



2025:KER:2175

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 13TH DAY OF JANUARY 2025 / 23RD POUSHA, 1946

WP(C) NO. 20837 OF 2024

PETITIONER(S):

- 1 MARUTHENGAL MOIDEEN,
AGED 75 YEARS
PROPRIETOR, IJAS ENTERPRISES,
ROOM NO.21/137D, NEAR LIZADO CREATIONS,
TIRUR BYPASS ROAD, DOWN HILL,
MALAPPURAM, PIN - 676 519.
- 2 ADDL.P2: SMT.ASYA K.,
WIFE OF LATE MARUTHENGAL MOIDEEN,
MARUTHENGAL HOUSE, DOWN HILL,
MALAPPURAM DISTRICT, PIN - 676 519.
- 3 ADDL.P3: FASEELA,
DAUGHTER OF LATE MARUTHENGAL MOIDEEN,
MARUTHENGAL HOUSE, DOWN HILL,
MALAPPURAM DISTRICT, PIN - 676 519.
- 4 ADDL.P4: JASEELA,
DAUGHTER OF LATE MARUTHENGAL MOIDEEN,
MARUTHENGAL HOUSE, DOWN HILL,
MALAPPURAM DISTRICT, PIN - 676 519.
- 5 ADDL.P5: JAMSHEER M.,
SON OF LATE MARUTHENGAL MOIDEEN,
MARUTHENGAL HOUSE, DOWN HILL,
MALAPPURAM DISTRICT, PIN - 676 519.
- 6 ADDL.P6:IJAS AHAMMED M.,
SON OF LATE MARUTHENGAL MOIDEEN,
MARUTHENGAL HOUSE, DOWN HILL,
MALAPPURAM DISTRICT, PIN - 676519
ADDL.PETITIONERS 2 TO 6 ARE IMPLEADED AS PER ORDER
DATED 06.12.2024 IN I.A.1/24 IN WP(C)20837/2024

BY ADVS. V.DEVANANDA NARASIMHAM
SHEEJA D.K.



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RESPONDENT(S) :

- 1 STATE TAX OFFICER,
TAX PAYER CIRCLE, KSGST DEPARTMENT,
3RD FLOOR, MINI CIVIL STATION,
KACHERIPPADI, MANJERI,
MALAPPURAM, PIN - 676 121.

- 2 UNDER SECRETARY,
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
NEW DELHI, PIN - 110 023.

- 3 SECRETARY,
STATE OF KERALA, DEPARTMENT OF TAXES,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

- 4 DEPUTY COMMISSIONER,
(ARREAR RECOVERY), TAX PAYER SERVICES,
B2 BLOCK, CIVIL STATION,
MALAPPURAM, PIN - 676 505.

SMT. JASMIN M.M.(GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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BECHU KURIAN THOMAS, J......
W.P.(C) No.20837 of 2024.....
Dated this the 13th day of January, 2025**JUDGMENT**

Petitioner is a registered tax payer under the GST Acts 2017. Proceedings were initiated against the petitioner under Section 73 of the CGST Act alleging that he had wrongly availed input tax credit, in contravention of Section 16(2)(c) of the GST Act. Pursuant to a show cause notice, Ext.P6 order was issued under Section 73 determining an excess input tax credit availed by the petitioner to the tune of Rs.2,00,219/- each, under the heads of CGST and SGST and he was directed to pay the said amount along with applicable interest and penalty within a period of three months from the date of receipt of the order. Subsequently, a rectification petition was filed by the petitioner, which was also dismissed by Ext.P10. Petitioner has approached this Court challenging Ext.P6 and Ext.P10 orders.

2. A counter affidavit has been filed by the first respondent pointing out that petitioner had wrongly availed the input tax credit under the heads CGST, SGST instead of IGST, and therefore, the impugned orders are not liable to be interfered by



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this Court under Article 226 of the Constitution of India.

3. I have heard Smt.Devananda Narasimham V., the learned counsel for the petitioners as well as Smt.Jasmin M.M., the learned Government Pleader.
4. In the decision in ***Rejimon Padickapparambil Alex v. Union of India and others*** 2024 KHC Online 7215 a Division Bench of this Court had observed that there can be no wrong availing of input tax credit when such credit, available in IGST, was availed under the heads CGST and SGST.
5. In this context, it needs to be mentioned that the electronic credit ledger has to be treated as a pool of funds, designated for different types of taxes such as IGST, CGST and SGST. The credit ledger represents a wallet with different compartments of funds. Since the petitioner had availed credit under the CGST and SGST instead of IGST and utilised the same for payment of GST, I am of the view that the benefit of the decision in *Rejimon Padickapparambil's case* (supra) is applicable to the petitioner. The impugned orders having not considered the aforesaid legal proposition, are required to be set aside and a reconsideration be directed.
6. Accordingly, I set aside Ext.P6 and Ext.P10 orders and direct the first respondent to reconsider Ext.P6, afresh bearing in mind the dictum laid down in *Rejimon Padickapparambil s case* (supra) as



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expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment.

The writ petition is allowed as above.

sd/-
BECHU KURIAN THOMAS
JUDGE

AMV/14/01/2025



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APPENDIX OF WP(C) 20837/2024

PETITIONER EXHIBITS

- EXHIBIT-P1** TRUE COPY OF THE ANNUAL RETURN E-FILED IN FORM GSTR-9 DATED 17-07-2019 FOR THE YEAR 2017-18 BEFORE THE 1ST RESPONDENT.
- EXHIBIT-P2** TRUE COPY OF THE SHOW CAUSE NOTICE IN FORM GST ASMT-10 PROPOSING TO DEMAND A SUM OF RS.9,79,390/- AS OUTPUT TAX DUE.
- EXHIBIT-P3** TRUE COPY OF REPLY FILED IN FORM GST ASMT-11 ON 20-11-2020 AGAINST EXBT-P2 NOTICE FOR THE YEAR 2017-2018 BEFORE THE 1ST RESPONDENT.
- EXHIBIT-P4** TRUE COPY OF THE INTIMATION OF TAX ASCERTAINED IN FORM GST DRC-01A U/S 73(5) OF THE GST ACT FOR 2017-2018 ON 20-06-2022 BY 1ST RESPONDENT ON THE PETITIONER.
- EXHIBIT-P5** TRUE COPY OF THE REPLY DATED 20-08-2022 FILED AGAINST EXBT-P4 NOTICE BEFORE THE 1ST RESPONDENT BY THE PETITIONER.
- EXHIBIT-P6** TRUE COPY OF THE ASSESSMENT ORDER PASSED U/S 73(9) OF THE GST ACTS BY 1ST RESPONDENT ON THE PETITIONER ON 12-09-2023 FOR THE YEAR 2017-2018.
- EXHIBIT-P7** TRUE COPY OF RECTIFICATION APPLICATION DATED 30-09-2023 E-MAILED U/S 161 OF THE GST ACTS BEFORE THE 1ST RESPONDENT BY THE PETITIONER.
- EXHIBIT -P8** TRUE COPY OF THE ARREAR RECOVERY NOTICE NO.AR-MPM/GST/2023/1461 DATED 06-01-2024 ISSUED BY 4TH RESPONDENT TO THE PETITIONER FOR THE YEAR 2017-2018 UNDER RR ACT.
- EXHIBIT-P9** TRUE COPY OF THE APPLICATION REQUESTING TO PASS ORDERS ON EXBT-P7 APPLICATION FOR RECTIFICATION FOR THE YEAR 2017-2018 BEFORE THE 1ST RESPONDENT BY THE PETITIONER.



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EXHIBIT-P10

**TRUE COPY OF THE REJECTION ORDER DATED
22-01-2024 PASSED AGAINST EXBT-P7
RECTIFICATION APPLICATION FOR THE YEAR
2017-2018 BY THE 1ST RESPONDENT.**