



2025:KER:44560

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 19TH DAY OF JUNE 2025 / 29TH JYAISHTA, 1947

WP(C) NO. 2342 OF 2025

PETITIONER/S:

BALVINDER SINGH
AGED 54 YEARS
PROP. MS SYMPHONY IMPEX BYPASS ROAD
PANTHEERANKAVU CALICUT, PIN - 673016

BY ADVS.
SHRI.P.RAGHUNATHAN
SRI.PREMJIT NAGENDRAN
SMT.M.SHYLAJA
SHRI.RISHAL.K

RESPONDENT/S:

- 1 ASSISTANT ENFORCEMENT OFFICER
ENFORCEMENT SQUAD STATE GST DEPARTMENT
MINI CIVIL STATION
MANANTHAVADY
WAYANAD,
PIN - 670645
- 2 ENFORCEMENT OFFICER
ENFORCEMENT SQUAD
MANANTHAVADY
STATE GST DEPARTMENT
MINI CIVIL STATION
MANANTHAVADY WAYANAD,
PIN - 670645
- 3 JOINT COMMISSIONER (APPEALS)
STATE GST DEPARTMENT ERANCHIPALAM
CALICUT,
PIN - 673006



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4 GOODS AND SERVICES TAX NETWORK
 4TH FLOOR EAST WING WORLD MARK 1 AEROCITY
 NEW DELHI, PIN - 110037

OTHER PRESENT:

SHRI.ARUN AJAY SANKAR, G.P

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19.06.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

The petitioner is a registered dealer under the CGST/SGST Act with a place of business at Calicut and principal place of business at Bangalore. On 24.07.2023, certain goods which were in transit to Calicut, at the instance of the petitioner were intercepted by the officers and proceedings under Section 129 of the CGST Act were initiated. Ultimately the same culminated in Ext.P1 order, under Section 129(3) of the Act. Even though the petitioner had grievances with respect to the findings in Ext.P1, and intended to file appeal, he remitted the amount payable under Ext.P1, under protest.

2. Thereafter he took steps to file appeal online, as contemplated under the Act and the Rules, but the same was not accepted by the system, in view of the fact that, in the Form GST APL-01, the petitioner was required to indicate the disputed tax, interest and penalty, for which that data is required to be adopted from the impugned order and demand notice. Since in GST MOV-09, the demand as per the order was indicated as 'NIL' which was



evidently consequent to the payment affected by the petitioner, the appeal was not accepted on the reason that the disputed amount cannot be 'Zero". Therefore, the petitioner could not upload the appeal. The above matter was intimated to the State Tax Officer, by the petitioner as evidenced by Ext.P3 on 09.02.2024, which was before the expiry of the statutory period for submitting an appeal under Section 107.

3. In response to Ext.P3, the petitioner was issued with Ext P4 communication, wherein, it was mentioned that as the tax payee paid the entire amount of penalties and dues in accordance with the relevant provisions of the Act through Form GST DRC 03, the proceedings initiated vide the Show Cause Notice dated 29.07.2023 are concluded. It was also observed that no demand is found existing in order to revise the order. Thus, the issue highlighted by the petitioner was not addressed in the said communication. In such circumstances, the petitioner submitted Ext.P5 appeal manually, on 05.03.2024. The said appeal was considered by the 3rd respondent herein and as per Ext.P6 the same was rejected on the reason that, the appeal was submitted



beyond the statutory period contemplated under Section 107 (1) read with 107 (4) of the CGST Act. It was in these circumstances, this writ petition is submitted by the petitioner seeking the following reliefs:

- “ It is therefore prayed that this Hon’ble Court may be pleased to call for the records leading to issue of Ext. P1 Order by First Respondent u/s 129(3) of the Act as also Ext. P6 Order passed by Third Respondent, peruse the same, hear arguments on behalf of the Petitioner AND
- A. Issue a WRIT OF CERTIORARI quashing Ext. P1 order passed by First Respondent:
 - B. In the alternative, Issue a WRIT OF CERTIORARI quashing Ext. P6 order passed by Third Respondent:
 - C. Issue a WRIT OF MANDAMUS directing Third Respondent to restore the appeal to its files, consider the same and dispose of the appeal on merits after hearing the Petitioner:
 - D. Issue a WRIT OF MANDAMUS directing the Fourth Respondent to carry-out necessary updates on the GST Portal to cover the contingencies highlighted by Petitioner in this writ Petition:



E. Pass such other orders as the Petitioner may pray for and this Hon'ble Court may deem fit to grant in the circumstances of the case:

F. Award costs of the Petitioner."

4. I have heard, Sri.Rishal K, the learned counsel for the petitioner and Sri. Arun Ajay Shankar, the learned Government Pleader for the respondent.

5. The specific contention put forward by the learned counsel for the petitioner is that the petitioner was prevented from invoking the statutory remedies available to him in time, for the reasons beyond the control of the petitioner. To be precise, it is the specific case of the petitioner that, due to the failure on the part of the system maintained by the respondents to address the situation that arose in this case, the petitioner was prevented from filing appeal.

6. After carefully going through the materials placed on record, I find merit in the submissions made by the learned counsel for the petitioner. As regards the right of an appeal contemplated under Section 107 of the CGST Act is concerned, if



the taxpayer is aggrieved by any order passed by the authorities concerned, he can invoke the said remedies. The fact that the tax covered by the order under challenge was paid, will not take away such right of appeal of the party. Here in this case, merely because, the petitioner remitted the amount under protest, he was deprived of the opportunity to invoke the statutory remedy. The denial of that statutory remedy was not attributable to the petitioner at all, but solely because of the shortcomings in the system provided by the respondents for filing the appeal. Ext.P2 would indicate that, the petitioner made an attempt to file an appeal within the statutory period and he was prevented from doing the same only because of the reason that, the petitioner had paid the entire amount demanded as per the impugned order. Even though the said aspect was highlighted by the petitioner before the authorities concerned in Ext.P3, it was not addressed by the authorities.

7. During the course of hearing, the learned counsel for the petitioner brought the attention of this Court to the observations made by this Court in W.P.(C) No.17454/2022, when



this Court came across a similar situation. In that decision also, this Court after examining the statutory stipulations contained in Section 129 and Section 107, came to a definite conclusion that the right of appeal available to the person in such circumstances cannot be denied. It was also observed that, the fact that the system does not generate a demand or that the system does not contemplate the filing of an appeal without a demand, does not mean that the intention of the legislature was to deny the right of appeal to the party.

8. I fully concur with the view expressed by this Court in W.P.(C) No.17454/2022. Moreover, in the said decision, a specific direction was issued to the respondents to do the needful within one month from the date of receipt of the certified copy of the said judgment. Further, in order to prevent recurrence of such issue, the Commissioner, Office of the State Goods & Services Tax Department, Thiruvananthapuram was directed to issue an appropriate circular taking note of the aforesaid findings. The said judgment was rendered by this Court on 20.07.2022 and the events which are the subject matter of this writ petition occurred



much after the pronouncement of the judgment. This would indicate that despite a positive direction issued by this Court, specifically highlighting the situation, the system maintained by the respondents is not updated so as to address a situation of this nature, which shows the laches on the part of the respondents.

9. As far as the Ext.P6 order is concerned, under no circumstances the same can be treated as a justifiable one. Of course it is true that, technically the 3rd respondent was justified in adopting the view that the appeal is time barred, as the same was submitted after the expiry of four months, which was beyond the condonable period of delay. However, there was no attempt to consider the circumstances which prompted the petitioner to submit an appeal beyond the statutory period and the same ought to have been taken into account. Evidently, it was impossible for the petitioner to submit an appeal with the provisions available in the system provided by the respondents. The said fact is evident from Ext.P2. Moreover, despite a specific direction issued by this Court in W.P.(C) No. 17454/2022, as early as on 20.07.2022, this issue was not addressed. Thus the petitioner cannot be



prejudiced for the fault of the Department and he cannot be denied his remedies because of the reason that he could not perform an impossible task. Therefore, I am of the view that, Ext.P6 requires interference.

Accordingly, this writ petition is disposed of, quashing Ext.P6 with a direction to the 3rd respondent to restore Ext.P5 appeal and to consider the matter on merits by treating it as an appeal submitted in time. With regard to the shortcomings in the system, a specific relief is sought by the petitioner, to direct the 4th respondent to carry out the necessary updates on the GST Portal to cover the contingencies highlighted in this writ petition. I have no reason not to grant the said reliefs. Thus, there shall be a direction to the 4th respondent to ensure that, appropriate modifications in the portal are made, so as to enable the parties concerned to upload their appeals even after making the payments covered by the impugned orders whether under protest or otherwise . This shall be done within a period of three months from the date of receipt of a copy of this judgment. It is further directed that the 4th respondent shall take necessary steps to



enable the Assessing Officer to complete the processing of Ext.P5 appeal and to pass final orders.

Sd/-

ZIYAD RAHMAN A.A.

JUDGE

rpk



APPENDIX OF WP(C) 2342/2025

PETITIONER EXHIBITS

EXHIBIT P-1	TRUE COPY OF ORDER U/S 129(3) AND ORDER OF DEMAND PENALTY
EXHIBIT P-2	TRUE COPY OF SCREEN SHOT OF THE "MESSAGE"
EXHIBIT P-3	TRUE COPY OF LETTER DATED 09.02.2024
EXHIBIT P- 4	TRUE COPY OF REPLY DTD 15.02.2024 TO SCN DTD 29.07.2023
EXHIBIT P- 5	TRUE COPY OF APPEAL MEMO AFFIDAVIT IN SUPPORT OF PRAYER FOR CONDONATION OF DELAY
EXHIBIT P-6	TRUE COPY OF ORDER OF THIRD RESPONDENT DTD 06.06.2024