



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 18<sup>TH</sup> DAY OF DECEMBER 2023 / 27TH AGRAHAYANA, 1945

WA NO. 1953 OF 2023

AGAINST THE JUDGMENT DATED 26.10.2023 IN WP(C) 7997/2023 OF HIGH  
COURT OF KERALA

APPELLANT/PETITIONER:

PLATINO CLASSIC MOTORS INDIA PVT. LTD.,  
11/6B, NH-47, MARADU P O, COCHIN.  
REPRESENTED BY ITS LIQUIDATOR,  
REUBEN GEORGE JOSEPH. 37/2038,  
1ST FLOOR, MUTTATHIL LANE, KADAVANTHRA,  
KOCHI-682 020., PIN - 682304

BY ADVS.  
SRI.ANIL D. NAIR  
SRI.TELMA RAJU  
SRI.AADITYA NAIR

RESPONDENTS/RESPONDENTS:

- 1 DEPUTY COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE,  
ERNAKULAM DIVISION., 4TH FLOOR,  
CENTRAL EXCISE BHAVAN,  
KATHRIKADAVU, KALOOR,  
KOCHI, PIN - 682017
- 2 JOINT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE,  
ERNAKULAM DIVISION, 4TH FLOOR, CENTRAL EXCISE  
BHAVAN, KATHRIKADAVU, KALOOR,  
KOCHI, PIN - 682017
- 3 SUPERINTENDENT.,  
CENTRAL TAX AND CENTRAL EXCISE,  
ERNAKULAM DIVISION, 4TH FLOOR,  
CENTRAL EXCISE BHAVAN,  
KATHRIKADAVU, KALOOR,  
KOCHI, PIN - 682017



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BY ADV SREEJITH P. R, SR. SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
18.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## JUDGMENT

### **Dr. A.K.Jayasankaran Nambiar, J.**

The petitioner in WP(C).No.7997 of 2023 is the appellant herein aggrieved by the judgment dated 26.10.2023 of the learned Single Judge in the Writ Petition.

2. The brief facts necessary for the disposal of this Writ Appeal are as follows:

The appellant is a private limited company. By an order dated 08.03.2021, the National Company Law Tribunal initiated corporate insolvency resolution proceedings against the appellant company under the Insolvency and Bankruptcy Code, 2016. As a consequence, the moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code came into force with effect from 08.03.2021. Subsequently, an order of liquidation in terms of Section 33 of the Insolvency and Bankruptcy Code also came to be passed on 30.09.2022, and a fresh period of moratorium commenced with effect from that date. While claims were invited by the Liquidator, the 1<sup>st</sup> and 2<sup>nd</sup> respondents also preferred a claim for unpaid service tax and central excise dues on the basis of Exts.P7 and P8 orders. A claim was also made by the 3<sup>rd</sup> respondent on the strength of Exts.P9 and P10 assessment orders and



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demand notices under the GST Act. As the aforesaid orders (Exts.P7 to P10) were passed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents after the moratorium had commenced in terms of the provisions of the Insolvency and Bankruptcy Code, the appellant approached the writ court contending that the notice to the company in relation to the proceedings covered by Exts.P7 to P10 orders had been issued only in the name of the erstwhile Directors of the company and not the Official Liquidator, who had been appointed in the meantime, and hence the proceedings could not have been finalised without hearing the Official Liquidator. The said contention was not, however, accepted by the learned Single Judge, who was of the view that there was no bar for finalisation of assessment and adjudication proceedings merely upon the ground that a reference on the insolvency resolution process had been admitted and there was a consequent moratorium for recovery of tax.

3. We have heard Sri.Anil D.Nair, the learned counsel for the appellant, as also Sri.P.R.Sreejith, the learned Senior Standing counsel for the respondents.

4. On a consideration of the rival submissions and taking note of the submission of the learned standing counsel for the respondents that fresh orders can be passed in the matter by respondents 1, 2, and 3,



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after hearing the Official Liquidator within two months from today, we dispose this Writ Appeal with the following directions:

i. The respondents 1, 2, and 3 shall pass fresh orders in lieu of Exts.P7, P8, P9, and P10, respectively, after hearing the Official Liquidator appointed for the appellant company within a period of two months from the date of receipt of a copy of this judgment.

ii. To enable respondents 1, 2, and 3 to do so, we set aside Exts.P7, P8, P9, and P10 orders /notices, respectively.

iii. Respondents 1, 2, and 3 shall issue a fresh notice to the Official Liquidator appointed for the appellant company within three weeks from the date of receipt of a copy of this judgment so as to enable the said Liquidator to appear in the proceedings before them on the dates specified in the notice.

Sd/-

**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Sd/-

**DR. KAUSER EDAPPAGATH**  
**JUDGE**

mns