



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 7<sup>TH</sup> DAY OF OCTOBER 2024 / 15TH ASWINA, 1946

WP(C) NO. 33659 OF 2024

**PETITIONER/S:**

HARIES MUHAMMED, AGED 53 YEARS  
S/O. ABDULLA KUNHI HAJEE, EHTRHODE HOUSE,  
EDANEER P.O., PADY, KASARGOD, PIN - 671541

BY ADV SANTHOSH P.ABRAHAM

**RESPONDENT/S:**

- 1 THE ASSISTANT COMMISSIONER (IB),  
STATE GOODS AND SERVICE TAX DEPARTMENT,  
OFFICE OF THE DEPUTY COMMISSIONER OF STATE TAX,  
KASARGOD AT KANHANGAD, PIN - 671315
- 2 THE INTELLIGENCE OFFICER, INTELLIGENCE UNIT,  
STATE GOODS AND SERVICE TAX DEPARTMENT, KERALA,  
KANHANGAD, KASARGOD, PIN - 671315
- 3 THE STATE TAX OFFICER, TAX PAYER SERVICE CIRCLE,  
MANJESHWARAM, STATE GOODS AND SERVICE TAX DEPARTMENT,  
KERALA, AT NELLIKUNNU, KASARGOD, PIN - 671121
- 4 THE STATE TAX OFFICER, TAX PAYER SERVICE CIRCLE,  
KASARGOD, STATE GOODS AND SERVICE TAX DEPARTMENT,  
KERALA, MAHADEVA COMPLEX,  
NELLIKUNNU, KASARGOD, PIN - 671121
- 5 THE COMMISSIONER, STATE GOODS AND SERVICE TAX  
DEPARTMENT, KERALA, TAX TOWER, KARAMANA,  
THIRUVANANTHAPURAM, PIN - 695002

SMT. JASMIN M.M, GP  
ADV. P.R. SREEJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
07.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

Petitioner has approached this Court, being aggrieved by the fact that a consolidated show cause notice (Ext.P1) has been issued by invoking the provisions of Section 74 of the CGST/SGST Acts for the years 2017-18 till 2021-22.

2. Learned counsel appearing for the petitioner submits that, in the year 2017-18 , there was failure to file returns and even if that can be seen as a case of suppression, for the subsequent years (which are also subject matter of the show cause notice), returns have been filed and tax has been remitted at the rate of 5%. It is submitted that, even if there is a mistake in the rate of tax , the same cannot be a ground to invoke the provisions of Section 74 of the CGST/SGST Acts for the years 2018-19 to 2021-22. It is submitted that since a consolidated notice has been issued under Section 74 of the CGST/SGST Acts, the petitioner will be unnecessarily subjected to penalty and other proceedings under Section 74 of the CGST/SGST Acts . It is submitted that the competent Authority may be directed to issue separate notices for each of the years in question.



3. Learned Government Pleader would submit, on instructions that, even if a consolidated notice has been issued to the petitioner, the proceedings have to be finalized and orders have to be uploaded separately for each of the years in question and any contention taken by the petitioner specific to any particular year will also be considered by the Adjudicating Authority, while passing orders. It is also submitted that taxes paid by the petitioner for the year 2018-19 till 2021-22 (at the rate of 5%) have been given due credit to.

4. Learned counsel appearing for the petitioner submits that, by now, the amounts payable on account of the application of an incorrect rate of tax has also been remitted by the petitioner. It is also submitted that, the amounts payable for the year 2017-18 have also been paid.

5. Having heard the learned counsel appearing for the petitioner and the learned Government Pleader and having regard to the facts and circumstances of the case, the writ petition will stand disposed of, directing that the Competent Authority shall consider the issue for each of the years separately, if there is warrant for doing so, also taking into consideration the submission of the petitioner that there was no just cause or reason to invoke the provisions of Section 74 of



the CGST/SGST Acts, for the years 2018-19 till 2021-22. Any taxes paid by the petitioner shall also be given due credit to while finalizing the proceedings. It is made clear that the petitioner shall be afforded an opportunity of personal hearing before orders are passed by the Adjudicating Authority.

The writ petition is disposed of with the aforesaid directions.

**Sd/-**

**GOPINATH P.**

**JUDGE**

ajt

**APPENDIX OF WP(C) 33659/2024****PETITIONER EXHIBITS**

<b>Exhibit P1</b>	<b>TRUE COPY OF THE SHOW CAUSE NOTICE NO. IB KSD/INT (03)/2022-23 DATED 22.11.2022 ISSUED BY THE 1 ST RESPONDENT</b>
<b>Exhibit P2</b>	<b>TRUE COPY OF THE REPLY DATED 26.12.2022 SUBMITTED BY THE PETITIONER BEFORE THE 1 ST RESPONDENT</b>
<b>Exhibit P3</b>	<b>TRUE COPY OF FORM GST DRC-03 (ARN:AD 320622002711S) DATED 13.06.2022 FOR 2017-18</b>
<b>Exhibit P3(a)</b>	<b>TRUE COPY OF FORM GST DRC-03 (ARN:AD 3206220027116I) DATED 13.06.2022 FOR 2018-19</b>
<b>Exhibit P3(b)</b>	<b>TRUE COPY OF FORM GST DRC-03 (ARN:AD 3212220066000) DATED 28.12.2022 FOR 2018-19</b>
<b>Exhibit P3(c)</b>	<b>TRUE COPY OF FORM GST DRC-03 (ARN:AD 321222006643 Q) DATED 28.12.2022 FOR 2019-20</b>
<b>Exhibit P3(d)</b>	<b>TRUE COPY OF FORM GST DRC-03 (ARN:AD 321222006646 K) DATED 28.12.2022 FOR 2020-21</b>
<b>Exhibit P3(e)</b>	<b>TRUE COPY OF FORM GST DRC-03 (ARN:AD 32122206609I) DATED 28.12.2022 FOR 2021-22</b>
<b>Exhibit P4</b>	<b>TRUE COPY OF THE COMMUNICATION NO. IB KSD/INT 03/2022-23 DATED 13.4.2023 ISSUED BY THE 2 ND RESPONDENT</b>
<b>Exhibit P5</b>	<b>TRUE COPY OF THE NOTICE NO. ST0/32AIFPH0751C121/2017- 18 TO 2021-22 DATED 06.09.2024 ISSUED BY THE 4 TH RESPONDENT</b>