
2025 (4) TMI 870 - KERALA HIGH COURT

Other Citation: 2025:KER:30804

MJBR MARKETING AND FINANCIAL SERVICES PVT. LTD., VERSUS UNION OF INDIA, DEPUTY COMMISSIONER, TAXPAYER SERVICES CIRCLE, KERALA, DEPUTY COMMISSIONER, ADJUDICATION 1, ERNAKULAM, THE MANAGING DIRECTOR, GOODS AND SERVICES TAX NETWORK, STATE OF KERALA.

WP(C) NO. 26333 OF 2024

Dated: - 1-4-2025

Erroneous availment of CENVAT Credit - mismatch between GSTR 3B and GSTR 2A - Petitioner contends that the inadvertent error while availing ITC under a wrong heading was a human error and since there was no facility for revising the forms, petitioner utilized the IGST credit available - HELD THAT:- Division Bench of this Court had, in *Rejimon Padickapparambil Alex v. Union of India and others* [[2024 \(12\) TMI 399 - KERALA HIGH COURT](#)] held, after referring to the clarification issued by CBIC by its Circular No.192/04/2023 dated 17.07.2023 that the input tax credit available in the electronic credit ledger should be considered as a pool of funds designated for different types of taxes such as IGST, CGST and SGST. It was further observed that these accounts would represent a wallet with compartments for IGST, CGST and SGST funds and the entire wallet has to be taken into consideration, not just individual compartments. It was also observed that for utilizing the IGST liability, the clarification emphasizes that the eligibility of funds for this payment is based on the total balance in the entire wallet and not just one of the compartments.

The Division Bench went on to hold that Section 73 of the Act is attracted only when there is tax not paid or short paid or erroneously refunded or where an input tax has been wrongly availed or utilized for any reason. As far as the grievance and apprehension expressed by the State in that case was concerned that it might be deprived of its legitimate share of the IGST made by supplies outside, the Division Bench made it clear that the State on producing a copy of the judgment with a representation before the GST Council, appropriate directions to solve the issue by taking note of the declaration in the judgment shall be carried out.

The 3rd respondent is directed to pass fresh orders within two months, in the light of the decision in *Regimon Padickapparambil Alex* - petition allowed.

Judgment / Order

HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

For the Petitioner: By Advs. Jazil Dev Ferdinanto, Jose Jacob, Sreelekshmi Ben, Anne Maria Mathew.

For the Respondent: GP Jasmin M.M, SC. P.R Sreejith.

ORDER

Petitioner challenges Ext.P14 order in original issued by the 3rd respondent as well as Ext.P11 rectification order.

2. Petitioner is engaged in the business of providing marketing and financial services and is a registered taxpayer under the GST laws. According to the petitioner, by an inadvertent error, petitioner had claimed input tax credit available under the CGST and SGST as credit under IGST leading to a mismatch between GSTR 3B and GSTR 2A. Petitioner contends that the inadvertent error while availing ITC under a wrong heading was a human error and since there was no facility for revising the forms, petitioner utilized the IGST credit available. Subsequently, Ext.P14 order was issued imposing tax and penalty for IGST wrongly availed apart from interest, though there was no revenue loss to the department. Subsequently, a rectification petition was filed which was dismissed by Ext.P11 order, thereby confirming the demands made in Ext.P14. Petitioner has approached this Court challenging the aforesaid orders.

3. A counter affidavit has been filed on behalf of the 3rd respondent wherein it is pointed out that, as there was no inward inter-state supply for the petitioner during the month of October 2017, IGST credit was unavailable in the credit ledger. However, in order to set off the IGST output tax liability, petitioner wrongly availed the CGST and SGST credit, instead of availing it under the respective heads, resulting in wrong availment of IGST, affecting the GST provisions relating to apportionment of tax between Centre and the State.

4. I have heard Sri. Jose Jacob, learned counsel for the petitioner as well as Sri. P.R. Sreejith, the learned Standing Counsel and Smt. Jasmin M.M. the learned Government Pleader.

5. Petitioner is alleged to have utilized the CGST and SGST credit to set off the IGST output tax liability. Though there is an error in availing the same, it cannot amount to a short availment or short payment. In this context, it needs to be mentioned that in the Circular No.192/04/2023 dated 17.07.2023 issued by the CBIC, the clarification expressly refers to an instance similar to the one on hand and states "Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST...". Hence it cannot be held to be an instance warranting invocation of the proceedings under section 73 of CGST Act.

6. Apart from the above, a Division Bench of this Court had, in ***Rejimon Padickapparambil Alex v. Union of India and others [2024 KHC Online 7215]*** held, after referring to the clarification issued by CBIC by its Circular No.192/04/2023 dated 17.07.2023 that the input tax credit available in the electronic credit ledger should be considered as a pool of funds designated for different types of taxes such as IGST, CGST and SGST. It was further observed that these accounts would represent a wallet with compartments for IGST, CGST and SGST funds and the entire wallet has to be taken into consideration, not just individual compartments. It was also observed that for utilizing the IGST liability, the clarification emphasizes that the eligibility of funds for this payment is based on the total balance in the entire wallet and not just one of the compartments. In short, the analogy of the above Circular was held to be that the GST system treats the electronic ledger as a unified resource and if collectively the available funds fall below the amount of wrongly availing credit during the specified period, interest can be imposed.

7. The Division Bench went on to hold that Section 73 of the Act is attracted only when there is tax not paid or short paid or erroneously refunded or where an input tax has been wrongly availed or utilized for any reason. As far as the grievance and apprehension expressed by the State in that case was concerned that it might be deprived of its legitimate share of the IGST made by supplies outside, the Division Bench made it clear that the State on producing a copy of the judgment with a representation before the GST Council, appropriate directions to solve the issue by taking note of the declaration in the judgment shall be carried out.

8. The learned Standing Counsel for the respondent vehemently pleaded if the directions in *Rejimon Padickapparambil Alex* (supra) are made applicable to the instant case, instead of the State, it would be

the Centre who would be at a loss. Though the said contention was impressive, the same is not a reason to ignore the statutory framework and the binding decision of this Court.

9. Hence Ext.P14 and Ext.P11 are set aside and the 3rd respondent is directed to pass fresh orders within two months, in the light of the decision in *Regimon Padickapparambil Alex (supra)*. It is clarified that, if in case there is any revenue loss to the Centre in respect of the IGST, it is upon them to take it up with the GST Council with a representation for appropriate relief.

10. Writ petition is allowed as above.
