IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE AMIT RAWAL

THURSDAY, THE 21ST DAY OF NOVEMBER 2019 / 30TH KARTHIKA, 1941

WA.No.2359 OF 2019

AGAINST THE ORDER DATED 19-11-2019 IN WP(C) 31184/2019(W) OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

PITTAPPILLIL AGENCIES
CATTLE MARKET ROAD, PERUMBAVOOR 683 542,
REPRESENTED BY SRI. PETER PAUL, MANAGING PARTNER.

BY ADVS.
SRI.K.N.SREEKUMARAN
SRI.P.J.ANILKUMAR
SRI.N.SANTHOSHKUMAR

RESPONDENTS/RESPONDENTS:

1 SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISSE GOODS AND SERVICES TAX DEPARTMENT, PERUMBAVOOR RANGE, PIN-683 542.

2 PRINCIPAL COMMISSIONER OF CENTRAL TAX, CENTRAL GOODS AND SERVICES TAX DEPARTMENT, CENTRAL REVENUE BUILDING, I.S PRESS ROAD, COCHIN 682 018.

3 ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, GOODS AND SERVICES TAX DEPARTMENT, PERUMBAVOOR RANGE 683 542.

4 MANAGER, FEDERAL BANK, BUILDING. NO. 111/685 A, KOCHERIL BUILDING, A.M. ROAD, KURUPPAMPADY, PERUMBAVOOR 683 545.

R1-3 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND CUSTOMS

OTHER PRESENT:

SC-R1-R3- SRI. P.R SREEJITH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21.11.2019, ALONG WITH WP(C).31184/2019(W), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE AMIT RAWAL

THURSDAY, THE 21ST DAY OF NOVEMBER 2019 / 30TH KARTHIKA, 1941

WP(C).No.31184 OF 2019(W)

PETITIONER:

PITTAPPILLIL AGENCIES
CATTLE MARKET ROAD, PERUMBAVOOR, PIN - 683542.
(REPRESENTED BY SRI. PETER PAUL, MANAGING PARTNER)

BY ADVS.
SRI.K.N.SREEKUMARAN
SRI.P.J.ANILKUMAR (A-1768)
SRI.N.SANTHOSHKUMAR

RESPONDENTS:

1 SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE GOODS AND SERVICE TAX DEPARTMENT, PERUMBAVOOR RANGE, PIN - 683 542.

2 PRINCIPAL COMMISSIONER OF CENTRAL TAX CENTRAL GOODS AND SERVICE TAX DEPARTMENT, CENTRAL REVENUE BUILDING, I.S.PRESS ROAD, COCHIN - 682 018.

3 ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, GOODS AND SERVICE TAX DEPARTMENT, PERUMBAVOOR RANGE, PIN - 683 542.

4 MANAGER FEDERAL BANK, BUILDING NO.III/685 A, KOCHERIL BUILDING, A. M. ROAD, KURUPPAMPADY, PERUMBAVOOR - 683 545.

R1-3 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND CUSTOMS
R4 – BY SRI. PAULOCHAN ANTONY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.11.2019, ALONG WITH WA.2359/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K. ABDUL REHIM, J.
&
AMIT RAWAL, J.

W.A. No. 2359 OF 2019
&
W.P (C) No. 31184 OF 2019

DATED THIS THE 21st DAY OF NOVEMBER, 2019

J U D G M E N T

Abdul Rehim, J.:

W.A. No.2359/2019 is filed against an interim order of the Single Judge, dated 19th November, 2019, passed in W.P.(C) No.31184/2019. After hearing both sides for quite some time, we felt that the writ petition itself can be disposed of based on the contentions raised. Therefore W.P.(C) No.31184/2019 is tagged on to the writ appeal and both the cases are disposed of through this common judgment.

2. Issue pertains to the sustainability of a proceedings initiated for recovery of the amount of interest due under Section 50 of the Central Goods and Services Tax Act, 2017 ('CGST Act' for short) and the consequential garnishee proceedings initiated under Section 79 (1) (c) of the said Act.

3. Exhibit P16 notice was issued to the appellant/petitioner requiring them to remit a sum of Rs.1,95,01,865.57 towards interest due with respect to 14

returns filed after the due dates stipulated. The appellant/petitioner submitted Ext.P18, detailed objection against the demand made under Ext.P16, to the 1st respondent and Ext.P19 to the 2nd respondent. Main contention raised is that, going by the returns in form GSTR-I, GSTR-3B, the assessee is entitled for refund of huge amounts, because the input tax credit claimed was always been in excess of the output. According to them, huge amount of tax acquires to their credit in the electronic ledger due to the fact that they had purchased goods from outside the state, which are eligible for IGST input credit, which can be set off against the liability of output. They also mentioned that there is also a recent amendment effected with respect to the procedure in granting IGST credit against SGST output. It is further contended that, the liability of interest under Section 50 will be accrued only if there is a failure to make payment of the tax due. According to the appellant/petitioner the tax due has to be ascertained after considering the input tax credit, otherwise the object of the Goods and Services Tax law would be defeated, is the contention raised. It was also pointed out that, on the contrary if such input tax credit is not considered, it will have a cascading effect on the dealers. Therefore the liability calculated without taking into consideration of the credit due is unsustainable, is the argument. The appellant/petitioner had also pointed out the amendments brought into Section 50 of the Act which reads as follows;

> *"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of sec.39 except were such return is furnished after commencement of any proceedings u/s 73 or sec. 74 in respect of the said period, shall be levied on that portion of tax that is paid by debiting the electronic cash ledger."*

4. Despite filing of the objections as mentioned above, the 3rd respondent had issued Ext.P20 notice to the 4th respondent – Bank, directing to pay a sum of Rs.1,78,08,455.36, which is the amount allegedly due from the appellant/petitioner to the public exchequer, in accordance with provisions contained in clause c (i) of sub-section (1) to Section 79 of the Act. It is the said notice which was under challenge in the writ petition.

5. By virtue of the interim order passed by the Single Judge, operation of Ext.P20 garnishee notice was stayed, subject to condition of the petitioner paying 40% of the demand mentioned therein, within one month. The writ appeal is filed aggrieved by the above said order.

6. Prima facie we were not at all convinced that there existed any legal ground to interfere with the impugned order passed by the learned Single Judge. But learned counsel for the appellant/petitioner had pointed that, Ext.P20 notice was issued under Section 79 without adverting to the contentions raised against Ext.P16 notice through Exts.P18 and P19 reply submitted by the petitioner to respondents 1 & 2. Going by provisions contained in Section 50 of the CGST Act, we are of the opinion that the accrual of interest mentioned therein is automatic when the tax due as conceded in the return is not remitted along with the return. However, when the appellant/petitioner had raised contentions refuting their liability for payment of interest as calculated by the respondent, the theory of *audi alteram partem* will come into play. Therefore we are of the opinion that a direction to the 3rd respondent for consideration of Ext.P18 and P19, before proceeding with the coercive steps, would suffice to meet the ends of justice.

7. Learned Standing Counsel appearing for the respondents 1 to 3 had pointed out that, if no restrainment is imposed with respect to operation of the Bank Account held by the petitioner with the 4th respondent, pending disposal of such consideration, it may cause prejudice to the public exchequer.

We find force in the said contention. Learned counsel appearing for the appellant/petitioner made an offer to furnish Bank Guarantee for the entire amount demanded under Ext.P20, pending finalization of the matter by the 3rd respondent.

8. Under the above mentioned circumstances, both the writ appeal as well as the writ petition are hereby disposed of by directing the 3rd respondent to consider Ext.P18 and P19 objections filed by the petitioner against the proposal intimated in Ext.P16, after affording an opportunity of personal hearing to the petitioner or to his representative. The above exercise shall be done at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment. In the meanwhile, freezing of the account held with the 4th respondent bank shall be lifted upon the appellant/petitioner furnishing Bank Guarantee to the satisfaction of the 3rd respondent, for the entire amount demanded under Ext.P20.

Sd/-
C.K.ABDUL REHIM
JUDGE

Sd/-
AMIT RAWAL
JUDGE

AMG

APPENDIX OF WP(C) 31184/2019

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF AUGUST 2017 FILED ONLINE.

EXHIBIT P2 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF SEPTEMBER 2017 FILED ONLINE.

EXHIBIT P3 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF APRIL 2018 FILED ONLINE.

EXHIBIT P4 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF MAY 2018 FILED ONLINE.

EXHIBIT P5 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF JUNE 2018 FILED ONLINE.

EXHIBIT P6 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF JULY 2018 FILED ONLINE.

EXHIBIT P7 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF AUGUST 2018 FILED ONLINE.

EXHIBIT P8 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF SEPTEMBER 2018 FILED ONLINE.

EXHIBIT P9 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF OCTOBER 2018 FILED ONLINE.

EXHIBIT P10 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF DECEMBER 2018 FILED ONLINE.

EXHIBIT P11 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF JANUARY 2019 FILED ONLINE.

EXHIBIT P12 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF FEBRUARY 2019 FILED ONLINE.

EXHIBIT P13 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF MARCH 2019 FILED ONLINE.

EXHIBIT P14 TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR 3B FOR THE MONTH OF APRIL 2019 FILED ONLINE.

EXHIBIT P15 TRUE COPY OF THE ELECTRONIC CREDIT LEDGER OF THE PETITIONER FOR THE PERIODS FROM JULY 2017 TO OCTOBER 2019.

EXHIBIT P16 TRUE PRINT OUT OF THE NOTICE DOWNLOADED FROM THE E-MAIL OF THE PETITIONER ON 1.10.2019.

EXHIBIT P17 TRUE EXTRACT OF THE EXCEL SHEET OBTAINED FROM THE 1ST RESPONDENT.

EXHIBIT P18 TRUE COPY OF THE REPLY DATED 3.10.2019 FILED BEFORE THE 1ST RESPONDENT.

EXHIBIT P19 TRUE COPY OF THE REPRESENTATION FILED ON 14.10.2019 BEFORE THE 2ND RESPONDENT.

EXHIBIT P20 TRUE COPY OF THE NOTICE IN FORM GST DRC-13 NO.C.NO.IV/16/04/2019/ARRC/1434 DATED 15.11.2019 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.