

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 09TH DAY OF JANUARY 2020 / 19TH POUSHA, 1941

WP (C) .No. 32678 OF 2019 (H)

PETITIONER :

RAJU K. THOMAS,
AGED 63 YEARS
KALLOTH ROAD BUILDERS, 198, KADAYATTUMARUTHAVELIL,
THADIYOOR, THIRUVALLA, PATHANAMTHITTA -689 545

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

RESPONDENTS :

- 1 THE STATE TAX OFFICER (WC) ,
OFFICE OF THE DY. COMMISSIONER, STATE GST DEPARTMENT,
PATHANAMTHITTA- 689 645
- 2 THE EXECUTIVE ENGINEER,
PWD ROADS DIVISION, PATHANAMTHITTA- 689 645
- 3 DY. COMMISSIONER,
STATE GST DEPARTMENT, PATHANAMTHITTA- 689 645
- 4 THE COMMISSIONER OF STATE GST,
STATE GST DEPARTMENT, TAX TOWERS, KILLIPPALAM,
KARAMANA, THIRUVANANTHAPURAM- 695 002.

BY ADVS.
SMT.THUSHARA JAMES, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P(C). No. 32678 of 2019

Dated this the 9th day of January, 2020

JUDGMENT

The case projected in this Writ Petition (Civil) filed under Article 226 is as follows.

The petitioner is an assessee under the CGST/SGST Acts on the rolls of the 1st respondent herein. The 2nd respondent has awarded two separate works to the petitioner and as against the said contracts Rs.8,11,206/- and Rs.2,98,848/- were deducted by the 2nd respondent herein under Sec.51 of the Act as evidenced by Exts.P2 and P2 (a). But the petitioner was not extended credit against the above, by the respondents herein inspite of repeated reminders. Ultimately the petitioner had to file the returns for the respective periods by satisfying the tax due from out of his own resources. Therefore the petitioner has submitted a request before the 1st respondent for refund of the tax deducted at source. But no positive steps are being taken in the matter. It is in the light of these averments and contentions, the petitioner has filed instant Writ petition with the following prayers:

- “(i) To direct the 1st respondent to refund the tax deducted at source under Section 51 of the CGST Act amounting to Rs.8,11,206/- and Rs.2,98,848/- by the 2nd respondent herein, to the petitioner forthwith by the issue of a writ of mandamus or such other writ or order or direction.*
- (ii) To grant the petitioner such other incidental reliefs including the costs of these proceedings.”*

2. Heard Sri.Harisankar.V.Menon, the learned counsel appearing for the petitioner and Smt.Thushara James, the learned Government Pleader appearing for the respondents.

3. Sri.Harisankar.V.menon, the learned counsel appearing for the petitioner would submit on the basis of instructions from the party that earlier, the petitioner had made an application for grant of refund in respect of the subject matter of his claims, which was not in the prescribed format and later on advice, the petitioner has now already submitted the requisite application in the prescribed form for claiming the benefit of the refund of the amounts as provided under Sec.51 (8) read with Sec.54 of the Central Goods and Services Tax Act, 2017 before the 1st respondent on 30-10-2019 etc,. If that be so, it is ordered in the interest of justice that in case the petitioner has filed requisite application for grant of refund as abovestated before the 1st respondent

and the same is pending consideration, then the said authority will take the said plea for consideration after affording a reasonable opportunity of being heard to the petitioner through his authorised representative or counsel, if any, will take a considered decision thereon in accordance with law, without much delay preferable within a period of three weeks from the date of production of the certified copy of the judgment.

4. The petitioner may produce the certified copy of this judgment before the 1st respondent for the necessary information and further action. It is made clear that this Court has not entered into the merits of the controversy in any manner and it is for the 1st respondent to take an independent decision in the matter and in accordance with law as aforestated.

With these observation and directions the above Writ petition (Civil) will stand disposed of.

sd/-

**ALEXANDER THOMAS,
JUDGE**

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 COPY OF REGISTRATION CERTIFICATE NO. 32ABGPT4698C1ZH ISSUED BY THE GOVERNMENT OF INDIA DATED 17-07-2018.
- EXHIBIT P2 COPY OF STATEMENT ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P2 A COPY OF STATEMENT ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P3 COPY OF GSTR RETURN FOR THE MONTH OF MARCH 2019
- EXHIBIT P3 A COPY OF GSTR RETURN FOR THE MONTH OF AUGUST 2019
- EXHIBIT P4 COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 24-09-2019.
- EXHIBIT P5 COPY OF REPLY ISSUED BY THE 2ND RESPONDENT DATED 28-09-2019.
- EXHIBIT P6 COPY OF APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST AND 2ND RESPONDENTS DATED 30-10-2019.
- EXHIBIT P6 A COPY OF APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST AND 2ND RESPONDENTS DATED 30-10-2019.
- EXHIBIT P7 COPY OF LETTER ISSUED BY THE 2ND RESPONDENT DATED 11-11-2019

RESPONDENT'S/S EXHIBITS: NIL

//TRUE COPY//
PA TO JUDGE