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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 26TH DAY OF NOVEMBER 2024 / 5TH AGRAHAYANA, 1946

WA NO. 54 OF 2024

AGAINST THE JUDGMENT DATED 19.12.2023IN WP(C) NO.40005 OF 2023 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

REJIMON PADICKAPPARAMBIL ALEX,
AGED 59 YEARS
PROPRIETOR,PADIKEN SILKS,583,KOOTHATTUKULAM
ERNAKULAM, PIN - 686662

BY ADVS.
SRI.R.JAIKRISHNA
SRI.ANISH P.
SRI.C.S.ARUN SHANKAR
SRI.GANESAN M.
SMT.NARAYANI HARIKRISHNAN
SRI.VIVEK BHAT D.

RESPONDENTS/RESPONDENTS:

1 **UNION OF INDIA,**
THROUGH ITS SECRETARY (REVENUE),MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI G.P.O, PIN - 110001

2 **STATE OF KERALA,**
REPRESENTED BY ITS CHIEF SECRETARY,SECRETARIAT,
THIRUVANANTHAPURAM G.P.O.,THIRUVANANTHAPURAM,
PIN - 695001

3 **GOODS AND SERVICES TAX NETWORK,**
EAST WING 4TH FLOOR, WORLD MARK I, AERO CITY,

**NEW DELHI, REPRESENTED BY ITS CHAIRMAN,
PIN - 110037**

**4 COMMISSIONER,
OFFICE OF THE COMMISSIONER,STATE GOODS AND SERVICE TAX DEPARTMENT,TAX TOWER, KARAMANA P.O,THIRUVANANTHAPURAM, PIN - 673006**

**5 STATE TAX OFFICER,
OFFICE OF THE STATE TAX OFFICER,TAX PAYER SERVICE CIRCLE, MINI CIVIL STATION, 2ND FLOOR,MUVATTUPPUZHA, MUDAVOOR P.O ERNAKULAM, PIN - 686669**

**BY ADV P.R SREEJITH,
GOVERNMENT PLEADER
SMT.RESMITHA RAMACHANDRAN
SRI.T.C.KRISHNA, SENIOR PANEL COUNSEL**

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON 26.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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(CR)

JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

The petitioner in WP(C).No. 40005 of 2023 is the appellant before us, aggrieved by the judgment dated 19.12.2023 of a learned Single Judge dismissing the Writ Petition.

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

The appellant runs a proprietorship concern with the name and style 'Padiken Silks', and is a registered dealer on the rolls of the 5th respondent for the purposes of payment of GST. During the assessment year 2017-2018, and in particular, during the period from July 2017 to March 2018, the appellant received various inward supplies of goods, both inter-state and intrastate. For the inter-state inward supplies, on which IGST (Integrated Goods and Services Tax) was paid by the supplier, the appellant had to avail input tax credit by resorting to a procedure whereby he had to show the IGST amount paid by the supplier, as the IGST paid by him in the Form GSTR 2A generated by him, and thereafter, if there was no outward supply on which IGST had to be paid by him he had to show the same IGST amount as Credit available in the Form GSTR 3A and then split the IGST amount into the CGST (Central Goods and Services Tax) and SGST (State Goods and Services Tax) components in the said Form 3A before utilising the same for the purposes of payment of outward taxes.

In the instant case, however, on receipt of the IGST paid inward supplies from outside the State, the appellant, instead of showing the IGST component in the eligible credit details in Form GSTR-3B, inadvertently showed the IGST component as nil and added the bifurcated CGST and SGST components of IGST to the existing figures showing eligible CGST and SGST credit. This resulted in a mismatch between Form GSTR 2A and Form GSTR 3B maintained in relation to the assessee. What is significant, however, is that it is undisputed that it was the amount shown as IGST in Form GSTR 2A that was split into the components of CGST and SGST and added to the corresponding columns in Form GSTR 3B.

3. The Assessing Authority noticed this mismatch and opined that this mismatch had resulted in the appellant utilising 'unavailable credit' towards payment of CGST and SGST on outward supplies. He therefore proceeded to issue a notice to the appellant demanding the return of the CGST/SGST amounts allegedly utilised in excess by the appellant. The proceedings initiated through the said notice culminated in Ext.P14 order confirming the demand against the appellant. It was Ext.P14 order that was impugned in the Writ Petition, *inter alia,* on the contention that there had been no revenue loss involved in the exercise carried on by the appellant, and that there was no jexcess credit availed by the appellant.

4. The learned Single Judge, who considered the matter noticed that the appellant had, by way of abundant caution, also sought

a refund of the amounts demanded from him, from the credit that was available with the department consequent to the payment of IGST by the supplier outside the State. The learned Judge, therefore, merely directed the 5th respondent to consider and pass orders on the refund application without actually pronouncing on the legality of the actions of the respondent.

5. In the appeal before us, it is the submission of Sri. Jaikrishna R, the learned counsel for the appellant, that the demand in Ext.P14 order that was impugned in the Writ Petition was wholly unsustainable since there was admittedly no excess utilisation of credit since the appellant was entitled to take credit on the IGST paid on inter-state inward supplies. The only mistake that was occasioned by the appellant was that he had not shown the IGST amounts separately in Form GSTR 3B against available credit and had resorted to an exercise of splitting the IGST amount towards CGST and SGST since he did not have any outward supply that attracted IGST.

6. We have also heard Sri. P.R. Sreejith, the learned Standing counsel for the 3rd respondent, and Smt. Resmitha Ramachandran the learned Government Pleader for the State.

7. During the course of the hearing, we have been shown a copy of an order dated 14.12.2023 passed by Shri.Hareendran K, IRS, Assistant Commissioner of Central Tax, East Division-6, Bengaluru, which considered an identical issue regarding the availment of input

tax credit as CGST and SGST instead of IGST. In the said case, the Assessing Authority had issued a notice alleging that there had been a wrong availment of input tax credit since the IGST amounts paid by the assessee, and in respect of which he ought to have taken credit as such, had not been shown separately as IGST but had been split by the assessee into the CGST and SGST components while taking credit. On the assessee bringing the said facts to the notice of the Officer, the findings of the Officer were as follows:

> "23. **Issue 2: Wrong availment of ITC as CGST (27,000/-) and SGST (27,000/-) instead of IGST -:** During the course of verification and reconciliation of ITC register, it was noticed that the taxpayer had availed input tax credit of Rs.27,000/- as CGST and 27,000/- as SGST instead of IGST for a supply received from PIRANHA (27AARFP6159NIZ9), a service provider located in Maharashtra, vide invoice No.PC/19-20/01 dated 12.04.2019. It is alleged in the show cause notice that the ITC amounting to Rs.54,000/- [CGST:Rs.27,000/- & SGST:Rs.27,000/-] is inadmissible under the provisions of section 16 of CGST Act,2017.
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> 24. The noticee in their written reply submitted that Section 77 of the CGST Act, 2017 deals with cases where tax has been paid under an incorrect head. This section outlines the provisions for refunding taxes paid under an incorrect head in situations where the nature of the transaction is subsequently determined to be different from what was initially considered. Since the legislation itself is allowing a refund of tax paid, they requested that ITC availed under the head CGST/SGST be adjusted with IGST.
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> 25. Further the noticee argued that when the department is allowed to adjust the refund being claimed against any outstanding tax liability in accordance with rule 92(1A), this entire exercise proposed to levy tax in the SCN is revenue neutral and will only result in unnecessary utilization of resources of the revenue & yield nothing in return. Therefore, noticee lays stress on this process of adjustment and asserts that the amount remitted under one head can be adjusted under another head, for the demand can be any amount under

the Act. The noticee submitted that they wish to rely on the Kerala High Court decision in the case of Saji S. Vs. Commissioner of State GST 2018 (19) GSTL 385 (KER) that allowed transfer and adjustment of amount from "SGST" to "IGST" and also held that it is inequitable for authorities to let the assessee suffer on account of any delay in transfer. Therefore, relying on the decision of Kerala High Court (Supra) tax paid wrongly under CGST and SGST should rightly be adjusted and no further recovery under IGST is legally sustainable.

26. I have examined Invoice No.PC/19-20/01 dated 12.04.2019, issued by PIRANHA (GSTIN27AARFP6159NIZ), a supplier situated in Maharashtra. The invoice specifies a taxable value of Rs.3,00,000/-, for which the supplier charged an Integrated Goods and Services Tax (IGST) of Rs.54,000/-. The particulars of this invoice have been duly recorded in GSTR-1 and are reflected in the GSTR-2A of the noticee. However, the noticee has availed input tax credit amounting to Rs.27,000/- each under CGST and SGST, instead of IGST, in the month of April 2019 for a supply received from a service provider located in Maharashtra. In the instant case, there is no dispute regarding the eligibility of the input tax credit claimed by the noticee; but the allegation pertains to the noticee erroneously availing the input tax credit under incorrect heads, specifically CGST & SGST credit availed instead of IGST credit.

27. In accordance with Section 49(2) of the Goods and Services Tax (GST) Act, the input tax credit, as assessed by the registered person in their return, is credited to their electronic credit ledger. The utilization of the electronic credit ledger for discharging payments related to output tax is governed by the provisions outlined in Sections 49(4) and 49(5) of the GST Act. Section 49(4) and 49(5) is reproduced below;

> Section 49(4): The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions 3 [and restrictions] within such time as may be prescribed.
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> Section 49(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of –
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> (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State

tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

28. Proviso to Section 49(5) ensures a clear and defined order of priority for utilizing input tax credits, preventing cross-utilization between different tax components. As delineated in the prescribed order of utilization, IGST credits are permissible for the settlement of liabilities arising from CGST and SGST, and conversely. The only restrictions are that central tax cannot be used for the payment of state tax or union territory tax, and vice versa. In the instant case, the noticee availed credit under CGST and SGST instead of IGST and utilised the same for payment of GST arising out of outward supplies. Therefore, based on the interpretation of Section 49(5) and the specific order of priority for utilizing input tax credits, the noticee's actions are consistent with the legal framework.

29. CBIC vide Circular No.192/04/2023-GST dated 17th July 2023 had given clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof. With respect to the calculation of interest under Rule 88B of the CGST Rules, it has been clarified in the above circular that

> “Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the

> said amount of wrongly availed credit. Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of CGST Page 3 of 3 Rules."

30. The essence of the above clarification is that the input tax credit (ITC) available in the electronic credit ledger should be considered as a pool of funds designated for different types of taxes, such IGST, CGST and SGST. These accounts represent a wallet with compartments for IGST, CGST, and SGST funds. Therefore, while determining interest under rule 88B of the CGST Rules, the entire wallet has to be taken into consideration, not just individual compartments. If the total balance (combining IGST, CGST, and SGST) falls below the amount of the wrongly availed IGST credit, there is interest liability. If, however, the total wallet balance never dips below this specific amount during the relevant period, there's no interest liability. Similarly, for utilizing the IGST liability, the clarification emphasizes that the eligibility of funds for this payment is based on the total balance in the entire wallet, not just the IGST compartment. In short, the analogy of the above circular is that the GST system treats the electronic credit ledger as a unified resource, and interest is incurred if, collectively, the available funds fall below the amount of wrongly availed credit during the specified period.

31. I adopt the analogy of the above circular No.192/04/2023-GST dated 17th July 2023 in deciding this issue. In the instant case, there is no loss of revenue, either to the Centre or to any State, arising from the availment and utilisation of CGST/SGST instead of IGST. **In view of the above findings, I hold that the noticee is not liable to reverse the CGST (27,000/-)**

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and SGST (27,000/-) availed instead of IGST through the GSTR 3B and the demand of Rs.54,000/- in the Show Cause Notice No. is liable to be dropped."

8. We have deemed it appropriate to extract the above findings from the order of the Assistant Commissioner since we find that it not only represents the correct view of the procedural law in this regard, but more importantly, demonstrates that revenue officials, even at the level of Assistant Commissioner, who are often the first point of contact between an assessee and the revenue department, are capable of rendering timely and effective justice in our country which is known for its huge backlog of cases. At a time when the justice dispensation system is looking for ways and means to reduce litigation generally, and especially in the field of taxation where delays can affect the nation's economy, orders such as the one extracted above come as a welcome breath of fresh air, and are to be duly appreciated and encouraged. It needs no gainsaying that an expeditious disposal of cases, especially those involving procedural aspects of taxation, is the need of the hour so as to ensure fairness and certainty in tax administration.

9. We find that on the facts in the instant case, the notice issued to the appellant, and the demand confirmed against him, were in proceedings initiated under Section 73 of the GST Act. The said provisions are attracted only when it appears to a proper officer that any tax has not been paid or short paid or erroneously refunded, or

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where input tax has been wrongly availed or utilised for any reason. The case before us clearly reveals that there has been no wrong availment of credit, and that the only mistake committed by the appellant was an inadvertent and technical one, where he had omitted to mention the IGST figures separately in Form GSTR 3A. The mistake was also insignificant because it is not in dispute that there was no outward supply attracting IGST that was effected by him. We therefore set aside the impugned judgment of the learned Single Judge and allow the Writ Petition by quashing Ext.P14 order and declaring that the appellant shall not be seen as having availed excess credit for the purposes of initiating proceedings under Section 73 of the GST Act.

Before parting with this case and taking note of the anxiety and apprehension of the learned Government Pleader, that the State might be deprived of its legitimate share of the IGST paid by the suppliers outside the State in the instant case, we make it clear that on the respondent State producing a copy of this judgment, along with a representation before the GST Council, the GST Council shall issue necessary directions to resolve the issue by taking note of the declaration in this judgment.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

K.V. JAYAKUMAR
JUDGE

mns