IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

WEDNESDAY, THE 6TH DAY OF NOVEMBER 2024/15TH KARTHIKA, 1946

WA NO. 1739 OF 2024

AGAINST THE ORDER/JUDGMENT DATED IN WP(C) NO.4495 OF 2023 OF HIGH COURT OF KERALA

APPELLANT:

MUHAMMED ABDUL SAINI,
AGED 40 YEARS,
PROPRIETOR, M/S. SALEEMS SUPER MARKET,
MURIKKASSERY, IDDUKKI, PIN – 685 604.

BY ADV K.KRISHNA

RESPONDENTS:

1 STATE TAX OFFICER,
STATE GST DEPARTMENT, CHERUTHONI AT IDDUKKI,
PIN – 685 609.

2 UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE),

NORTH BLOCK, NEW DELHI, PIN – 110 001.

**3 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS
GST POLICY WING, NORTH BLOCK, NEW DELHI ,
REPRESENTED BY PRINCIPAL COMMISSIONER (GST).,
PIN – 110 001.**

**4 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPT., GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN – 695 001.**

GP RESMITHA RAMACHANDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

This Writ Appeal impugns the judgment dated 12.06.2024 of a learned Single Judge in W.P.(C).No.4495 of 2023. The Writ Petition itself was preferred inter alia challenging the provisions of Section 16(2)(c) of the CGST/SGST Act to the extent it insisted that the assessee availing input tax credit had to ensure that the supplier of the inputs of the assessee had actually paid his output tax to the government. The learned Single Judge had rejected the challenge to the statutory provision in a batch of Writ Petitions, and a Division Bench comprised of one of us (Hon'ble Dr..Justice A.K. Jayasankaran Nambiar) had also affirmed the said judgment in **Nahasshukoor v. Assistant Commissioner II Circle, Alappuzha and Others [2024 123 GSTR 44 (KER)].** Under the circumstances, we find that the principal issue decided by the learned Single Judge has received the approval of the Division Bench and the Writ Appeal to the extent it impugns the judgment of the learned Single Judge on the said issue has necessarily to fail.

2. We take note however of the submission of the learned counsel for the appellant that at the time of filing the Writ Petition, the mistake occasioned by the assessee while entering figures in Form GSTR-3B could not be brought to the notice of the learned Single Judge, and was not therefore urged at the time of hearing of the Writ Petition. However, the learned Single Judge while disposing the Writ Petition has granted liberty to the petitioner to claim the benefit of two circulars namely, Circular No.183/15/2022-GST dated 27.12.2022 and Circular No. 193/5/2023– GST dated 17.07.2023 by making that claim within one month from the date of the judgment before the appropriate authority. A direction has also been issued to the said authority to examine the claim of the appellant and process the claim. It is the submission of the learned counsel for the appellant that he may be given an opportunity to bring to the notice of the assessing authority the mistakes that were occasioned while

claiming input tax credit so that the authority concerned can look into these aspects also along with the claims based on the circulars aforementioned.

We are inclined to accede to the prayers of the learned counsel for the appellant and accordingly, while dismissing the Writ Appeal in its challenge against the statutory provisions, we extend by one month from today, the time limit granted by the learned Single Judge to the appellant herein for claiming the benefit of the two circulars aforementioned as also for raising the additional issue projected by them with regard to the errors that crept into the Form GSTR-3B, before the adjudicating authority. Accordingly, if the appellant herein approaches the assessing authority concerned within a month from today pointing out the irregularities aforementioned, then the said assessing authority shall consider the application of the appellant as one that is preferred pursuant to the liberty granted by the learned Single Judge and proceed to adjudicate the same expeditiously. Save for this limited modification, the rest of the findings of the learned Single Judge are upheld and the

Writ Appeal disposed accordingly.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

K. V. JAYAKUMAR
JUDGE

ADS/06.11.24

APPENDIX OF WA 1739/2024

PETITIONER ANNEXURES

ANNEXURE A	**COPY OF NOTICE IN FORM GST ASMT-10 ISSUED BY THE 1ST RESPONDENT DATED 23-06-2020.**
ANNEXURE B	**COPY OF REPLY FILED BY THE APPELLANT DATED 05-08-2020.**
ANNEXURE C	**COPY OF REPLY FILED BY THE APPELLANT DATED 28-08-2021.**