

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 30TH DAY OF JANUARY 2020 / 10TH MAGHA, 1941

WP(C).No.485 OF 2020(I)

PETITIONER/S:

ZERO DISCHARGE TECHNOLOGIES (P) LTD.,
SF NO.303/3A,KALAINGNAR NAGAR,
SEERAPALAYAM.P.O, COIMBATORE,
TAMIL NADU,REPRESENTED BY ITS DIRECTOR,A.S.SENTHIL
KUMAR.

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

RESPONDENT/S:

- 1 THE STATE TAX OFFICER,
SQUAD NO.V,STATE GST DEPARTMENT,PALAKKAD-678001.
- 2 THE COMMISSIONER OF COMMERCIAL TAXES,
STATE GST DEPARTMENT,TAX TOWERS,
KILLIPPALAM,KARAMANA,THIRUVANANTHAPURAM-695002.
- 3 STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
TAXES DEPARTMENT,GOVERNMENT
SECRETARIAT,THIRUVANANTHAPURAM-695001.

OTHER PRESENT:

SMT.THUSHARA JAMES, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

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W.P.(C).No. 485 of 2020

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Dated this the 30th day of January, 2020

J U D G M E N T

The case projected in this Writ Petition (Civil) are as follows: -

That the petitioner is a an assessee to GST in Tamil Nadu. The petitioner made an interstate supply to a customer in Kerala against Ext.P-1 invoice, collecting tax payable under the IGST Act and the above goods were transported to Kerala, supported with invoice and an e-way bill. It is stated that the transport was detained under Sec. 129 of the Act, since part B of the e-way bill was not filled up and hence Rs.8,10,000/- towards tax and the same amount towards penalty was collected from the petitioner, following which final order at Ext.P-3 is also issued. That however, the 1st respondent as per Ext.P-5 order dated 19.11.2019 has refused to credit Rs. 8,10,000/- towards the GST registration number of the petitioner in spite of the request made by the petitioner in that regard. It is in the above factgs and circumstances that the petitioner has filed the above W.P.(C). with the following prayers:

- “(i) *To quash Ext.P-5 issued by 1st respondent by the issue of a writ of certiorari or such other writ or order or direction.*
- “(ii) *To direct the 1st respondent to credit Rs. 8,10,000/- collected from the petitioner under section 129 of the Act towards its GST registration No.33AAACZ9069RIZE by the issue of a writ of*

mandamus or such other writ or order or direction.

- (iii) *To grant the petitioner such other incidental reliefs including the costs of these proceedings.”*

2. Heard Sri.Harisankar V.Menon, learned counsel appearing for the petitioner and Dr.Thushara James, learned Prosecutor appearing for the official respondents.

3. The contentions raised by the petitioner are stated in paras 15 and 16 the Writ Petition, which read as follows:

“15. Firstly, Section 129 of the CGST Act permits the 1st respondent to detain goods when there is a transport detected, contravening the provisions of the Act. The said provision of Law further permits the 1st respondent to collect the tax due on the consignment as also penalty for the offence committed. In other words, the 1st respondent is collecting the tax due on the consignment from the petitioner. A reference to Ext. P2 series documents also makes it clear that the 1st respondent has collected the tax payable under the IGST Act. The order of penalty at Ext. P3 also speaks about collection of tax under the IGST Act from the petitioner. So much so, the 1st respondent has a duty cast upon him to credit the said amount towards the IGST liability of the petitioner against the GST No. held by it. The refusal to do so is patently illegal and arbitrary.

16. Secondly, 1st respondent has made reference to the provisions of Section 17 (5) (i) to reject the prayer of the petitioner. Section (17) (5) (i) reads as under:

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of Section 18, input tax credit shall not be available in respect of the following, namely:-

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

Above Section it is true prohibits an assessee from taking credit of tax paid under Section 129. But the credit covered by Section 17 is “input tax credit” under Section 16 of the Act. Section 16 of the Act to the extent relevant herein reads as under:-

“16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input

tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless:-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.”

It is also worthwhile to make a reference to the definition of the term “input tax” and “input tax credit” under the Act as under.

“(62) “input tax” in relation to a registered person, means the Central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes”-

“(63) “input tax credit” means the credit of input tax;”

Thus “input tax” is the tax charged on a supply to a person. Section 16 read with the above definitions makes it clear that it is only tax collected from a recipient of supply that is covered under Sections 16 & 17. In other words, it is only a purchaser of goods who is prohibited from claiming input credit of the tax paid under Section 129 of the Act. Petitioner is not claiming the benefit of input tax credit as above. Instead it is only requesting for a credit towards the output tax liability. The 1st respondent is therefore not justified in refusing to extend credit of Rs. 8.10 lakhs collected from the petitioner as above.”

4. After hearing both sides and after careful evaluation facts and circumstances of the case, more particularly with reference to the pleadings in that regard, this Court is of the considered view that the matter requires serious reconsideration at the hands of the 1st respondent as vital aspects enumerated in paras 15 and 16 of the Writ Petition (Civil) have not been duly considered and adverted to by the 1st respondent. Accordingly, for effectuating such a remit, it is

ordered that the impugned Ext.P-5 order dated 21.11.2019 refusing to credit the abovesaid amount towards the GST registration number of the petitioner will stand quashed and the matter in relation thereto will stand remitted to the 1st respondent for consideration afresh. The petitioner will give detailed written submission/written objections in the matter to the 1st respondent along with certified copy of this judgment within a period of ten days from the date of production of a certified copy of this judgment. Thereafter the 1st respondent will issue notice to hearing to the petitioner and render a decision after affording reasonable opportunity of being heard to the petitioner and taking into the contentions of the petitioner, more particularly the contentions raised as referred to paras 15 and 16 of the memorandm of the above Writ Petition (Civil). The decision as directed above shall be duly taken by the 1st respondent without much delay, preferably within a period of six weeks from the date of production of a certified copy of this judgment.

With these observations and directions, the Writ Petition (Civil) stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	COPY OF INVOICE D/GST/118/2018-19 ISSUED BY THE PETITIONER.
EXHIBIT P2	COPY OF ORDER IN FORM GST MOV 06 ISSUED BY THE PETITIONER
EXHIBIT P2 (A)	COPY OF ORDER IN FORM GST MOV 09 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P2 (B)	COPY OF ORDER IN FORM GST MOV 09 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P3	COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P4	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
EXHIBIT P5	COPY OF REPLY ISSUED BY THE 1ST RESPONDENT
EXHIBIT P6	COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
EXHIBIT P7	COPY OF RETURN FILED BY THE PETITIONER.