

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 23<sup>RD</sup> DAY OF JANUARY 2025 / 3RD MAGHA, 1946

WP(C) NO. 23524 OF 2024

PETITIONER:

MELLOW FOUNDATION BUILDERS AND DEVELOPERS PVT LTD.,  
2ND FLOOR, 4/1680 K, CITADEL ARCADE,  
RED CROSS ROAD, CALICUT, REP BY MANAGING DIRECTOR,  
MURALIDHARAN, PIN - 673 032

BY ADVS.  
P.RAGHUNATHAN  
PREMJIT NAGENDRAN  
M.SHYLAJA  
RISHAL.K

RESPONDENTS :

- 1 THE SUPERINTENDENT,  
CENTRAL TAX AND CENTRAL EXCISE,  
KOZHIKODE RANGE-1, CALICUT, PIN - 673001
- 2 GOODS AND SERVICE TAX NETWORK (GSTN) ,  
EAST WING , 4TH FLOOR, WORLD MARK-1,  
AEROCITY, NEW DELHI, REP. BY CHAIRMAN,  
PIN - 110037
- 3 UNION OF INDIA,  
MINISTRY OF FINANCE, GOVERNMENT OF INDIA,  
NEW DELHI, REP. BY SECRETARY, PIN - 110 001

BY ADV VIVEK A.V.

SRI.P.R SREEJITH, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
23.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**BECHU KURIAN THOMAS, J.**

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**W.P.(C).No.23524 of 2024**

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**Dated this the 23<sup>rd</sup> day of January, 2025****JUDGMENT**

Petitioner challenges an order dated 18.04.2024 assessing the petitioner under Section 73(9) of the CGST Act apart from penalty and interest for the financial year 2018-19.

2. Petitioner is an assessee under the GST Act. The impugned order was issued after denying the benefit of input tax credit on account of the provisions contained in sub-section (4) of Section 16 of the CGST/SGST Act, due to the failure of the petitioner to file Form GSTR-3B within the time prescribed for the year 2018-19.

3. However, subsequently, in view of Section 16(5), the time limit prescribed under Section 16(4) was extended and therefore the petitioner would now be entitled to the benefit of input tax credit which has been denied by the impugned order. Petitioner claims to have filed the returns for 11/2018 up to 03/2019 on 26.11.2019 and is now to be treated as within time.

4. I have heard Sri.Raghunathan P., the learned counsel for the petitioner and Sri.P.R.Sreejith, the learned Standing Counsel for the respondents.

5. For the months of November 2018 upto March 2019, the petitioner ought to have, as per section 16(4), filed the returns by



20-10-2019. However petitioner filed the returns GSTR-3B only on 26.11.2019. Hence the claim for input tax credit availed by the petitioner was denied and the demand and penalty were imposed on them. After the introduction of Section 16(5), the time period for filing such returns has been extended upto 30.11.2021. If the return filed by the petitioner is taken into reckoning, there could be significant change in the appreciation of facts carried out in Ext.P1. In view of the above, the impugned order cannot be legally sustained, and it is required to be re-considered.

Accordingly, impugned order Ext. P1 dated 18-04-2024 is set aside and the first respondent is directed to pass fresh orders, within a period of three months from the date of receipt of a certified copy of this judgment, after taking note of the provisions contained in Section 16(5) of the CGST/SGST Act and after affording an opportunity of hearing to the petitioner.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS, JUDGE**

RKM



APPENDIX OF WP(C) 23524/2024

PETITIONER'S EXHIBITS :

Exhibit-P1	TRUE COPY OF ADJUDICATION ORDER DTD 18.04.2024 FOR 2018.19
Exhibit-P2	TRUE COPY OF SAMPLE GSTR 3B
Exhibit-P3	TRUE COPY OF INTERIM ORDER IN WP(C) NO. 21227/2024 DTD 18.06.2024