

Difference between GSTR 1 and GSTR 3B entails penalty even if tax is paid within 30 days of issue of SCN since as per Section 73(11) tax self assessed / tax collected should be paid within 30 days of the due date of payment of tax.



2023:KER:64562

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

WP(C) NO. 33787 OF 2023

PETITIONER:

M/S. **GLOBAL PLASTO WARES,**
AGED 44 YEARS, 2/407,
AVINISSERY, THRISSUR,
REPRESENTED BY ITS MANAGING PARTNER DAVIS JOHN,
PIN - 680027.

BY ADVS.

SRI. P. N. DAMODARAN NAMBOODIRI
SRI. HRITHWIK D. NAMBOOTHIRI

RESPONDENTS:

- 1 ASSISTANT STATE TAX OFFICER,
TAX PAYER SERVICES CIRCLE, NATTIKA,
STATE GST DEPARTMENT, POOTHOLE,
THRISSUR, PIN - 680004.
- 2 THE STATE TAX OFFICER,
STATE GST DEPARTMENT, FOURTH CIRCLE,
POOTHOLE, THRISSUR, PIN - 680004.
- 3 THE JOINT COMMISSIONER,
STATE GST DEPARTMENT, POOTHOLE,
THRISSUR, PIN - 680004.

BY ADV.

SMT. JASMINE M. M. - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



DINESH KUMAR SINGH, J.

W.P.(C) No.33787 of 2023

Dated this the 17th day of October, 2023

JUDGMENT

1. The present writ petition has been filed impugning Exhibit P-5 order dated 14.09.2023. The Learned Counsel for the petitioner submits that the petitioner has confined his grievance in respect of the penalty assessed in the said impugned order in the extent of Rs. 40,000/- (Rupees Forty thousand only).

2. Learned Counsel for the petitioner submits that the petitioner has paid all tax before thirty days from the date of the notice. The notice is dated 28.02.2022 and the petitioner has paid the tax on 10.03.2022. Learned Counsel in support of his submission has placed reliance on Sub-section (8) of Section 73 of the GST Act, 2017 and submits that in view of the express provision that if an assessee/a person chargeable with tax under Sub-section (1) or Sub-section (3) of Section 73 of the GST Act, 2017 paid the tax along with the interest payable under Section 50 within a period of thirty days of issue of notice, no penalty shall be payable and all proceedings in respect of the said notice would be deemed to be



concluded.

3. On the other hand, Learned Government Pleader, Ms. M. M. Jasmine submits that Sub-section (8) of Section 73 comes into play when an assessee has not paid the tax on the transactions. But where the assessee has collected from the others and not credited it to the Government. It is Sub-section (11) of Section 73 which comes into play. She therefore submits that Sub-section (11) of Section 73 of the GST Act, 2017 begins with a non-obstante Clause which provides that; *“notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax”*.

4. The controversy involved in this writ petition falls in a narrow compass. The question is whether an assessee who had paid the tax within thirty dasy from the issue of notice along with interest would be held to be liable for penalty. He has collected the tax and has not paid it to the Government within thirty days from the date from he collected. The Assessing Authority in paragraph 3.6 of the impugned Exhibit P-5 order has held as under;



*“3.6 Verified the reply and documents produced in detail. The taxable person had remitted the short paid amount of **Rs.38,969.00** under IGST and **Rs.552.00** each under CGST and SGST along with **interest** through DRC 03 vide ARN:AD320322003809G dated 10.03.2022 as against the **discrepancies 1 and 2.***

*As the collected tax is not paid within 30 days from the due date, vide section 73(11) of the CGST/KSGST Act, the penalty under section 73(9) of the CGST/KSGST Act read with section 20(xxv) of the IGST Act 2017 shall be payable **at the notice state itself.** In this case, the taxable person has remitted the short paid amount of Rs.38,969.00 under IGST and Rs.552.00 each under CGST and SGST along with interest only through DRC 03 on 10.03.2022, ie, after the issuance of show cause notice. Hence the taxable person has to pay the penalty as per section 73(9) read with section 73(11) of the CGST/KSGST Act 2017 and section 20(xxv) of the IGST Act 2017.”*



5. Sub-sections (6), (8) and (9) of Section 73 of the GST Act, 2017 respectively reads as under;

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.



6. Considering the provisions of Sub-sections 6, 8 and 9 of Section 73 of the GST Act, 2017 it is provided that if a person chargeable to tax fails to deposit the tax collected by him within a period of thirty days from the due date of the payment of the such tax, Sub-section 8 will not have any effect and such a person is liable to pay penalty.

7. Considering the above facts and the circumstances of the case, I find that the Assessing Authority has taken the correct view in the matter and, therefore, I do not find any error of law which requires interference by this Court. Hence the present writ petition is hereby dismissed.

**Sd/-
DINESH KUMAR SINGH
JUDGE**

Svn

**APPENDIX OF WP(C) 33787/2023****PETITIONER'S EXHIBITS**

- EXHIBIT P1 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 28.02.2022 NO. C3/ AD3209200067592(38)/69/ 2020/2017-18 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P2 TRUE COPY OF THE FORM GST DRC - 03 RECEIPTS DATED 10-03-2022 SHOWING THE PAYMENT OF DEMAND ALONG WITH INTEREST AS IN THE SHOW-CAUSE NOTICE
- EXHIBIT P3 TRUE COPY OF THE NOTICE NO.32AAFFG6929F1ZI/ 2017-18 DATED 11.05.2023 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P4 TRUE COPY OF THE REPLY DATED 03.06.2023 IN FORM GST DRC-06 FILED BY THE PETITIONER THROUGH GST PORTAL
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 14.09.2023 NO.32AAFFG6929F1ZI/2017-18 ISSUED BY THE 1ST RESPONDENT DEMANDING PENALTY U/S.73(9) OF THE ACT, 2017
- EXHIBIT P6 TRUE COPY OF THE FORM DRC-07 DATED 14.09.2023 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P7 TRUE COPY OF CIRCULAR NO.122/41/2019-GST DATED 05-11-2019 ISSUED BY THE CENTRAL BOARD OF DIRECT TAXES AND CUSTOMS
- EXHIBIT P8 TRUE COPY OF THE CIRCULAR NO.8/2020 DATED 04.08.2020 ISSUED BY COMMISSIONER OF STATE TAX
- EXHIBIT P9 TRUE COPY OF THE JUDGMENT DATED 26-09-2023 OF DIVISION BENCH OF THE HON. HIGH COURT OF CALCUTTA IN PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA VS. TATA MEDICAL CENTRE TRUST, KOLKATA