

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 26<sup>TH</sup> DAY OF JULY 2024 / 4TH SRAVANA, 1946

WP(C) NO. 7991 OF 2023

PETITIONER:

D.C.MOHANKUMAR,  
PROPRIETOR, JOHNSON BAKERY, PP-XIV/1076, 77, NH ROAD,  
POST OFFICE JUNCTION, PARASSALA, THIRUVANANTHAPURAM,  
PIN - 695 502.

BY ADVS.

RAHUL A.

S.ANIL KUMAR (TRIVANDRUM)

V.SATHEESH (S-3495)

K.SUNDAR

SABU C.J

RESPONDENTS:

- 1 THE STATE TAX OFFICER (INTELLIGENCE),  
SQUAD NO.III, STATE GOODS AND SERVICES TAX DEPARTMENT,  
NEYYATTINKARA, THIRUVANANTHAPURAM, PIN - 695 121.
- 2 THE JOINT COMMISSIONER (APPEALS),  
STATE GOODS AND SERVICES TAX DEPARTMENT, TAX TOWERS,  
KARAMANA, THIRUVANANTHAPURAM, PIN - 695 002.

BY SMT.JASMINE M M, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
26.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

This writ petition has been filed challenging Ext.P3 order of the 1<sup>st</sup> Appellate Authority in an appeal under Section 107 of the CGST / SGST Acts and on the premise that no Appellate Tribunal has been constituted to enable the petitioner to file a 2<sup>nd</sup> appeal under Section 112 of the CGST / SGST Acts.

2. This Court on 09.03.2023 passed the following order:-

*“Admit.*

*Government Pleader takes notice for respondents 1 and 2.*

*Respondents to place on record their counter affidavit/statement .*

*There will be an interim stay as prayed for, for a period of two months on condition that the petitioner complies with the requirement of Section 112(8)(b) of the GST Act.”*

3. Thereafter on 07.12.2023, this Court passed the following order:-

*“This writ petition has been filed challenging Ext.P3 order passed by the First Appellate Authority in absence of GST Tribunal constituted under the provisions of Central Goods and Service Tax Act and Kerala State Goods and*

*Services Tax Act. According to the petitioner, the petitioner has deposited 20% of the tax determined by the First Appellate Authority and the petitioner has filed Ext.P4 payment receipt along with the Interlocutory Application.*

*2. In view of the aforesaid facts, the petitioner has deposited 20% of the tax determined by the First Appellate Authority and as the GST Tribunal has not yet been constituted, the interim order dated 09.03.2023 is revived which shall remain in operation till the disposal of the writ petition.*

*The respondents are directed to file a counter affidavit within a period of two weeks.”*

4. It is not in dispute that the Appellate Tribunal to hear appeals under Section 112 of the CGST / SGST Acts has not been constituted thus far. However, it is expected that the Tribunal will be constituted without further delay also taking into account directions issued by a Division Bench of this Court in W.P(C)No.12267 of 2024 on 09.07.2024.

Taking into consideration of the above and the interim orders dated 09.03.2023 and 07.12.2023 referred to above and also taking into consideration of the fact that a deposit of 20% constitutes a stay against the recovery of the balance amount,

this writ petition will stand disposed of directing that if the petitioner files an appeal against Ext.P3 order before the Tribunal as and when the same is constituted, within a period of two weeks from the date of such constitution, such appeal shall be deemed to be one filed within time and shall be disposed of on merits by the Tribunal, in accordance with the law. If the petitioner complies with the aforesaid condition, the interim order protecting the petitioner from recovery on the basis of the findings in Ext.P3 order of the 1<sup>st</sup> Appellate Authority will continue to remain in force till the disposal of the appeal by the Appellate Tribunal (as and when it is constituted).

Writ petition ordered accordingly.

Sd/-  
**GOPINATH P.**  
**JUDGE**

DK

**APPENDIX OF WP(C) 7991/2023**

**PETITIONER EXHIBITS**

- Exhibit P1**            **A COPY OF THE ORDER DATED 25-11-2019  
ISSUED BY THE 1ST RESPONDENT**
- Exhibit P2**            **A COPY OF THE APPEAL MEMORANDUM ALONG  
WITH THE GROUNDS OF APPEAL DATED 30-  
12-2019 FILED BEFORE THE 2ND  
RESPONDENT AGAINST EXT-P1 ORDER**
- Exhibit P3**            **A COPY OF THE ORDER DATED 26-10-2022  
ISSUED BY THE 2ND RESPONDENT**
- Exhibit P4**            **A COPY OF THE RECEIPT DATED 10-04-  
2023 EVIDENCING PAYMENT OF  
RS.2,46,906/- EACH UNDER THE CGST AND  
THE SGST ACTS**