



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 14TH DAY OF NOVEMBER 2023 / 23RD KARTHIKA, 1945

WA NO. 1969 OF 2023

AGAINST THE JUDGMENT WP(C) 35051/2023 OF HIGH COURT OF

KERALA

APPELLANT/PETITIONER:

SAKKEENA.C., AGED 46 YEARS
PROPRIETRIX, M/S. ROYAL INTERNATIONAL EXPORTS &
IMPORTS, PONNANI, MALAPPURAM DISTRICT, PIN - 679577

BY ADVS.HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA
PARVATHY MENON

RESPONDENTS/RESPONDENTS:

- 1 THE STATE TAX OFFICER,
STATE GOODS & SERVICES TAX DEPARTMENT, MINI CIVIL
STATION, 3RD FLOOR, TIRUR,
MALAPPURAM, PIN - 676101
- 2 THE COMMISSIONER, STATE GOODS & SERVICES TAX
DEPARTMENT, TAX TOWERS, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM, PIN - 695002

BY .SR.GOVT.PLEADER SRI.V.K.SHAMSUDEEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
14.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**J U D G M E N T****Dr. Kauser Edappagath, J.**

This appeal has been preferred challenging the judgment of the learned Single Judge in WP(C) No.35051/2023 dated 27th October, 2023.

2. The appellant is the proprietrix of M/s Royal International Exports and Imports, Ponnani. She is an assessee under the CGST/SGST Acts on the rolls of the 1st respondent. On verification of the returns filed by the appellant for the financial year 2017-18, the 1st respondent found that the appellant had claimed excess input tax credit to the extent of ₹2,74,570/-. Hence, the 1st respondent initiated proceedings under section 73(1) of the CGST Act. Even though statutory notices were issued to the appellant, she did not respond. The 1st respondent completed the assessment proceedings by Ext.P1 order and directed the appellant to remit excess input tax credit of



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₹2,74,570/- with interest of ₹2,63,590/- and penalty of ₹27,460/-.

The appellant, thereafter, submitted a rectification application under section 161 of the GST Act alleging that she mistakenly claimed excess input tax credit of ₹1,37,285/- for SGST, the same amount for CGST and that the excess claim was rectified in the month of April 2018, which is reflected in GSTR 3B, marked as Exhibit P3. The 1st respondent, however, rejected the application for rectification as per Ext.P5 order. The appellant challenged Ext.P5 order before the learned Single Judge. As per the impugned judgment, the learned Single Judge dismissed the writ petition with liberty to the appellant to challenge Exts.P1 and P5 orders in appeal before the appellate authority.

3. We have heard Sri. Harisankar V.Menon as well as Sri.V.K.Shamsudeen, the learned Senior Government Pleader.

4. The learned counsel for the appellant submitted that non-consideration of Ext.P3 return amounts to rectifiable error under section 161 of the GST Act and hence, the learned Single Judge ought to have interfered with Ext.P5 and directed the



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matter to be reconsidered. We cannot subscribe to the said submission. Ext.P1 assessment order has been issued pointing out the excess availment of input tax credit. The appellant admits that she made such an excess claim. Even though the discrepancies in the return filed by the appellant regarding the excess claim of the input tax credit were communicated to the appellant, she did not respond. The appellant also did not respond to the show cause notice issued by the 1st respondent under section 73(1) of the CGST Act, nor did she avail the opportunity given for a personal hearing. The 1st respondent, therefore, finalised the assessment as per the available records. What is sought by the appellant, in effect, is the review of the said assessment order. The appellant made no case for rectification. The rectification under section 161 of the GST Act is permissible only when there are errors apparent on the face of the record, in a situation where the show cause notice was contested, which is not the case here. When a show cause notice is not contested, the resultant order passed assumes the nature



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of an agreed order and a rectification application will not lie to correct a factual mistake therein.

We find no merit in the appeal. Accordingly, it is dismissed. The statutory appeal, if any, filed by the appellant against Exts. P1 and P5 orders shall be considered by the appellate authority independently on merits.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp