, as pointed out by Mr.Sreejith.

7. I have heard learned counsel for the parties, appraised the paper book and of the view that while exercising the powers of judicial review under Article 226 of the Constitution of India, it would not be in the domain of this court to decide as to whether it is a normal credit or was an intentional or bonafide error. Since petitioner has already sought rectification vide request, Ext.P5 in W.P.(C)No.12930 of 2020 and Ext.P3 in other items, I am of the view that the 4th respondent has already received such request on consideration of the matter, in case it requires the petitioner or representative, take a call and thereafter, as per the circular and the procedure invoked, would send it to SGST network. The SGST network on consideration of the matter would take a

call on such request by applying the principles of natural justice, i.e. affording an opportunity of hearing to the petitioner and thereafter would strictly adhere the procedure prescribed in the circular for onward transition to ITGRC. Let the entire exercise be undertaken within a period of six months.

8. It is submitted that the procedure adopted in other matters calling an explanation and reply of the petitioner, whereas, in the instant case, the revenue respondent straight away issued a demand by raising a show cause notice dated 28.01.2020 vide Ext.P2, which would reveal that there is no such reference of an opportunity or show cause notice and the demands includes not only of reversal of credit but also an element of interest, which comes to Rs.3,20,863/-. Petitioner vide Ext.P6 has given reply but there is no such consideration. Thus the principles of audi alteram partem have not been strictly adhered to.

9. At this stage Mr.Sreejith submits that, it is not possible for the department to straight way issue

show cause notice as the writ petition is bereft of any averments, but, do deny the contents of notice dated 28.01.2020. Similar is the argument of Dr.Tushara James for other respondents.

10. Having considered the said circumstances as well as the submissions, I am of the view that, if at all the department had sent earlier notice, it would have definitely referred to while raising a summary of show cause notice including the demand any therein. Contents of the notice reads as under.

"The dealer submitted TRAN-1 and TRAN-2 return under rule 177 and claimed SGST transition credit in respect of the stock having no evidence for the tax suffered and took SGST credit of Rs.184404.00. But the assessee had already availed IPT credit through VAT return during 2017-18 and paid balance tax. Hence irregular availing of transitional credit under Rule 117(4) (a).

Grounds

On verification of own sales invoice filed by the dealer it is found that the assessee had availed IPT credit through VAT return for the year 2017-18. The assessee had submitted the

same invoices for claiming transitional credit which is not admissible."

11. Since the petitioners have already submitted the request, the procedure as directed to be followed by respondents in other matters, the conditions contained therein would also apply in the present case. Until such time a decision is taken, the operation of show cause notice dated 28.01.2020 in W.P.(C)No.12951 of 2020 is ordered to be kept in abeyance. However, it is made clear that, it would not preclude the respondent to comply with the principles of natural justice by asking for a reply as has been done in other matters. Petitioner shall be at liberty to raise all the legal pleas, deem it appropriate by referring to any case law or provision of Rules.

writ petitions are disposed of accordingly.

Sd/-

AMIT RAWAL

JUDGE

APPENDIX OF WP (C) 12930/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE GST REGISTRATION CERTIFICATE.
EXHIBIT P2	TRUE COPY OF THE NOTICE DATED 26/12/2019.
EXHIBIT P3	TRUE COPY OF THE REPLY DATED 17/01/2020.
EXHIBIT P4	TRUE COPY OF THE NOTICE DATED 07/02/2020.
EXHIBIT P5	TRUE COPY OF THE APPLICATION DATED 11/03/2020.
EXHIBIT P6	TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO. 511/2020 DATED 04/06/2020.

APPENDIX OF WP (C) 12943/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE GST REGISTRATION CERTIFICATE.
EXHIBIT P2	TRUE COPY OF THE NOTICE DATED 06/01/2020.
EXHIBIT P3	TRUE COPY OF THE APPLICATION DATED 22/03/2020.
EXHIBIT P4	TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO.511/2020 DATED 04/06/2020.

APPENDIX OF WP(C) 12949/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE GST REGISTRATION CERTIFICATE
EXHIBIT P2	TRUE COPY OF THE NOTICE DATED 06.03.2020
EXHIBIT P3	TRUE COPY OF THE APPLICATION DATED 22.03.2020
EXHIBIT P4	TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO.511/2020 DATED 04.06.2020

APPENDIX OF WP(C) 12951/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE GST REGISTRATION CERTIFICATE.
EXHIBIT P2	TRUE COPY OF THE NOTICE DATED 28/10/2020.
EXHIBIT P3	TRUE COPY OF THE APPLICATION DATED 16.03.2020.
EXHIBIT P3 (A)	TRUE COPY OF THE REPLY DATED 16/03/2020.
EXHIBIT P4	TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO. 511/2020 DATED 04/06/2020.