

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2020 / 7TH ASWINA, 1942

WP(C).No.15297 OF 2020(J)

PETITIONER/S:

SOFTOUCH HEALTH CARE PRIVATE LTD.,
15/47, GOOD EARTH HAVELI, EROOR WEST P.O,
TRIPUNITHURA, ERENAKULAM 682 306 RPERESNTED BY ITS
DIRECTOR , DAVIS KARE DAN

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

RESPONDENT/S:

- 1 THE STATE TAX OFFICER,
1ST CIRCLE, DEPARTMENT OF STATE GST, TRIPUNITHURA 682
036
- 2 COMMISSIONER OF STATE GST,
TAX TOWERS, KILLIPPALAM, KARAMANA, THIRUVANANTHAPURAM
695 002

OTHER PRESENT:

G.P. DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.09.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a private limited company engaged in providing ayurvedic and spa services, is an assessee under the provisions of the GST Act. In the writ petition, the petitioner is aggrieved by the assessment orders that were passed for the period from April 2018 to October 2019 on best judgment basis under Section 62 of the CGST Act. It is the contention of the petitioner that within the statutorily permitted period of 30 days from the date of receipt of the said assessment orders under Section 62, the petitioner preferred separate returns for the various months as aforementioned and also filed applications for rectification of errors apparent on the face of the assessment orders that was served on him. It is his contention in the writ petition that in view of the returns subsequently filed within the period permitted under Section 62, Ext.P1 series of assessment orders had to be withdrawn as contemplated under the said Section.

2. A statement has been filed on behalf of the 1st respondent pursuant to the directions from this Court, wherein at paragraphs 5 and 7 the respondents have given details of the date of issue of assessment orders in respect of various months constituting the period for which the assessment was completed on best judgment basis. At paragraph No.7 the respondents have also furnished the date on which the returns were filed by the petitioner for the various months covered by the assessment orders in question. A comparative chart based on the details furnished in paragraph Nos.5 and 7 would show the following:

Return Period	Date of Issue of Assessment Order	Date of Filing of Returns
April 2018	05.09.2019	17.01.2020
May 2018	05.09.2019	17.01.2020
June 2018	05.09.2019	17.01.2020

July 2018	05.09.2019	17.01.2020
August 2018	05.09.2019	17.01.2020
September 2018	05.09.2019	29.01.2020
October 2018	06.09.2019	29.01.2020
November 2018	06.09.2019	31.01.2020
December 2018	06.09.2019	07.02.2020
January 2019	06.09.2019	07.02.2020
February 2019	06.09.2019	07.02.2020
March 2019	06.09.2019	11.02.2020
April 2019	19.11.2019	29.02.2020
May 2019	19.11.2019	02.03.2020
June 2019	07.12.2019	02.03.2020
July 2019	07.12.2019	02.03.2020
August 2019	07.12.2019	07.03.2020

3. It is further submitted by the learned Government Pleader by placing reliance on Section 169 of the CGST Act that under the said provision the mode of communication of an order, by making it available on the common portal, is also a recognised method of communication of the order to an assessee as indicated in Section 169(2) of the Act. It is, therefore, her contention that inasmuch as the returns for the various months were filed with the Department more than 30 days after the date of communication of the assessment order through publication on the common portal, the petitioner could not avail the benefit of getting the assessment orders set aside in terms of Section 62 of the CGST Act.

4. I have heard Sri.Harisankar V. Menon, the learned counsel for the petitioner and Dr.Thushara James, the learned Government Pleader for the respondents.

5. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find force in the contention of the learned

Government Pleader for the respondents that the returns in respect of the period aforementioned were filed beyond the period of one month stipulated under Section 62 of the Act. It would follow, therefore, the petitioner cannot aspire for the benefit of getting the assessment orders passed on best judgment basis set aside, as contemplated under Section 62 of the Act. The remedy of the petitioner against the said assessment orders lies in approaching the statutory appellate authority against the said orders. I, therefore, dismiss the writ petition in its challenge against the assessment orders without prejudice to the right of the petitioner to move the first appellate authority in its challenge against the said assessment orders.

Taking note of the submission of the learned counsel for the petitioner that he would require some time to move the appellate authority, I direct that the recovery steps pursuant to the assessment orders impugned in this writ petition shall be kept in abeyance for a period of one month so as to enable the petitioner to move the appellate authority, in the meanwhile.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD APRIL 2018 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (A) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD MAY 2018 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (B) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD JUNE 2018 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (C) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD JULY 2018 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (D) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD AUGUST 2018 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (E) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD SEPTEMBER 2018 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (F) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD OCTOBER 2018 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (G) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD NOVEMBER 2018 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (H) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD DECEMBER 2018 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (I) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD JANUARY 2019 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (J) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD FEBRUARY 2019 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P1 (K) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD MARCH 2019 ISSUED BY 1ST

RESPONDENT.

EXHIBIT P1 (L) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD APRIL 2019 ISSUED BY 1ST RESPONDENT.

EXHIBIT P1 (M) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD MAY 2019 ISSUED BY 1ST RESPONDENT.

EXHIBIT P1 (N) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD JUNE 2019 ISSUED BY 1ST RESPONDENT.

EXHIBIT P1 (O) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD JULY 2019 ISSUED BY 1ST RESPONDENT.

EXHIBIT P1 (P) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD AUGUST 2019 ISSUED BY 1ST RESPONDENT.

EXHIBIT P1 (Q) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD SEPTEMBER 2019 ISSUED BY 1ST RESPONDENT.

EXHIBIT P1 (R) COPY OF PROCEEDINGS IN FORM GST DRC-07 FOR THE PERIOD OCTOBER 2019 ISSUED BY 1ST RESPONDENT.

EXHIBIT P2 COPY OF RETURN FOR THE PERIOD APRIL 2018 FILED BY THE PETITIONER.

EXHIBIT P2 (A) COPY OF RETURN FOR THE PERIOD MAY 2018 FILED BY THE PETITIONER

EXHIBIT P2 (B) COPY OF RETURN FOR THE PERIOD JUNE 2018 FILED BY THE PETITIONER

EXHIBIT P2 (C) COPY OF RETURN FOR THE PERIOD JULY 2018 FILED BY THE PETITIONER

EXHIBIT P2 (D) COPY OF RETURN FOR THE PERIOD AUGUST 2018 FILED BY THE PETITIONER

EXHIBIT P2 (E) COPY OF RETURN FOR THE PERIOD SEPTEMBER 2018 FILED BY THE PETITIONER

EXHIBIT P2 (F) COPY OF RETURN FOR THE PERIOD OCTOBER 2018 FILED BY THE PETITIONER

EXHIBIT P2 (G) COPY OF RETURN FOR THE PERIOD NOVEMBER 2018
FILED BY THE PETITIONER

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FILED BY THE PETITIONER

EXHIBIT P2 (J) COPY OF RETURN FOR THE PERIOD FEBRUARY 2019
FILED BY THE PETITIONER

EXHIBIT P2 (K) COPY OF RETURN FOR THE PERIOD MARCH 2019
FILED BY THE PETITIONER

EXHIBIT P2 (L) COPY OF RETURN FOR THE PERIOD APRIL 2019
FILED BY THE PETITIONER

EXHIBIT P2 (M) COPY OF RETURN FOR THE PERIOD MAY 2019
FILED BY THE PETITIONER

EXHIBIT P2 (N) COPY OF RETURN FOR THE PERIOD JUNE 2019
FILED BY THE PETITIONER

EXHIBIT P2 (O) COPY OF RETURN FOR THE PERIOD JULY 2019
FILED BY THE PETITIONER.

EXHIBIT P2 (P) COPY OF RETURN FOR THE PERIOD AUGUST 2019
FILED BY THE PETITIONER

EXHIBIT P3 COPY OF APPLICATION FILED BY THE
PETITIONER.

EXHIBIT P3 (A) COPY OF APPLICATION FILED BY THE
PETITIONER.

EXHIBIT P4 : COPY OF E-MAIL RECEIVED FROM THE STATE
GOODS & SERVICES TAX DEPARTMENT REGARDING
ASSESSMENT (NO.ZJ3209190005751) DATED
30/12/2019.

EXHIBIT P4 (a) : COPY OF E-MAIL RECEIVED FROM THE STATE
GOODS & SERVICES TAX DEPARTMENT REGARDING
ASSESSMENT (NO.ZJ3209190006531) DATED
30/12/2019.

EXHIBIT P4 (b) : COPY OF E-MAIL RECEIVED FROM THE STATE
GOODS & SERVICES TAX DEPARTMENT REGARDING
ASSESSMENT (NO.ZJ3209190006661) DATED
30/12/2019.

- EXHIBIT P4 (c) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3209190006801) DATED 30/12/2019.
- EXHIBIT P4 (d) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3209190006811) DATED 30/12/2019.
- EXHIBIT P4 (e) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3209190006831) DATED 30/12/2019.
- EXHIBIT P4 (f) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3209190006881) DATED 31/12/2019.
- EXHIBIT P4 (g) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3209190007121) DATED 31/12/2019.
- EXHIBIT P4 (h) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3209190007141) DATED 31/12/2019.
- EXHIBIT P4 (i) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3209190007161) DATED 31/12/2019.
- EXHIBIT P4 (j) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3209190007191) DATED 31/12/2019.
- EXHIBIT P4 (k) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3209190007231) DATED 31/12/2019.
- EXHIBIT P4 (l) :** COPY OF E-MAIL RECEIVED FROM THE STATE GOODS & SERVICES TAX DEPARTMENT REGARDING ASSESSMENT (NO.ZJ3211190084081) DATED 23/01/2020.
- EXHIBIT P4 (m) :** COPY OF E-MAIL RECEIVED FROM THE STATE

GOODS & SERVICES TAX DEPARTMENT REGARDING
ASSESSMENT (NO.ZJ3211190084141) DATED
23/01/2020.

EXHIBIT P4 (n) : COPY OF E-MAIL RECEIVED FROM THE STATE
GOODS & SERVICES TAX DEPARTMENT REGARDING
ASSESSMENT (NO.ZJ3212190029431) DATED
19/02/2020.

EXHIBIT P4 (o) : COPY OF E-MAIL RECEIVED FROM THE STATE
GOODS & SERVICES TAX DEPARTMENT REGARDING
ASSESSMENT (NO.ZJ3212190029501) DATED
19/02/2020.

EXHIBIT P4 (p) : COPY OF E-MAIL RECEIVED FROM THE STATE
GOODS & SERVICES TAX DEPARTMENT REGARDING
ASSESSMENT (NO.ZJ3212190029491) DATED
19/02/2020.

EXHIBIT P4 (q) : COPY OF E-MAIL RECEIVED FROM THE STATE
GOODS & SERVICES TAX DEPARTMENT REGARDING
ASSESSMENT (NO.ZJ3212190029521) DATED
19/02/2020.

EXHIBIT P4 (r) : COPY OF E-MAIL RECEIVED FROM THE STATE
GOODS & SERVICES TAX DEPARTMENT REGARDING
ASSESSMENT (NO.ZJ32012100050301) DATED
19/03/2020.